

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 727 OF 1994
Cuttack, this the 21st day of September, 2000.

PRAFUL KUMAR NAYAK.

....

applicant.

Vrs.

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? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

5

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

6

ORIGINAL APPLICATION NO. 727 OF 1994.
Cuttack, this the 21st day of September, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

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

Prafulla Kumar Nayak, Aged about 42 years,
Son of Chakrapani Nayak, At/Po; Mattabadi,
Via. Buguda, Dist. Ganjam, Presently working
as Extra Departmental Delivery Agent in
Mattabadi Branch Post Office.

... Applicant.

By legal practitioner: M/s. A. Deo, R. N. Naik, B. S. Tripathy, P. K. Misra,
Advocates.

-VERSUS-

1. Union of India represented by its Secretary
in the Ministry of Communication, Department
of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist. Khurda.
3. Postmaster General, Berhampur Region,
At/Po/Ps; Berhampur, Dist. Ganjam.
4. Superintendent of Post Offices,
Aska Division, Aska, At/Po; Aska,
District; Ganjam.
5. Sub Divisional Inspector (Postal), Aska East Sub
Division, Aska, Dist. Ganjam.
6. Satyabadi Dakua,
At/Po; Mattabadi, Via. Buguda,
Dist; Ganjam.
7. Surendranath Sethi, at present working
as extra Departmental Mail Carrier, Mattabadi,
Branch Post Office/At/Po; Mattabadi,
Via. Buguda, Dist. Ganjam.

... Respondents.

By legal practitioner: Mr. A. K. Bose, Senior Standing Counsel.

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ORDERMR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 5.12.1994 at Annexure-2 reinstating Shri Satyabadi Dakua and terminating the appointment of the applicant. He has also prayed for a direction to the Departmental Authorities to absorb him in the second post of EDDA cum EDMC in the event of reinstatement of Satyabadi Dakua, Respondent No.6. Third prayer is for a direction to the Departmental Authorities to adjust him in any other nearby post offices.

2. Departmental Respondents have filed counter opposing the prayers of the applicant. Private Respondents 6 and 7 were issued with notice but they did not appear and file counter.

3. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case. The undisputed position is that one Satyabadi Dakua, Res. NO. 6 was working as EDDA cum EDMC in Matabadi Branch post Office in the Ganjam District. He was placed under put off duty of charge of fraud and misappropriation and in that vacancy the applicant was provisionally appointed on 7.11.1981 in the combined post of EDDA cum EDMC. In 1983, the combined post of EDDA cum EDMC got bifurcated and the applicant was again appointed in the post of EDDA on 29.10.83. In the post of EDMC, Respondent No. 7, Shri Surendranath Sethi was appointed on 17.5.1984. Applicant continued for 13 years in the post of EDDA. Thereafter, from the counter it appears that Shri Satyabadi Dakua, the original incumbent approached the

Tribunal in O.A.No. 358/89 and in pursuance of the order dt. 24-9-1991 of the Tribunal in that OA one B.Samantray who was appointed as the disciplinary Authority was ordered to carry on the proceedings against S.Dakua. In this disciplinary proceedings, Shri Dakua was exonerated and had to be reinstated in his original post. Applicant's grievance is that he has been working as EDDA cum EDMC originally from 1981 and thereafter as EDDA from 1983 whereas Respondent No. 7 has been working as EDDA from 1984. But on reinstatement of Shri S.Dakua instead of disengaging Shri Sethi, Res.No. 7, the later entrant, his services were terminated. Departmental Respondents have pointed out that after bifurcation of the post of EDDA cum EDMC into two separate post of EDDA and EDMC regular process of selection was undertaken for the post of EDMC and Res. No. 7 was regularly appointed in that post. They have pointed out that for the post of EDDA held by the applicant provisional appointment was given to him. Therefore, at the time of disengagement, the Departmental Authorities disengaged the applicant rather than Respondent No. 7, who was regularly appointed. As the applicant's appointment was provisional and he was not regularly appointed, he can not claim that Res.No. 7 who had been regularly appointed to the post of EDMC should have been disengaged to make room for him just as he had been disengaged to make room for Shri S.Dakua. Moreover of the two posts one is EDDA against which the applicant was working and the other post held by Res.No. 7 as EDMC to which post Res.No. 7 has been rightly appointed. In view of this we find no merit in the claim of the applicant that he should have been adjusted against the other post of EDMC by disengaging Shri Sethi. This prayer of the applicant is accordingly rejected. While rejecting the above prayer we take note of the fact that in this process, the applicant who had put in

4:

13 years of service as EDDA cum EDMC and later on from 1983 as EDDA has been thrown out of employment for no fault of his. As a matter of fact, the Departmental Authorities have been remiss in so far as they had not undertaken the regular appointment to the post of EDDA-cum EDMC after Shri S. Dakua was removed from service. Had it been done, then the applicant could have tried his chance for getting the regular appointment to that post. They have kept the applicant on provisional basis for a long period of 13 years. According to the Departmental instructions, an ED Agent who is disengaged on grounds unconnected with his official performance or conduct should be kept in the waiting list and should be offered alternative ED appointment. In view of the circumstances of the case, we direct the Departmental Authorities that the name of the applicant should be included in the waiting list and he should be given an alternative appointment to ED post nearabout his place of original engagement when a vacancy arises there. This action should be taken by the Departmental Respondents with due despatch. We also direct that in case the applicant applies for any ED post and his application is in time and is with the necessary documents, then the Respondents will also consider the case of the applicant for such post.

4. With the above observations and directions, the Original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

(SOMNATH SOM)
VICE-CHAIRMAN