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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 110 OF 1998

Cuttack, this the 9th day of September, 1999

Sudhakar Parida

APPLICANT

Vrs.

Union of India and 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

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9.9.99

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sudhakar Parida, aged about 28 years, son of Dhaneswar Parida, At-Garajanga, PO-Ghaghra, Kendrapara, District-Kendrapara Applicant

Advocate for applicant - Mr.T.Rath

Vrs.

1. Union of India, represented through the Chief Post Master General,Orissa Circle, Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices, North Division, Cantonment Road, Cuttack-1.
3. Asst. Superintendent of Post Offices,Kendrapara Sub-Division, At/PO/District-Kendrapara Respondents
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Advocate for respondents - Mr.B.Dash,
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 27.1.1998 at Annexure-4 cancelling his selection as EDDA, Ghaghra B.O. and the charge report at Annexure-5 in which he made over charge to one Gokul Chandra Jena on 27.1.1998. Facts of this case fall within a very small compass and can be briefly stated.

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2. For the post of EDDA, Ghaghra BO, the departmental authorities called for names from the Employment Exchange in their letter dated 31.1.1995. The names of the applicant and some others were sponsored by the Employment Exchange. Ultimately, the applicant was selected to the post of EDDA, Ghaghra EDBO, after verification of his documents. He was given training and issued with appointment order in pursuance of which he assumed charge of the post of EDDA, Ghaghra BO on 2.7.1997. By order dated 27.1.1998 Annexure-4 his provisional appointment was cancelled and it was mentioned that Superintendent of Post Offices, Cuttack North Division, has cancelled his provisional appointment and he was compelled to hand over charge to one Gokul Chandra Jena. That is why the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that the Employment Exchange was asked to sponsor names of candidates latest by 28.2.1995. But the Employment Exchange Officer, Kendrapara, sponsored names of the candidates in letter dated 5.4.1995 which were received by respondent no.3 on 10.4.1995. It is stated that as the names of the applicant and other candidates were sponsored after due date, the selection should not have taken place and that is how respondent no.2 reviewed the selection file and ordered cancellation of the selection and directed that fresh selection be made. It is stated that according to Director-General, Posts' circular dated 4.9.1982 the Employment Officer should sponsor names within a period of thirty days from the date of sending requisition. But in this case, names received after much delay were

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illegally considered. It is further stated that under the rules respondent no.2 has the power to review the selection and the power has been rightly exercised as the selection has been in violation of the rules. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri T.Rath, the learned counsel for the petitioner and Shri B.Dash, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. It has been submitted by the learned counsel for the petitioner that as the respondents have acted upon the names though belatedly received from the Employment Exchange and the applicant was duly selected, given training and appointed in July 1997, respondent no.2 should not have cancelled the selection after passage of more than six months Considering the names which were sent belatedly is at best an irregularity which cannot be said to have vitiated the selection. In support of his contention, the learned counsel for the petitioner has relied on the case of Sardara Singh and others v. State of Punjab, AIR 1991 SC 2248. In that case, recruitment to the post of Patwari was under consideration. The State Government had instructed the Deputy Commissioner, Patiala that as the number of applicants was quite large it would not be necessary to solicit candidates afresh from the Employment Exchange or through public advertisement. But in paragraph 4 of the same order it was indicated that priority should be given to preferential categories like children affected by riots at Delhi, terrorist affected families in Punjab, etc. As the circular provided that these priority categories will have to be given precedence over candidates from other

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sources, the District Collector invited applications from these categories and ultimately selection was made on that basis. The Hon'ble Supreme Court held that even though the District Collector had invited applications by way of mistaken compliance on wrong impression of the Government order, selection of the candidates so applying does not become illegal thereby. In the instant case admittedly the names of the applicant and some others were forwarded by the Employment Exchange though belatedly. But following the principle laid down by the Hon'ble Supreme Court in **Sardara Singh's case (supra)**, consideration and selection of a candidate from amongst the list of names belatedly sent by the Employment Exchange does not ipso facto become invalid. Moreover, the respondents have mentioned that according to the circular of Director-General, Posts, the Employment Exchange has to sponsor names within thirty days. In this case, according to the respondents, the requisition was issued in letter dated 31.1.1995 and the Employment Exchange was asked to sponsor names by 28.2.1995. From this it is clear that the departmental authorities did not give thirty days time to the Employment Exchange.

6. The respondents have not alleged any other irregularity with regard to selection of the applicant for the post of EDDA, Ghaghra BO and therefore it must be held that cancellation of his selection on the above stated grounds by respondent no.2 is not sustainable.

7. The learned counsel for the petitioner has also submitted that respondent no.2 does not have the power of review of selection. In support of his

contention he has referred to the following cases:

- (i) Vishnu Kanta Shukla v. Union of India, 1997 (1) SLJ (CAT) 374;
- (ii) Dharam Pal v. Union of India, 1997(1) SLJ (CAT) 514;
- (iii) Vinod Kumar Mishra v. Union of India, 1996(1) SLJ (CAT) 616;
- (iv) Shri Kant Yadav v. Union of India, 1997 (2) SLJ (CAT) 446.

In view of our finding that in this case the impugned order of respondent no.2 is not sustainable, it is not necessary to refer to these cases.

8. In the result, therefore, the impugned order at Annexure-4 and the consequent report of handing over of charge at Annexure-5 are quashed and it is declared that the applicant has been legally and validly appointed to the post of EDDA, Ghaghra BO. The Original Application is accordingly allowed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN