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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

ORIGINAL APPLICATION NO. 62 OF 1998  
Cuttack this the 9th day of July, 1998

(PRONOUNCED IN THE OPEN COURT

Dilip Kumar Samal

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *No.*

*9.7.98*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*9.7.98*

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH  
CUTTACK

ORIGINAL APPLICATION NO.62 OF 1998  
Cuttack this the 9th day of July, 1998

CORAM:

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

Sri Dilip Kumar Samal  
aged about 21 years, Son of  
Chaitanya Samal  
Village/Po:Neulapoi, Via:Mahimagadi  
Dist:Dhenkanal

...

Applicant

By the Advocate:

Mr.G.Dash

-Versus-

1. Union of India represented by  
the Chief Postmater General  
OrissaCircle, Bhubaneswar-751001
2. The Superintendent of Post Offices,  
Dhenkanal Division, At/Po/Dist:Dhenkanal
3. Assistant Superintendent of Post Offices  
Dhenkanal Sub-Division  
At/Po/Dist:Dhenkanal
4. The Overseer of Mails,  
Officeof the Assistant Superintendent  
of Post Offices, Dhenkanal Sub-Division  
At/Po/Dist:Dhenkanal

...

Respondents

By the Advocate:

Mr.B.K.Nayak,  
Addl.Standing  
Counsel

...  
ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN: In this application under  
Section 19 of the Administrative Tribunals Act, 1985,  
the petitioner has prayed for a direction for quashing  
the order dated 12.1.1998 at Annexure-4. There is also a

prayer to direct the departmental authorities to allow the applicant to continue as substitute E.D.B.P.M., Neulapoi B.O. till the post is regularly filled up or till the earlier appointee resumes his duty. The third prayer isto direct the departmental authorities to consider his case in case the post of E.D.B.P.M., Neulapoi B.O. is filled up on regular basis. There is also a prayer that the applicant should be paid his allowances since 1.11.1997.

2. The facts of this case according to applicant are that his father has been working as E.D.B.P.M., Neulapoi B.O. from 22.9.1973. He has been suffering from paralysis and is under medical treatment. Because of this his son, the present applicant, has been appointed as a substitute in place of his father and has been working as such since 14.6.1997. The leave was sanctioned to applicant's father till 31.10.1997 vide order at Annexure-1 in which it was directed that the allowances from 14.6.1997 to 31.10.1997 will be paid to the applicant and accordingly he has been paid the allowances, but from 1.11.1997 the applicant has not been paid any allowance. The applicant submits that he is a Graduate in Science and belongs to SE .B.C. category. His caseis that according to order at Annexure-1 he should continuettill the regular incumbent (his father) resumes the duty. His father has not resumed the duty because of his continuing illness. But Res.2, in order dated 121.1997 directed the father of the applicant that Res.3, viz. Assistant Superintendent

of Post Offices, Dhenkanal would take over charge and accordingly he has taken over the charge from 13.1.1998. The applicant further states that the Branch Post Office is functioning at Neulapoi village from 1973 and he apprehends that the respondents are trying to shift the Post Office to someother village. It is also stated that the applicant apprehends by shifting the Branch Post Office to someother village the departmental authorities would engage someother person in place of the applicant and becauseof this he has come up with the aforesaid prayer referred to earlier.

3. The respondents have filed their counter in which they have stated that the applicant's father is the regular E.D.B.P.M. He applied for 178 days leave, i.e. from 14.6.1997 to 9.12.1997 vide Annexure-R/1 and he availed leave from 14.6.1997 handing over chargeof the post office to the present applicant, his son. The applicant's father was asked to produce medical certificate in support of his illness. He produced a certificate from Govt. Ayurvedic Dispensary, Jorada but as the Doctor had not recommended the period of absence in his certificate at Annexure-4, the respondents enquired about the matter and found that the applicant's father has been working as Assistant Teacher in Gopalpur U.P.School. The D.I. of Schools, Dhenkanal was addressed to ascertain if the applicant's father was onleave from 14.6.1997 whereupon the applicant's father submitted a letter at Annexure-R/3 stating that he was cured on 26.6.1997 and he submitted

J. Jom

fitness certificate dated 26.6.1997 on 26.10.1997, i.e. four months later. The leave of applicant's father was sanctioned as a special case and he was directed to resume duties, but he avoided to comply with the said order and remained on leave unahtorisedly whereupon the respondent No.3 has taken over charge from the applicant. The respondents have further stated that the applicant had remained absent beyond 180 days which is not permissible under the rules applicable to E.D.Agents and therefore, the substitute could not be allowed to continue beyond that period and accordingly the Assistant Superintendent of Post Offices, Dhenkanal has taken over charge from the applicant, the substitute of his father on 13.1.1998. The respondents have further stated that even though the period from 1.11.1997 to 12.1.1998 during which the applicant worked as a substitute of his father without adequate authority from the department, orders have already been issued to pay him allowance for that period. Thus this prayer of the applicant has already been met by the departmental authorities. The respondents have further stated that as the applicant has already been relieved he cannot be ~~taken to be~~ continued in that post. On the above grounds the respondents have opposed the prayer of the applicant.

4. We have heard learned counsel for the applicant Shri G.B.Dash and learned Addl.Standing Counsel Shri B.K.Nayak, appearing on behalf of the respondents and have perused the record. As the prayer of the applicant

for payment of allowance from 1.11.1997 to 12.1.1998 has already been conceded by the departmental authorities and orders to that effect have already been issued, ~~therefore~~ it is not necessary to pass any further order in this regard except to direct the respondents to make payment of the allowance for the period mentioned above to the applicant within a period of 60 days of the date of receipt of the order. As regards other prayer of the applicant that his case should be considered for the post of E.D.B.P.M., Neulapoi B.O., if and when the post is filled up on regular basis, there is no material before us in the record that the post of E.D.B.P.M. has fallen vacant. As per record the applicant's father Shri Chaitanya Samalhad been appointed from 1973 as E.D.B.P.M., Neulapoi B.O. and therefore, in view of the fact that there is no averment that the post of <sup>EDBPM, Neulapoi is vacant</sup> ~~the~~ the second prayer of the applicant that his case should be considered for the post of E.D.B.P.M., Neulapoi B.O. when the post is filled up on regular basis does not merit consideration and the same is, therefore, rejected. To sum up therefore, the petition is allowed in part in terms of the order above. But under the circumstances, no order as to costs.

7.7.98  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

B.K. Sahoo, C.M.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
7.7.98