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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 48 of 1996.

Cuttack this the 5th day of March, 1998.

BIJAYA KUMAR NAYAK.

....

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 Tribunals or not? *No*

Somnath Som
(SOMNATH SOM)
VICE -CHAIRMAN

S.K. Agarwal
(S.K. AGARWAL) 5/3/98
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION No. 48 OF 1996.

Cuttack this the 5th day of March, 1998.

CORAM;

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL).

...

BIJAYA KUMAR NAYAK,
aged about 43 years,
Son of late Kangali Charan Nayak,
Village/PO. Byree, Dist. Jajpur,
and also working as E.D.M.C. in
Byree SO, At/Po. Byree, Dist. Jajpur.

... APPLICANT.

By legal Practitioner :- M/s. Pradipta Mohanty,
D.N. Mohapatra,
G. S. Sahoo, Advocates.

-Versus-

1. Union of India represented through Chief
Post Master General, Orissa, Circle,
Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices, Cuttack
South Division, Cuttack, At/Po/Dist/
Cuttack.
3. Rama Chandra Jena,
Sub Divisional Inspector (Posts),
Central Sub Division, Cuttack,
At/Po/Dist. Cuttack-3.

... RESPONDENTS.

By legal practitioner :- Mr. Ashok Mohanty, Senior Standing
Counsel (Central).

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O R D E R

MR. S.K. AGARWAL, MEMBER (JUDICIAL) :-

This is an application, under section 19 of the Administrative Tribunals Act, 1985 filed by the applicant, with the prayer to quash the impugned order at Annexure-7 declaring the applicant to have been continuing in the post of Extra Departmental Mail Carrier of Byree Sub Post Office and further to direct the Respondents to pay him all emoluments and allowances towards holding the said post.

2. In brief, the facts of this case, as stated by the applicant, are that due to retirement of one Shri Rama Chandra Tripathy on 31.5.1994, the post of Extra Departmental Mail Carrier, Byree Sub Post Office, held by him fell vacant and to fill up the post, in question, recruitment process was started by the Respondents. Shri Gatikrushna Das, Sub Divisional Inspector(posts, made a requisition to the Jaipur Employment Exchange to sponsor names of eligible candidates and accordingly the names of applicant along with three others were sponsored by the Employment Exchange. The applicant alongwith other sponsored candidates made applications for the said post, and the S.D.I.P. after considering all the applications, selected the applicant for appointment to the post by his letter dated

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28.5.1994 and the applicant, was also communicated the said order of appointment issued by the SDIP. By virtue of the said appointment order, the applicant resumed his duty on 31.5.1994 Afternoon by relieving the incumbent Shri Rama Chandra Tripathy. It is stated that Respondent No.3, S.D.I.P. always tried to threaten the applicant to terminate his job for extraneous consideration whereas the applicant expressed his inability. Thereafter, Respondent No.3 by an order dated 17.1.1995, terminated the services of the applicant and sent the same order through overseer mail for service on the applicant. But that order was withdrawn by the Respondent No.3 with the impression that the applicant will fulfill the promise and should satisfy him but the applicant was not able to satisfy the illegal desire of the Respondent No.3, thereafter, again the Respondent No.3 issued another order vide Memo No.PF/EDMC-Byree, dated 10.1.1996 purported to have exercised the power under Rule-6 and terminated the services of the applicant and directed that the petitioner shall be entitled to claim a sum equivalent to the amount of his basic allowances and D.A. for the period of notice at the same rate at which he was drawing them immediately before the termination of his service or as the case may be for the period by which said notice falls short of one month.

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It is further stated that the said termination order was illegal and it was against the guidelines issued from time to time. It was also stated that this order was issued with ulterior motive and principles of natural justice, have not been followed while terminating the services of the applicant. Applicant was working against a permanent vacancy and he was selected through a regular recruitment process prescribed under the rules, so the services of the applicant, should not have been terminated without following the principles of natural justice and therefore, according to the applicant, the power exercised by the respondent no.3 was arbitrary and against the provisions of Article 14 and 16 of the Constitution of India. Therefore, in this application, the applicant has prayed that the impugned order vide Annexure-7 should be quashed and the applicant should be declared to have been continuing in the post of E.D.M.C., Byree Sub Post Office validly.

3. Counter was filed by the respondents. In the Counter filed by the respondents, it was admitted that Respondent No.3 has passed the impugned order at Annexure-7. It was stated in the counter that the post of Extra Departmental Mail Carrier, Byree Sub Post Office was going to be vacant w.e.f. 1.6.1994 due to retirement of Shri Ramachandra Tripathy on 31.5.94AN

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In order to fillup the said post, the Sub Divisional Inspector, (Postal), Cuttack Central Sub Division, Cuttack requested the employment exchange, Jajpur to sponsor candidate. The employment Exchange, Jajpur, sponsored five candidates within the scheduled time and all of the five candidates were addressed by the Sub-Divisional Inspector (Postal) on 6.5.1994 to apply for the post on or before 26.5.1994. All of them submitted their applications for the post within the stipulated date. Thereafter, the Sub-Divisional Inspector (Postal), prepared a checklist in respect of the applications of candidates applied for and out of them, selected one Shri Bijay Kumar Nayak (applicant) and the said selected candidate (applicant) joined the post of E.D.M.C., Byree Sub Post Office on 31-5-1994AN. It is further submitted that the Service Union made a complaint against the said selection alleging irregularities and mal practices in the process of selection. Therefore, the concerned filed was called from the Sub Divisional Inspector (Postal) and the matter was reviewed and it was found that the selection was irregular. In view of the fact that the selection was observed as not fair, the SDIP was directed on 7.9.1994 to make de-novo selection by terminating the irregular appointment of the applicant. This direction could not be implemented by the SDI (P), Cuttack Central

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until, it comes to the notice of the Chief Postmaster General, who under his letter dated 19th of October, 1995 directed implementation of the order earlier issued in this regard which was communicated by the Superintendent of Post Offices, Cuttack South Division in his letter No. SP/Vig-28/95-96, dated 5.1.1996 to the present SDI(P), who terminated the services of the applicant w.e.f. 11.1.1996 (FN) vide his letter at Annexure-7 to the Original Application. It is also stated that the applicant has filed a representation against the order of termination which was received by the Superintendent of Post Offices, Cuttack South Division on 16.1.1996 but while the same was under consideration, the applicant filed the present Original Application No. 48/96 on the same day. Therefore, the case being subjudice, no decision could be taken in this matter. It is further submitted that the services of the applicant were terminated rightly by following the provisions of Rule 6(b) of ED Agents and Conduct Rules, 1964 and the said order does not violate any provisions of natural justice. In view of the averments made by the Respondents, it was requested that the application, filed by the applicant has no merit and the same is liable to be rejected.

4.

We have heard learned counsel for the applicant

Mr. Pradipta Mohanty, and learned Senior Standing Counsel appearing on behalf of the Respondents Mr. Ashok Mohanty. We have also perused the rejoinder filed by the applicant as well as the written note of submission filed by the learned counsel for the applicant on 13.1.1998.

5. Learned counsel for the applicant has argued that the applicant was recruited as per the Recruitment Rules applicable for Extra Departmental Agents issued from time to time and after his selection, he was appointed to the said post and in response to the appointment order, the applicant resumed his duty and thereafter, his work, conduct and behaviour has been found most satisfactory but inspite of this fact, Respondent No.3, by an order dated 17.1.1995 terminated the services of the applicant under Rule -6 of the ED Agents (Service and Conduct) Rules, 1964 (hereinafter called as Rules, 1964). According to the learned counsel for the applicant, the power exercised by the respondent was arbitrary and against the provisions of constitution of India and, therefore, learned counsel for the applicant has argued that the impugned order vide Annexure-7 should be quashed and the applicant should be declared to have been continuing in the post of EDMC Byree Sub Post Office. In support of his arguments, he has relied upon a decision reported in 1996 (1) SLJ, CAT, Page-177 (KAILASH SHARMA

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VRS. UNION OF INDIA AND OTHERS).

6. On the other hand, learned Senior Standing Counsel, Shri Ashok Mohanty, appearing on behalf of the Respondents, has argued that against the selection made by the Sub Divisional Inspector (posts), a complaint was filed by the Service Union alleging irregularities and illegalities as also the mal-practices in the process of selection and thereafter, the matter was reviewed and it was found that the selection was irregular. In view of this, the services of the applicant was terminated under rule 6 of the ED Agents Rules, 1964. It is argued by him that this order is neither arbitrary nor against the principles of natural justice or in violation of Article 14 and 16 of the Constitution of India. Learned Senior Standing Counsel appearing for the Respondents has also argued that the appointment was provisional and Rule-6 of the ED Agents Rules, 1964 provides for termination of services of an employee who has not rendered three years of continuous service, without any notice. Therefore, no irregularity was done while terminating the services of the applicant under rule-6 of the ED Agents, Rules, 1964.

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7. We have given thoughtful consideration to the rival contentions of the parties and perused the whole records.

8. Rule-6 of the ED Agents (Service and Conduct) Rules, 1964 reads as under ;

"The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment, shall be liable to termination by the appointing authority at any time without notice".

9. In the present case, the applicant was holding a temporary post, terminated as per the order of appointment in Annexure-3, which has made it specific that the appointment of the applicant was purely provisional and can be terminated at any time without assigning any reason thereof. It has also been mentioned in the order of appointment that the applicant will be governed by the ED Agents (Service and Conduct) Rules, 1964.

10. In this instant case, it has become very much clear on the perusal of the record that against the selection made by the SDIP, a complaint was filed alleging irregularity and mal-practices. The matter was reviewed and thereafter, it was noticed that the selection made by

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the S.D.I.P. was irregular and not fair.

11. We have also perused the records and we are of the opinion that the S.D.I.P. while making selection out of the candidates, applied for, has ignored the instructions/guidelines issued in connection with the selection of ED Agents, for the best reason known to him.

12. In the case of DODDASIDDALAH VRS. UNION OF INDIA REPORTED IN (1993) 6 SLR 474, it was held by the Bangalore Bench of the Central Administrative Tribunal that in case of termination of an irregular appointment under rule 6 of the ED Agents (Conditions and Services), 1964, there was no need for giving an opportunity of hearing. On the basis of the check list prepared by the S.D.I.P., it becomes very clear that he has ignored the guidelines/instructions issued regarding the selection of ED Agents for example, as per the circular No. A/R-2/ Blg (Sub)/Ch.II, dated at Cuttack the 4.2.1994, it has been clarified that while making selection for appointment to the ED Posts, permanent resident in the village/delivery jurisdiction of the ED Post Office, need not be insisted upon as a pre-condition for appointment. However, it shall be laid down as a condition of appointment that any candidate, who is selected must before appointment to the post take up his residence in the village/delivery

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jurisdiction of the Ed Post Office as the case may be. But here, in this instant case, the candidature of the persons at Sl.Nos. 4 and 5 of the checklist have been overlooked .It also becomes abundantly clear that the guidelines pertaining to the educational qualifications have not been followed. The criteria for recruitment to the post of EDMC is that a candidate must have passed VIII standard. Preference may be given to the candidates with matriculation qualification vide DG Posts, New Delhi letter No. 17-366/91-ED & TRG dated 12.3.1993 but the guidelines/instructions contained in this letter, have completely been over looked .That is why, on the complaint made by the Service Union, a Review of the whole matter was done by the competent authority and the competent authority has reached to the conclusion that the selection made by the SDIP for the post in the question, was irregular and on the basis of that, the impugned order of termination was issued by the competent authority holding that the appointment of the applicant was irregular.

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13. In the case of SHANKAR DAYAL UPADHYAY AND ANOTHER VRS. UNION OF INDIA AND OTHERS Reported in

(1995) 30 Administrative Tribunals Cases 18, it was held by the Central Administrative Tribunal, Patna Bench as under :

" A Government servant, it is settled law has no right to the post held by him unless he is holding a permanent post substantively or he has achieved quasi-permanent status or he is holding a temporary post for a fixed term. In the present case, the applicants are holding temporary posts of ED Mailmen terminable at will. The termination of their services at any time will therefore not attract Article 311(2) of the Constitution of India and can not be deemed to be by way of punishment. In this case, the appointments were found to be irregular. The applicants, rendered less than three years of service. On the ground that it was a case of termination simpliciter for which the employer had the right under the terms and conditions of employment the order of termination of their services must be upheld."


14. We have also gone through the judgment cited by the learned Counsel for the applicant Mr. Mohanty (1996) 1 SLJ CAT 177 - Kailash Chandra Sharma vrs. Union of India and others) supra. But according to the facts and circumstances of the instant case and in view of the law laid down by the Bangalore Bench of the Central Administrative Tribunal (supra), the case cited by the applicant, is not applicable to the present case. Therefore, we are of the considered opinion that the

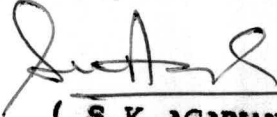
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impugned order terminating the services of the applicant is neither illegal nor contrary to any provisions of the Constitution of India.

15. On the basis of above all, and in view of the legal positions discussed above, we are of the considered opinion that the applicant has failed to make out any case for interference of this Tribunal. Therefore, the applicant is entitled to any reliefs sought for in the Original application.

16. Thus, the Original application is dismissed leaving the parties to bear their own costs.


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VICE-CHAIRMAN 3/98


(S.K. AGARWAL) 3/98
MEMBER (JUDICIAL)

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