

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.7 OF 1998
Cuttack, this the 9th day of November, 1998

Ratikanta Sarangi 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*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

9/11/98

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CORAM:

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

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Ratikanta Sarangi,
aged about 27 years,
son of Dhaneswar Sarangi of
village-Chhotanathpur Sasan,
PO-Sitaleswar, Via-Aul, P.S-Aul,
District-Kendrapara Applicant

By the Advocate - Mr.H.P.Rath

Vrs

1. Union of India, represented by
the Chief Post Master General,
Orissa Circle,
At/PO-Bhubaneswar, Dist.Khurda.
2. Superintendent of Post Offices,
Cuttack North Division,
At/PO/Dist.Cuttack.
3. Sub-Divisional Inspector of Post
Offices, At/PO-Pattamundai,
Dist.Kendrapara Respondents

By the Advocate - Mr.U.B.Mohapatra
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som
In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to appoint him
to the post of E.D.D.A., Sitaleswar B.O.

2. According to the applicant, consequent
upon promotion of regular E.D.D.A of Sitaleswar B.O.to
the cadre of Postman, the petitioner was provisionally
appointed as E.D.D.A. of that Branch Post Office with

effect from 9.2.1992 and continued till 19.10.1992. While he was continuing as such, respondent no.3 placed requisition to Employment Exchange for getting names for filling up of the post on regular basis. The last date for submission of applications was fixed to 8.6.1992. As regular selection was not completed, the petitioner was again appointed as E.D.D.A. on provisional basis from 15.4.1993 to 31.3.1994 and again from 1.4.1994 to 28.2.1995 and then from 1.3.1995 to 19.4.1996. As such, the applicant has continued on provisional basis from 15.4.1993 to 19.4.1996, a period of more than three years. Apprehending his termination even prior to regular selection, the applicant approached the Tribunal in OA No.347 of 1993 in which the Tribunal in their order dated 30.7.1993 directed the departmental authorities to allow the petitioner to continue till the regular appointee joins. Respondent no.3 again submitted requisition to the Employment Exchange calling for names and again names of five candidates including the present applicant were sponsored by the Employment Exchange. These five persons were asked to submit application in prescribed proforma by 18.2.1994. One Harihar Panda approached the Tribunal in OA No.122 of 1994 praying for consideration of his candidature for the post of E.D.D.A., Sitaleswar, even though he had not been sponsored by the Employment Exchange. The Tribunal in their order dated 2.8.1994 directed the respondents to consider the candidature of Harihar Panda if the selection had not been conducted yet. In that case the applicant was not made a party. The departmental authorities proceeded with the selection and ultimately selected Harihar Panda on the basis of percentage of marks secured in the qualifying examination. Challenging the selection of Harihar Panda, the applicant filed OA No.598 of 1994. In that application, by order dated

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19.10.1994 the Tribunal stayed the operation of the order dated 12.10.1994 in which Harihar Panda was directed to join in place of the applicant in the post of E.D.D.A., Sitaleswar B.O. The respondents in their counter filed in OA No.598 of 1994 indicated that on the basis of marks, Harihar Panda has been placed in the first position, having secured 44% of marks and the applicant has been placed in the second position, having secured 38.7%. In view of the above submissions, OA No.598 of 1994 filed by the applicant challenging the selection of Harihar Panda was dismissed. After the judgment, the applicant was relieved from the post of E.D.D.A., Sitaleswar, on 19.4.1996 to facilitate Shri Harihar Panda to join as E.D.D.A., Sitaleswar. It has been averred by the applicant that for reasons best known to Harihar Panda, he did not join as E.D.D.A., Sitaleswar B.O. and ultimately joined elsewhere. Thereafter the applicant claimed that as he was placed in the second position in the selection, after Harihar Panda, he should be appointed as E.D.D.A., Sitaleswar on regular basis. As the departmental authorities have not given him appointment, he has come up in the present application with the prayer referred to earlier.

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3. The respondents in their counter have pointed out that the post of E.D.D.A., Sitaleswar B.O., fell vacant as the previous incumbent became a Postman and as no regular appointment could be immediately made, the applicant was provisionally appointed as E.D.D.A., Sitaleswar B.O. and worked as provisional E.D.D.A. from 9.4.1992 to 19.10.1992 and from 15.4.1993 to 19.4.1996. One Ratnakar Pujari was working as E.D.D.A. during the intervening period from 20.10.1992 to 14.4.1993. The averments made by the applicant with regard to different O.As. filed before the Tribunal by Harihar Panda and the

applicant and the orders passed by the Tribunal have not been disputed by the respondents. The respondents have stated that after his selection as E.D.D.A., Harihar panda had gone to Sitaleswar B.O. on 26.4.1996 to work as E.D.D.A. The applicant with some other persons came to Shri Panda to attack him and therefore, Shri Panda could not work as E.D.D.A., Sitaleswar. The unlawful activity of the applicant was reported to Officer-In-Charge, Aul Police Station and also to Superintendent of Police, Kendrapra, on 9.7.1996 and 5.7.1996. These facts were also brought to the notice of higher authorities and ultimately, ShriPanda was provisionally appointed as E.D.M.C., Kurunti. As Harihar Panda was engaged as E.D.M.C., Kurunti, the departmental authorities called for names from the Employment Exchange on 16.10.1997 to fill up the post of E.D.D.A., Sitaleswar, on regular basis. As the Employment Exchange did not sponsore the candidates within the stipulated time, the departmental authorities issued public notice calling applications from the intending candidates. At this stage, the applicant has come up in this O.A. making the aforesaid prayer. The respondents have stated that as the applicant was not appointed on regular basis or through any regular process of selection, he cannot be offered the post of E.D.D.A., Sitaleswar B.O. They have also stated that in the selection of E.D.Aagents, there is no provision of keeping a panel and once the selected candidate was not able to join, fresh selection had to be undertaken. On the above grounds, the respondents have opposed the prayer of the petitioner.

4. We have heard Shri H.P.Rath, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

5. The case of the applicant is that in the process of selection which resulted in selection of Harihar Panda, he had secured the second position on the basis of percentage of marks and therefore, he should be appointed to the post. It is seen that when the selected candidate Harihar Panda came to join at Sitaleswar B.O., the applicant along with others threatened to attack him. ~~xxxxxxxxxx~~ The respondents have enclosed copy of the FIR which is addressed to Officer-In-Charge, Aul Police Station at Annexure-R/4 and also copy of the letter addressed to Superintendent of Police, Kendrapara at Annexure-R/5 where it has been mentioned that the applicant along with 15/20 other persons came to attack Shri Harihar Panda. It has been submitted by the learned counsel for the petitioner that police has investigated the above FIR and given final report and therefore, this cannot be relied upon. So far as the final report, if any, given by the police is concerned, that is only with regard to the absence of any criminal liability of the applicant in respect of the alleged incident. The fact of the matter is that the departmental authorities did file an FIR before the police alleging that the applicant had threatened the selected candidate Harihar Panda when he went to Sitaleswar to work there. Because of this, Harihar Panda, the regularly selected candidate could not join the post. The applicant, therefore, cannot take advantage of the situation which, according to the departmental authorities, is his own creation and set up a claim to get appointed to the post. This contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

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6. The other aspect of the matter is that in the E.D.Aagents (Conduct and Service)Rules and departmental instructions, there is no provision for drawing up of a panel outof which if the first person does not join, the second person would be offered appointment. In view of this, the petitioner cannot claim that because according to the percentage of marks his position was immediately after Harihar Panda, he should be offered the post.

7. In consideration of all the above, we hold that the petitioner has not been able to make out a case for the relief claimed by him. The application is, therefore, held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

AN/PS