

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACKBENCH, CUTTACK.

ORIGINAL APPLICATION NO. 150 OF 1998  
Cuttack, this the 24<sup>th</sup> day of April, 2000

Manibhusan Tripathy .....

Applicant

Vrs.

Union of India,

.... Respondent

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not?

(G.NARASIMHAM),  
MEMBER (JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN

14

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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)

.....  
Sri Manibhusan Tripathy, a ged 31 years, son of Radhakrishna  
Tripathy, Village-Mahilo, Via-Kaduapada, Dist.Jagatsinghpur  
Applicant  
.....

Advocates for applicant - M/s B.K.Mohanty  
P.K.Bhuyan  
S.K.Patnaik

Vrs.

Union of India represented through Superintendent of Post  
Offices, Cuttack South Postal Division,  
Cuttack, At/PO/Dist.Cantonment Road, Cuttack ...Respondent

Advocate for respondent-Mr.U.B.Mohapatra  
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  
that a letter be issued to him by the departmental  
authorities giving him one month's time to produce all his  
certificates of qualificationi,etc., for the purpose of  
selection for the post of EDBPM, Kotian. The second prayer is  
for a direction to the respondent to consider his case taking  
into account his past experience in the post of EDBPM, Mahilo  
as a substitute.

2. The respondent has filed counter opposing  
the prayers of the applicant, and the applicant has filed a  
rejoinder reiterating his prayers in the OA. For the purpose  
of considering this petition, it is not necessary to go into  
too many facts of this case.

3. The admitted position is that the applicant's father Radhakrishna Tripathy was working as EDBPM, Mahilo and the applicant has worked for some periods as substitute of his father in his leave vacancy. For filling up of the post of EDBPM, Kotian, names were called for from Employment Exchange. Even though the applicant had registered his name in the Employment Exchange, his name was not forwarded. He thereupon approached the Hon'ble High Court in OJC No.16297 of 1997 which was disposed of in order dated 12.12.1997 with a direction to the postal authorities that the candidature of the applicant should be taken into consideration even though his name is not sponsored by the Employment Exchange. This order of the Hon'ble High Court is at Annexure-1 of the O.A. The applicant has stated that he apprehends that notwithstanding this order of the Hon'ble High Court, his case will not be considered by the departmental authorities and that is why he has come up in this petition with the prayers referred to earlier.

4. The respondent in his counter has stated that the case of the applicant was considered along with other candidates whose names were sponsored by the Employment Exchange. The applicant belongs to General Category and he has got 35.14% of marks in HSC Examination. Originally one H.C.Sahoo belonging to OBC category was selected for the post. He got 38.85% of marks in HSC Examination, i.e., higher than the applicant. It is further stated that later on a review it was found that selection of H.C.Sahoo has not been correctly done and therefore that selection has been cancelled and notice has been issued to H.C.Sahoo to show cause why his services should not be terminated. Shri Sahu has come up before the Tribunal in OA No.126 of 1999. The respondent has stated that as the order of the Hon'ble High Court has been

strictly followed and the candidature of the applicant has been considered, the applicant can have no grievance. It has been stated that experience as a substitute cannot be taken into account under the rules while making regular selection to the post of EDBPM and therefore, the experience of the applicant as substitute in the post of EDBPM, Mahilo cannot be taken into account.

5. The applicant in his rejoinder has stated that he has worked as substitute for many days in different spells and according to law as laid down by the Full Bench in the case of Raghunath Naik v. Union of India, OA No. 315 of 1990, decided on 6.2.1992, substitutes who have completed 240 days of service, are entitled to be considered for appointment in future vacancies. It has also been stated that SLP against the decision of the Full Bench has been dismissed by the Hon'ble Supreme Court. In view of the above, the applicant has reiterated his prayers in the OA.

6. We have heard Shri B.K.Mohanty, the learned counsel for the petitioner, Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondent, and Madam S.L.Patnaik, the learned counsel for Shri H.C.Sahoo, the originally selected candidate, who got himself impleaded as intervenor, and have also perused the records.

7. The prayer of the petitioner is for consideration of his case at the time of selection for the post of EDBPM, Kotian. There is already a direction of the Hon'ble High Court to that effect and from the counter filed by the Department it is seen that his case has been considered and amongst the ten candidates who have been considered, the applicant has got the lowest percentage of marks. He also belongs to General Category whereas the candidate originally selected, i.e. , the intervenor belongs to OBC category.

There are a large number of candidates belonging to General Category like the applicant who have got higher marks than the applicant and therefore, the question of selection of the applicant on the basis of marks does not arise. In any case, his prayer for consideration of his candidature has already been met by the departmental authorities.

8. It has been submitted by the learned counsel for the petitioner that Calcutta Bench of the Tribunal in the case Smt. Durga Bhowmick and others v. Union of India and others, (1989)11 ATC 255, has held that a substitute working for not less than 240 days per year between 1985 and 1987 are entitled to permanent absorption against future vacancies. Further it is argued that in the Full Bench decision in Raghunath Naik's case (supra) the Tribunal has held that substitutes who have completed 240 days of service are entitled to be considered for appointment in future vacancies. We have gone through the decision in Smt. Durga bhowmick's cas (supra) as also the above Full Bench decision. On a perusal of the Full Bench decision it is clear that Smt. Durga Bhowmick's case (supra) was taken into consideration by the Full Bench in Raghunath Naik's case (supra). On a perusal of the Full Bench decision it is absolutely clear that the Full Bench has in the above case decided that substitutes are not entitled to be regularised in future vacancies. The first question referred to the Full bench in Raghunath Naik's case (supra) was the following:

"1) Whether a substitute of an ED Agent fills the character of a Casual Worker and as such the decisions with regard to absorption of casual workers can be made applicable to such substitutes."

The Full Bench in paragraph 14 of the decision has clearly answered the above question in the negative. From the above it is clear that according to the law as laid down by the Full

Bench in the above case, a substitute is not entitled to be considered for regularisation. In any case the petitioner has not asked for regularisation. He has asked only for consideration of his candidature, and this has been done.

9. As regards his second prayer that his past experience as a substitute should be taken into consideration. This is wholly without any merit because a substitute is inducted by regular incumbent at his risk and responsibility during the period of his leave. If experience as substitute is given weightage, then it will always be open for a regular incumbent to an ED post to go on leave by providing one of his relations as his substitute thereby giving him an unfair advantage over others at the time of regular selection for ED post. We have been consistently taking the view that for the above reason, experience as a substitute cannot be taken into consideration at the time of regular selection. The respondent has pointed out that there is also no departmental rule in this regard. Therefore, this prayer is held to be without any merit and is rejected.

10. In consideration of all the above, the Original Application is held to be without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN