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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 59 OF 1994.

Cuttack, this the 27th day of September, 1999.

KRUSHNA MALLIK.

....

APPLICANT.

-VERSUS.-

UNION OF INDIA & OTHERS.

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Mo

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
27.9.99

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ORIGINAL APPLICATION NO. 59 OF 1994.

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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

Krushna Mallik, Aged about 26 years,
Son of Ratnakar Mallik, At. Padhani
(Ramarkula), P.O. Mamadula, Via. Dasarathpur,
Dist. Bhadrak.

... Applicant.

By legal practitioner : Mr. Satrughna Das, Advocate.

-Versus-

1. Union of India represented by the
D&G of Posts, Dak Bhavan, New Delhi-1.
2. Asst. Supdt. of Post Office I/c.,
Jajpur Sub Division, Jajpur-1.
3. Superintendent of Post Offices,
North Division, Cuttack-1.
4. Director Postal Services,
Office of Chief Postmaster General
Orissa Circle, At/P.O. Bhubaneswar,
Dist. Khurda.

Respondents.

BY Legal practitioner : Mr. A. K. Bose, Senior Standing Counsel.

S. Som

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O R D E R

MR. SOMNATH SOM, VICE CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for a direction to the Respondents to absorb him permanently in the post of E.D.D.A. Cum E.D.M.C. as he has gained experience of the work of the post for 185 days as substitute and again for 174 days as adhoc appointee in the year 1993.

2. The case of the applicant is that his father was working as E.D.D.A. Cum E.D.M.C. of Bamadula Branch Post Office. During the incumbency of his father, the applicant had worked as substitute in place of his father. After his father's retirement, applicant was appointed on adhoc basis from 23.1.93 to 30.6.1993 but actually he worked upto 15.7.1993. Thus he had completed 174 days in one Calender year i.e. 1993. For filling up of the post on regular basis names were called from the Employment Exchange and even though applicant had registered his name in the employment exchange, his name was not sponsored. Therefore, his candidature was not considered and some one else was appointed to the post. In the context of the above facts, applicant has come up in this petition with the prayer referred to earlier.

S. Som.

3. Respondents, in their counter have stated that the vacancy in the post of E.D.D.A. cum E.D.M.C. arose on retirement of Ratnakar Mallik, father of the applicant and as there was delay in filling up of the post on regular basis, applicant was appointed on adhoc basis to the post.

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At the time of his appointment, applicant gave an undertaking (Annexure-R/1), in which he stated that he could not claim permanent service on the basis of his present appointment. Respondents have stated that for filling up of the post on regular basis names were called from the Employment Exchange and in the requisition to the Employment Exchange, which is at Annexure-R/3, it was mentioned, as far as possible, the applicant must reside in or nearby place of his work, post village man or permanent resident of Ramarakal village, Saini, Athagaria, and other villages were mentioned. It was also mentioned that SC/ST candidate, may be preferred. Applicant name was not sponsored by the Employment Exchange and therefore, ^{was} Respondent No. 3 not in a position to consider his candidature ^{A. J. Tom}, and another person belonging to SC community was selected and appointed. On the basis of the above facts, Respondents have opposed the prayer of applicant.

4. We have heard Mr. Satrughna Das, learned counsel for the Applicant and Mr. A. K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and have also perused the records.

5. The first ground on which the learned counsel for the applicant has prayed regularisation of service of the applicant in the post of EDDA cum EDMC is that he had worked for 185 days as substitute and 174 days by way of adhoc appointment. Engagement as a substitute can not confer on a person any right to get regularised in the post because a substitute works at the risk and responsibility of the regular incumbent who ^h while proceeding on leave ^{A. J. Tom} provides the substitute. So far as applicant's engagement as

J. Tom

adhoc E.D.D.A. Cum E.D.M.C. is concerned, it has been held by the Tribunal in Full Bench decision in the case of RAGHUNATH NAIK VRS. UNION OF INDIA AND OTHERS in O.A. No. 315 of 1990 on 6.02.1992 that ED Agents are not casual workers and they are not entitled to have their services regularised on the basis of their length of engagement. This contention is therefore, held to be without any merit and is rejected.

6. As regards the regular selection for the post, it has been submitted by learned counsel for the petitioner that the petitioner belongs to Ramarakul Village which comes within the area of operation of Bamadula BO. Learned counsel for the petitioner has relied on the instruction of DG of posts at Annexure-4 according to which for appointment to an ED Post, Resident in the post village or in the village within the area of operation of a post office can not be a precondition. It is only necessary that the selected candidate who is belonging to any other village must be prepared to take up residence in the post village after *selection*. In the instant case, applicant comes to a village within the area of operation of the post office but his case has not been taken into consideration. In the instant case, even though the applicant had registered his name in the employment Exchange, the Employment Exchange Authorities did not sponsor his name and therefore, the Departmental Authorities were not in a position to consider his candidature. Subsequently in 1998, instructions have come that alongwith calling for names from the

selection

Employment Exchange, public notification has to be issued inviting applications from the general public but this case prior to issue of that instruction. In view of this, the Departmental Authorities could not have considered the candidature of applicant.

7. The other aspect of the matter is that in this petition filed on 10.2.1994, it has been mentioned that the selection will be held on 11.2.1994 and stay of selection was asked for. The stay not having been granted, the Departmental Authorities have also selected another SC candidate. Granting this petition, is now, will in effect mean the quashing of the selection of the selected person who has not been made as a party. Without hearing him no order to his detriment can be passed.

8. In consideration of the above, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him in this original Application. The original Application, is therefore, dismissed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.9.99

KNM/CM.