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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


ORIGINAL APPLICATION NO. 723 OF 1996
Cuttack, this the 06th day of November, 2003.

Kumari Sabita Pradhan. 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? No


(B.N.SOM)
VICE-CHAIRMAN


06/11/2003
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 723 OF 1996
Cuttack, this the 86th day of November, 2003

C O R A M:-

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.)

....

Kumari Sabita Pradhan,
D/o. Akadasi Pradhan,
At/Po: Gobindapur,
Via: Kenaveta,
Dist: Sundargarh,
ORISSA.

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.... APPLICANT.

By legal practitioner: M/s. Manoj Mishra,
U. C. Patnaik,
D. S. Mohanty,
Advocates.

:Versus:

1. Union of India represented through the
Postmaster General, Orissa, Department of
Posts, Bhubaneswar, At & Po: Bhubaneswar,
Dist. Khurda.
2. Superintendent of Post Offices,
Sundargarh Division,
Town and Po: Sundargarh,
Dist. Sundargarh.
3. Sub-divisional Inspector (Postal),
Banigarh Sub division,
At/Po: Banigarh,
Dist. Sundargarh.

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RESPONDENTS.

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

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

The Applicant, in order to assist her father (to discharge the duties of Extra Departmental Branch post Master of Govindapur Branch post office) worked as a SUBSTITUTE from 12-04.1993 to 10.07.1993; because her father (the regular EDBPM) was ill; which factum was informed to the Departmental Authorities, on 11.7.1993. Due to such illness, the original incumbent/father of the Applicant proceeded on leave w.e.f. 01.09.1993 (by providing the present Applicant as his substitute) till 01.06.1994; when he resumed his duty after recovering from illness. It is the case of the Applicant that even though she had performed the duties of EDBPM of Govindapur Branch post office, during the aforesaid periods, she was not paid her allowances, by the Respondents, despite her repeated approach. It is the further case of the Applicant that since the post of EDBPM of Govindapur is now lying vacant considering her qualification and experiences as gained, she should be given appointment, as EDBPM on regular basis.

2. In this original Application, under Section 19 of the Administrative Tribunals Act, 1985 the Applicant has prayed for the following reliefs:

- i) direct the Respondents to pay the salary and other allowances for the period from 12.04.1993 to 10.07.1993 and from 01.09.1993 to 31.05.1996;
 - ii) to appoint the Applicant in the post of Extra Departmental Branch Post Master on regular basis.
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3. Respondents have filed their counter stating therein that Akadasia Pradhan was functioning as E.D.B.P.M. of Govindapur Branch Post Office; apart from discharging the duties of a Teacher in the local M. E. School at Govindapur. On receipt of public complaint regarding irregular functioning of the Govindapur Branch Post Office (and as the working hours of the said post office clashed with the working hours of the School) said Akadasia Pradhan was directed to resign from either of the posts and in order to avoid the resignation from the post of E.D.B.P.M., he went on leave by handing over the charge of the Post Office to his daughter (the present Applicant as the substitute. Since the prayer for leave (of the original incumbent/EDBPM) had not got prior approval (nor the substitute had the approval as per the rules) the Applicant was not paid any allowances. It is the case of the Respondents that for the wilful absence of the regular E.D.B.P.M. (the father of the Applicant) proceedings as per the EDAs (Conduct and Service) Rules, were initiated against him and, therefore, the Applicant has also not got the allowances. As regards her claim for regular appointment as EDBPM, it has been submitted by the Respondents, that since the engagement of the Applicant (as substitute EDBPM) was an irregular one and since substitute has no right to claim regular appointment, it deserves no consideration.

4. We have heard Mr. M. Mishra, learned Counsel appearing for the Applicant; Mr. A.K. Bose, learned Senior Standing Counsel appearing for the Respondent Department and Mr. P.K. Padhi, learned Counsel appearing for the intervenor.

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Respondent and perused the materials placed on record.

5. We have gone through the DG's instructions (relied on by the Respondents) filed as Annexure-R/4. In the said clarification, though it has been provided that prior approval of the leave/substitute is required, simultaneously the Director General of Posts had also taken care of unforeseen situations by providing (in the clarification No. 3 under the head 'approval of the substitutes in place of ED Agents proceeding on leave) as under:

*It is provided in the latest instructions that substitutes should be approved by the appointing authorities. It is not the intention that there should be any elaborate procedure to be followed for according such approval. In cases where leave is not sanctioned in advance, we may not even insist upon prior approval of the substitute but the Department should not be precluded from making such inquiries into antecedents of the substitutes as considered necessary and to ask an ED Agent to provide another substitute, if it is found that the one actually proposed by the ED Agent is not acceptable. (emphasis supplied)

By keeping in mind the above, we examined the matter. Fact remains that the Applicant had performed her duties as substitute E.D.B.P.M. in place of the regular incumbent. Fact also remains that there was no irregularity or illegality during the period she had performed her duties as a substitute EDBPM. Therefore, since under the rules/instructions, an ED Agent can provide substitute and proceed on leave, there was nothing wrong in doing so by the regular incumbent. As such, non-payment of the duty allowance to the Applicant (a substitute) during the period in question, is definitely not justified. 7

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Further we would like to observe here that the supervising authorities had also utterly failed in their duties in not pointing out the defect/irregularities and in taking further action if they were not satisfied with the arrangement or on the work of the substitute/present Applicant. Nothing adverse having been pointed out at that relevant time (when she had performed her duties satisfactorily, without any comments from the Respondents) the Applicant is entitled to get her duty allowance as per the Rules. It has also not been pointed out in the counter as to what action has been taken by the Department (against the authorities) for not pointing out or supervising the work of the regular incumbent of the Branch Post Office, if they were not satisfied with the work of the Applicant or the manner in which the substitute provided.

6. In the above said premises, we have no option but to direct the Respondents to pay the required allowances to the Applicant; for which she was entitled to during the period she had worked as a substitute in place of the regular incumbent. The payment should be released, in her favour, within a period of sixty days from the date of receipt of a copy of this order; for which we hereby direct the Respondents.

7. As regards the claim of the Applicant that being a matriculate and on the face of gathering some experience, she should be absorbed as a regular EDBPM, we are to conclude that law is well settled that a substitute has no right to claim regular appointment and, in that view of the matter, while rejecting this prayer of the Applicant, we order

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that in case the Applicant applies for any ED post, pursuant to notification, her case be considered along with others, strictly in accordance with Rules.

8. In the result, this Original Application is allowed in part as per aforestated terms. No costs.


(B.N. SOM)
VICE CHAIRMAN


06/11/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)