

Serial No. of Order	Date of Order	Order with Signature
30.3.2001	<p>Heard Shri D. N. Mohapatra, learned counsel for the petitioner, Shri P. V. B. Rao, learned counsel for private Res. 4 and Shri U. B. Mohapatra, learned A. S. C. for the departmental respondents and have perused the records.</p> <p>In this O.A. the petitioner has prayed for quashing the appointment of Res. 4, to the post of E.D.D.A.-cum-M.C., Ambaliatha Branch Office. The second prayer is for a direction to departmental respondents to consider permanent absorption of the applicant against a post, specially taking into consideration his experience and other eligibility. The departmental respondents have filed their counter opposing the prayer of the applicant. Private Respondent No. 4 has appeared, but he has not filed any counter. Applicant has not filed any rejoinder. We have perused the pleadings.</p> <p>For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that one Shri Mrutunjay Nanda, was the regular incumbent of the post and he was promoted to the post of Postman where he joined on 16.11.1995. Applicant has stated in his petition that during the period of absence of Shri Nanda he worked as substitute on adhoc basis from 19.8.1993 to 15.11.1995. Respondents have mentioned in Page-2 of their counter that Shri Nanda had inducted the applicant as his substitute till he left that post on 16.11.1995. This assertion of the respondent has not been denied by the applicant by filing any rejoinder. From this it is clear that the applicant worked from 1993 till 15.11.1995.</p>	<p>for hearing P.D. Bench 21/3</p> <p>for hearing Part-heard matter P.D. Bench 21/3</p> <p>Free copy of the order at 30.3.01 given to the both counsel P.D. Bench 11/4/01 P S.O</p>

1993 till 15.11.1995 only as substitute. Law is well settled that experience as substitute cannot be taken into account at the time of regular appointment, because in that event a regular incumbent can always go on leave and induct ~~the~~ one of his relations as substitute and thereby giving him an unfair advantage over fresh candidates at the time of regular selection in respect of a similar post. In view of this, experience of the applicant as substitute cannot be taken into consideration. The departmental respondents have stated that the applicant was given provisional appointment in that post on 16.11.1995 in order dated 29.12.1995 vide Annexure-R/1.

It is stated by the departmental respondents that this appointment was given pending regular selection to be made for the post of EDDA/MC and in the appointment order it was specifically mentioned that such appointment of the applicant was only till regular selection was made. Learned counsel for the petitioner has in course of hearing denied the above averment of the respondents. He has stated that order at Annexure-R/1 is a concocted and forged document as this does not contain the signature of S.D.I.(P). We note from this document that the condition that applicant's appointment was made till the regular appointment is made to that post has been mentioned therein. Learned counsel for the petitioner, while stating that this order at Annexure-R/1 is a forged one, has not himself enclosed any appointment order along with this Original Application. Annexure-1 to the petition is a certificate of the Postmaster to the effect that the applicant has been appointed by S.D.I.(P) from 16.11.1995 till 13.2.1996 and again from 14.2.1996 to 8.3.1996.

This certificate cannot take the place of order of appointment.

It is the admitted position that the applicant had worked in the post of EDDA/MC from 16.11.1995 vide Annexure-R/1.

In the absence of any appointment order produced by the applicant it cannot be held that he was appointed to the post in question on a permanent basis and his appointment was not till a selection is made. Even if for argument, it is held that no such condition as mentioned in order at Annexure-R/1 was imposed, still it cannot be held that the applicant is entitled to continue in that post by virtue of the provisional appointment, when in his O.A. he has made no averment that he

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was so provisionally appointed through a regular process of selection by competing with other persons, whose candidatures were also considered along with him. In view of this it must be held that the applicant's appointment was till the regular selection was made. In the regular process of selection Respondent No.4 was selected, because he got the highest percentage of marks in the Matriculation over all the candidates. Learned A.S.C. had produced, at the time of hearing the check sheet showing the marks obtained by the different candidates within the zone of consideration for our perusal. Learned counsel for the petitioner objected to this check sheet being taken into consideration as this has been produced at the time of hearing.

We are not inclined to agree with this objection of the learned counsel for the petitioner, firstly because, the averment made by the respondents in their counter that amongst all the candidates Res.No.4 having secured the highest percentage of marks has not been denied by the applicant by filing any rejoinder. In any case it is always open for the Tribunal to look into selection records; and the check sheet is not produced for the purpose of reference by the counsel for the petitioner, and therefore, petitioner is not prejudiced in any way for not having been supplied copy of the mark sheet. In view of this, objection of the learned counsel for the petitioner is overruled.

*S. J. Rao*

From the check sheet we find that while the selected candidate (Res.4) has secured 282 marks, i.e. 40.28% of marks in the Matriculation, the applicant has secured 248, i.e. 35.42% of marks. The minimum qualification for the post of E.D.D.A./M.C. is Class-VIII pass. But Rules provide that higher qualification upto Matriculation can be taken into consideration and any qualification above Matriculation has to be ignored. As in this case the selected candidate is a Matriculate, naturally his marks in the Matriculation have been taken into consideration. Applicant, who is also a Matriculate has got lower

percentage of marks and therefore, he cannot claim to be selected for that post. It is further submitted by the learned counsel for the petitioner that admittedly he was given provisional appointment w.e.f. 16.11.1995, but after selection of Res.4, he has also been given provisional appointment. It is submitted by the learned counsel for the petitioner that a provisional appointee cannot be replaced by another provisional appointee. In support of his contention learned counsel for the petitioner has relied on the decision of the Hon'ble High Court of Orissa in Suba Patra vs. State of Orissa reported in 1985(90)CLT 595. We have perused the decision. But it does not support the contention of the learned counsel for the applicant. Because the petitioner's provisional appointment was not made on the basis of any regular selection process. He was just picked up from the open market and inducted to that post in order to manage the work on the vacancy arising out of promotion of the regular incumbent. In view of this, the above decision does not go to support ~~the~~ the case of the applicant. Moreover, Res.4 has been appointed through a regular process of selection and even after such regular process of selection, initially appointment is always made on provisional basis. In view of this it cannot be said that a provisional appointee, as in this case, can ~~be~~ not been replaced by another provisional appointee. This contention of the learned counsel for the petitioner is held to be without any merit and the same is rejected.

*S. Jam*  
The last contention of the learned counsel for the petitioner is that applicant is working in the post till to-day. He had earlier filed the C.P. on the ground that he was not allowed to rejoin the post after the interim order of the Tribunal. As <sup>the order of</sup> the Hon'ble Tribunal directing the applicant to rejoin the post has not been implemented, it must be taken, under law, that he is still continuing in that post. The fact however, remains that Res.4 has been selected through a regular process of selection and has joined long ago and has been working for a number of

years. In consideration of this it cannot be said that applicant has been working in that post.

In view of discussions held above, we hold that the applicant has not been ~~max~~ able to make out a case for any of the relief prayed. In the result, O.A. is held to be without any merit and the same is rejected. But no order as to costs.

MEMBER (JUDICIAL)

VICE CHAIRMAN

30.3.2011