

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 559 OF 1998.
Cuttack, this the 6th day of March, 2000.

SHRI KULAMANI SAHOO.

....

APPLICANT.

VRS.

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*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
6/3/2000

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 559 OF 1998.

Cuttack, this the 6th day of March, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASI MHAM, MEMBER (JUDL.).

SHRI KULAMANI SAHOO,
Aged about 50 years,
S/o. late Gobinda Sahoo,
Working as EDBPM in charge,
Anantapur BO, via. Machhagaon,
SO Under Jagatsinghpur Head Office,
DIST: JAGATSINGHPUR. APPLICANT.

By legal practitioner: Ms. SADAY LAXMI PATNAIK, Advocate.

-VERSUS-

1. Union of India represented through its
Secretary, Government of India,
Ministry of Communication,
New Delhi.
2. Chief Postmaster General,
Orissa Circle, Bhubaneswar.
3. Superintendent of Post Offices,
Cuttack South Division, Cantonment Road,
Cuttack.
4. Assistant Superintendent of Post Offices I/c.
Jagatsinghpur Sub Division, At/Po/Dist: Jagatsinghpur.

: RESPONDENTS.

By legal practitioner : Mr. U. B. Mohapatra, Addl. Standing
Counsel (Central).

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for a direction to the Respondents to post him as EDBPM of Anantapur BO and to regularise his service with effect from his illegal removal from 31.5.1977 and to give him all service benefits.

2. Case of the applicant is that he joined as EDDA at Anantapur Extra-Departmental Branch Post Office on 18.2.70. The Regular EDBPM of Anantapur BO one Bhagaban Das was elected as a sarpanch and he resigned from the Office of the EDBPM. According to the applicant, he was duly selected as EDBPM of Anantapur BO, in the appointment letter dated 24.3.1976, which is at Annexure-1. Again Bhagaban Das, the earlier EDBPM came back to service ^{by} ~~by~~ exercising political pressure and the applicant's service as EDBPM was terminated in order to accommodate Shri Bhagaban Das. On the representation of the Applicant, for getting the post of EDBPM, or any other ED Posts, he was appointed as EDDA in the post held by him earlier. Applicant has been making representation for the post of EDBPM but without any result. Subsequently, Bhagaban Das, expired on 23.8.98 and the post of EDBPM has fallen vacant. Even though applicant has represented for the post of EDBPM, his case has not been considered and that his why he has come up in this Original Application with the prayer referred to above.

3. Respondents, in their counter have opposed the prayer of applicant. They have stated that because of Shri Bhagaban Das getting elected to the post of Sarpanch, disciplinary proceedings were initiated against Shri Das and he was put off

duty. In the put off duty vacancy, applicant who was working as E.D.D.A. in that office, was appointed as EDBPM. For such appointment, the names were called for from the employment exchange, and applications were invited from the general public and the appointment of the applicant was not a regular appointment and it was provisional appointment, during the put off vacancy of Bhagaban Das. Subsequently Bhagaban Das was reinstated in service, the applicant came back to the post of EDDA. Applicant, therefore, has to be reverted from the post of EDBPM and he was adjusted in his earlier post of EDDA.

JDM
Applicant has been representing for the post of EDBPM. But as his original posting was on provisional basis during the put off duty vacancy and he was not selected through any process of selection, his case was not considered. Regular vacancy in the post of EDBPM arose when Shri Bhagaban Das expired on 23.8.98. Applicant represented for getting appointment to the post but in 1998, the requirement for filling up of the post of EDBPM was HSC pass and applicant has only passed in Class-VIII and therefore, he could not be selected for the post of EDBPM, Anantapur. On the above grounds the Respondents have opposed the prayer of applicant.

4. We have heard Ms. SLPatnaik, ld. counsel for applicant and Mr. U. B. Mohapatra, ld. Addl. Standing counsel appearing for the Respondents and have also perused the records. Applicant has stated that in 1976 vacancy in the post of EDBPM arose when the incumbent EDBPM Bhagaban Das resigned from service. Respondents on the other hand pointed out that Bhagaban Das was placed under put off duty and in his put off duty vacancy applicant was appointed on provisional basis, and therefore, he had to make way for the regular incumbent on his

12

reinstatement in service. It has been submitted by ld. counsel for the applicant Ms. SL patnaik, that the appointment order at Annexure-1 shows that it was a regular appointment. Ld. counsel for the applicant has referred us to the form of appointment given at page 36 & 37 of swamy's Compilation of ED Service Rules published on 18.5.1981. It has been submitted by the ld. counsel for the applicant that as the form of appointment issued to the applicant is not in form at Annexure-B which is meant for provisional appointment during put off duty vacancy, the appointment order issued to the applicant should be taken as regular appointment. On a reference to the relevant circular, we find that this form at Annexures-A and B were prescribed in DG P&T circular dated 18.5.1979 i.e. much after the appointment of applicant in 1976. Therefore, just because in the appointment order it was not written that his appointment is during the duration of the put off duty vacancy, it can not be taken that his appointment was on regular basis. Moreover, applicant has not denied the submission of Respondents that even in the put off duty vacancy he was appointed straightaway as EDBPM and he did not come through the process of selection to be appointed as EDBPM. As regards his appointment to the post of EDBPM, the vacancy arose in 23.8.1998 on the death of the existing incumbent, Bhagaban Das. By that time, the educational requirement for the post of EDBPM was HSC pass and the applicant has only passed Class-VIII. It is submitted by learned counsel for the applicant that his claim relates to the year 1977 when the educational requirement was class VIII and therefore, his case should have been considered in 1998 on the basis of the educational qualification of class-VIII pass. Position of law is well settled that a vacancy has to be filled upon the basis of the rules

J. Som.

applicable when the vacancy arose. In this case, vacancy arose in August, 1998 and by that time the educational qualification for the post of EDBPM was HSC pass. As the applicant did not have the educational qualification, Respondents could not have considered and appointed him to the post of EDBPM in 1998 when he did not have the minimum educational qualification. Prayer of applicant to get appointed against the post of EDBPM in 1998 on the basis of his educational qualification of class VIII pass, is therefore, held to be without any merit and the same is rejected.

5, In the result, therefore, we hold that the applicant has not been able to make out any case for the reliefs claimed by the applicant and the OA is dismissed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.