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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.589 OF 1996
Cuttack this the 21st day of March/2003

Ananda Nisal

...

Applicant(s)

VERSUS

Union of India & Others ...

Respondent(s)

FOR INSTRUCTIONS

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

S. Mohanty
21/03/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Sasmal
(B.N. Sasmal)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.589 OF 1996
Cuttack this the 21st day of March/2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

Ananda Nisal, aged about 29 years,
Son of Magatianisal, Village-Penta,
Via-Bisama Cuttack, PS-Bisama Cuttack
Dist-Koraput - at present working as
E.D.B.P.M., At-Penta Branch Post Office,
Post-Penta, Dist-Koraput

... **Applicant**

By the Advocates

M/s . B . B . Patnaik
G . N . Padhi
B . Behera

—VERSUS—

1. Union of India represented through the Director General (Posts), Daka Bhawan, New Delhi
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda
3. Senior Superintendent of Post Offices, Koraput Division, Jeypore, Dist-Koraput
4. Sub Divisional Inspector of Post Offices, Gunupur Sub Division, At/PO-Gunupur Dist-Koraput

... Respondents

By the Advocates

Mr. A. K. Bose,
Sr. Standing Counsel
(Central)

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN : In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, Shri Ananda Nisal (applicant) has made a grievance that although he has been working as Extra Departmental Branch Post Master, Penta Branch Office, in account with Bisama Cuttack (under Koraput Division) on provisional basis

with effect from September, 1992, without any break, he has not yet been appointed on regular basis. He has, therefore, sought a direction from this Tribunal to Respondents to appoint him on regular basis in that post. The applicant has further stated that the Respondents could have regularised his service on the strength of D.G.P & T Letter No.18/3/62-Disc. dated 30.1.1965, (copy not enclosed) because there is no contest for this post from any quarters. He has also submitted that as his provisional appointment is running ~~for~~ ^{for} years together, Respondent No.3 could have regularised his service in terms of D.G.P&T instructions in Memo No.43-4/77-Pen. dated 18.5.1979 (Copy not enclosed).

2. The Respondents have not disputed the facts as brought out in the Original Application. They have admitted that the applicant was appointed purely on stop gap measure with effect from 14.9.1992, that the applicant had educational qualification of VIII Standard. The Respondents have been trying to select a person for regular appointment to the post since 4.1.1992, but without any success. In December, 1992, they went for a public notification, but that also did not succeed. In the meantime, from the year 1993, the minimum educational qualification for appointment to the post of E.D.B.P.M. was enhanced from Class-VIII to Matriculation, whereupon they issued notification on 25.10.1993, afresh, inviting applications from the residents of Penta village. They again approached the Employment Exchange on 19.3.1996 for sponsoring the

candidates, followed by public notification dated 22.4.1996, but without any success.

3. From the above facts of the case, it appears that the Respondents are not getting suitable candidates either through the Employment Exchange or from the open market. On the other hand, they are not regularising the service of the applicant on the ground that he does not possess the minimum educational qualification of Matriculation. This is a ~~very~~ typically chaotic situation where the Respondents are not ~~either~~ able to dispense with the service of the applicant, because there is no eligible candidate available in Penta or to give him regular appointment, because he does not possess the minimum educational qualification as prescribed for the post in question since 1993. However, when the Respondents gave him provisional appointment as EDBPM of Penta Branch Post Office in September, 1992, the applicant did possess the minimum educational qualification of Class-VIII, as prevalent at that point of time. In the meantime, the applicant has spent over 10 years looking after the work of E.D.B.P.M., Penta. In this context, we feel tempted to refer to the decisions of the Hon'ble Supreme Court in the case Y.V.Rangaiah and Others v. J.Srenivasa Rao & Others (AIR 1993 SC 582) wherein it has been held as under.

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"... The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules ... We have not the slightest doubt that the post which fell vacant prior to amended rules would be governed by the new rules".

To the same effect is the another decision of the Hon'ble Supreme Court in P. Mahendran & Others vs. State of Karnataka and others (AIR 1990 SC 405), wherein it has been held as under.

"... If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any Rules unless the amending Rule is retrospective in nature".

4. In view of the settled position of law as propounded by the Hon'ble Supreme Court in the above mentioned two cases, we see no logic in the Respondents' action to try for someone else other than the person(applicant) who has been looking after the job of EDBPM, Penta B.O. over 10 years, and who at the time of his initial appointment fulfilled all the eligibility conditions for appointment to the post of EDBPM, Penta B.O. including the minimum educational qualification. We, therefore, direct, in the interest of fair play and justice, that the applicant be given the status of regular appointee of the post of EDBPM, Penta B.O.

5. In the aforestated terms, this Original Application succeeds, leaving the parties to bear their own costs.

21/03/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

By/

B.N. SOM
(B.N. SOM)
VICE-CHAIRMAN