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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 599 OF 1998
Cuttack this the 23rd day of August/2000

Santosh Kumar Mohapatra

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 599 OF 1998
Cuttack this the 23rd day of August/2000

CORAM:

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

...

Santosh Kumar Mohapatra,
aged about 31 years,
S/o. Guru Charan Mohapatra
Village/PO: Sidhal
Via - Kaduapada
PS/Munsifi/Dist : Jagatsinghpur

...

Applicant

By the Advocates

M/s. S.K. Swain
B.R. Parida

-VERSUS-

1. Union of India represented by it's
Secretary in the Department of
Posts, Dak Bhawan,
New Delhi
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
At/PO/PS/Munsifi: Bhubaneswar
Dist : Khurda
3. Superintendent of Post Offices,
South Division, Cuttack
At/PO/PS/Munsifi/Dist: Cuttack

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Respondents

By the Advocates

Mr. B.K. Nayak
Addl. Standing Counsel
(Central)

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application filed on 28.9.1998 for issuing direction to Respondent Nos. 2 and, viz., Chief Post Master General, Orissa Circle and Superintendent of Post Offices(S) Division, Cuttack respectively to consider the case of the applicant and appoint him as Extra Departmental Branch Post Master, against any existing or future vacancy, the facts not not controversy are that against a put off duty vacancy applicant Santosh Kumar Mohapatra was selected and provisionally appointed as E.D.S.P.M., Sidhal Branch Office with effect from 15.12.1986 by order dated 5.2.1987 (Annexure-A/1). As the regular incumbent was reinstated the applicant handed over charge of that post on 6.9.1988. Applicant's Original Application No.175 of 1988 questioning the reinstatement was dismissed by this Tribunal on 30.8.1988. While dismissing the O.A. the Tribunal observed that Post Master General should sympathetically consider the case of the applicant for appointment at Baijanga B.O. within the District of Cuttack. As Hrusikesh Chaini, the original E.D.B.P.M., who was reinstated was again placed under put off duty, the applicant filed Original Application No.344 of 1992 seeking direction for provisional appointment in that vacancy. By the strength of the interim order passed by this Tribunal on 31.7.1992 in that Original Application, the applicant was again provisionally appointed as E.D.B.P.M., Sidhal B.O. appointment of regularly selected candidate. Respondent No.4, Ajaya Dash of that Original Application and the applicant along with others were candidates for selection to that vacancy. Ajaya Dash having been more meritorious was ultimately selected and appointed in that vacancy, and as per orders of this Tribunal, the applicant handed over the charge

to Shri Dash on 15.1.1993. This Original Application was ultimately dismissed on 12.2.1993. On 1.3.1993 vide Annexure-A/2, the applicant was offered the post of E.D.B.P.M., Khorat B.O. on provisional basis. As there was resistance from the villagers of that particular locality, the applicant could not join and accordingly submitted his report to the authorities under Annexure-A/3. Again by order dated 7.5.1993 (Annexure-A/4) he was provisionally appointed as E.D.B.P.M., Sardola. He also could not take over the charge of this seat because of resistance of the residents of the locality and accordingly submitted report to the authorities under Annexure-A/5.

With this background and past experience he being an employed, files this Application.

2. The Respondents (Department) in their counter take the stand that there is no provision to give weightage to the experience gained against any put off duty vacancy. As per rule, candidates are to compete among themselves. Applicant is at liberty to apply for any vacancy, in which event his case will be considered on merit.

3. No rejoinder filed.

4. We have heard Shri S.K.Swain, learned counsel for the applicant and Shri B.K.Nayak, learned Addl.Standing Counsel appearing for the Respondents. Also perused the records and the records of O.A.Nos. 175/88 and 344/92.

5. Facts are not in controversy. His total provisional experience against the put off duty vacancy on two spells comes to about two years and three months. Under the E.D.Rules, there is no provision for taking into account this much of experience for giving appointment and that too without any regular

application containing necessary particulars along with necessary documents, having been made in response to a notice for any vacancy. Moreover, Bangalore Bench of the C.A.T. Full Bench (Five Members) in D.M.Nagesh v. Asst.Suptd.Post Offices, reported in 2000(2) A.T.J. 259, by overruling the previous Full Bench decision in G.S.Parvati case held that previous experience gained by a candidate due to his working as a provisional E.D.Agent need not be given due weightage at the time of regular selection.

Question therefore, arises, whether this Tribunal can give direction to the respondents(Department) to appoint the applicant as E.D.B.P.M. against any existing or future vacancy by taking into account his past experience of about 2 years and three months. We are aware that the then Bench of this Tribunal directed the Department to consider the case of the applicant sympathetically. At the same time, we cannot overlook the following observation of the Apex Court in L.I.C. of India v. Mrs.Asha Ambekar reported in AIR 1994 SC 2149.

"... The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration ... yielding to instinct will tend to ignore the cold logic of law. It should be remembered law is the embodiment of all wisdom. Justice, according to law is a principle as old as the hills. The Courts are to administer law as they find it, however inconvenient it may be ... a statute must of course be given effect to whether a Court likes result or not. The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the Court of law. Disregardful of law, however, as the case may be, it should never be done".

In view of this observation of the Apex Court, we cannot direct the departmental authorities to ignore the standing rules/ instructions and give appointment to the applicant against any vacancy of E.D.B.P.M. by considering his case sympathetically

in view of his past experience of 2 years and 3 months against put off duty vacancy. However, at the same time we make it clear that in case the applicant applies for any vacant post of E.D.B.P.M. and/or equivalent post in response to an advertisement/notification of the concerned vacancy, and if the application is complete in all respects, his case can be considered along with other applicants, keeping in view the departmental rules and instructions on the subject.

7. With this observation, Original Application is disposed of, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.8.2000

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//