

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 630 OF 1998
Cuttack, this the 21st day of March, 2001

Nityananda Nayak

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 Soni
(SOMNATH SONI)
VICE-CHAIRMAN
21.3.2001

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CUTTACKBENCH, CUTTACK.

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CORAM:

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

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Nityananda Nayak, aged about 38 years, son of Dibakar Nayak,
At/PO-15 Cantonment Road, Postal Colony, Cuttack, at present
working as Stenographer in the office of the Executive
Engineer, Postal Civil Division, Cuttack,
At/PO/District-Cuttack

Applicant

Advocates for applicant - M/s S.K.Das
P.K.Mishra
S.B.Pradhan
S.Behera

Vrs.

1. Union of India, represented through its Secretary, Minister of Communication, Department of Post, Daka Bhawan, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
3. Superintending Engineer, Postal Civil Circle, G.P.O.Complex, Patna-I.
4. Executive Engineer, Postal Civil Division, Cuttack-3, At/PO/Dist.Cuttack

Respondents

Advocate for respondents- Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.S.M. In this O.A. the petitioner has prayed for quashing the order dated 12.11.1998 (Annexure-7) rejecting his representation for permanent absorption in Postal Civil Wing and the employment notice at Annexure-8 calling for applications for filling up the post of Stenographer Grade-III. His second prayer is for a direction to the respondents to consider his case for permanent absorption in Civil Wing as per his option.

2. The admitted position is that the applicant joined the Department of Post as Grade-III Stenographer in 1985. In December 1993 he was transferred to the office of Executive Engineer, Postal Civil Division. The applicant has stated that in the year 1995 Civil Wing became a separate cadre because of coming into force of the Department of Post (Stenographer Grade III in Civil Wing) Rules, 1995. It is further stated that according to these Rules, 50% of the posts of Stenographer Grade-III are to be filled up by direct recruitment and 50% by promotion. It is stated that in 1996 the Secretary, Ministry of Communication issued a notification to absorb the optees who are working in Civil Wing. As per the notification the petitioner gave option in his representation dated 6.11.1996 at Annexure-2. He followed it up by further representation in 1997 and thereafter at Annexure-3 series. His representation was also forwarded by the Executive Engineer, Postal Civil Division to Chief Post Master General in his letter dated 1.9.1997 at Annexure-5. The applicant has stated that executive instruction as well as rules clearly stipulate that regular Stenographers if otherwise eligible can be considered for permanent absorption. But his case was not considered. being aggrieved, the petitioner approached the Tribunal in OA No.502 of 1998. In the interim order issued in OA No.502 of 1998 the Chief Post Master General was directed by the Tribunal to dispose of the representation if the same is pending with him. In pursuance of the interim order, the Chief Post Master General in the impugned order dated 12.11.1998(Annexure-7) rejected his representation. This order has been challenged by the applicant on various grounds which will be referred to while

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considering the prayers of the applicant. The applicant has further stated that under similar circumstances other employees have been permanently absorbed in Civil Wing. It is further stated that ^{while} the applicant's option for permanent absorption in Civil Wing has not been accepted, ^{to fill up} one post of Stenographer Grade III Employment Notice has been issued at Annexure-8. Against the above background, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayers of the applicant. It is not necessary to record the averments made by the respondents in the counter because these will be referred to at the time of considering the submissions made by the learned counsel of both sides.

4. We have heard Shri S.K.Dash, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the records.

5. The first point urged by the learned counsel for the petitioner is that with the coming into force of the Department of Post (Stenographer Grade-III in Civil Wing) Rules, 1995 at Annexure-5, Civil Wing became a separate cadre. The respondents, on the other hand, have submitted that Civil Wing did not become a separate cadre by virtue of the Rules at Annexure-1 which are merely Recruitment Rules for recruitment to the post of Stenographer Grade-III in Civil Wing. The Rule itself is titled "Department of Post (Stenographer Grade-III in Civil Wing) Rules. We have gone through the extract of the rules enclosed by the applicant and we find that there is nothing in the rules to show that with coming into force of the Rules, Stenographers in Civil Wing became a separate cadre. Moreover, when by bifurcation of the cadre or otherwise

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a new cadre is formed, invariably an order is issued constituting or separating the new cadre from the old. The applicant has not enclosed any order to show that the Postal Civil Wing ever became a separate cadre. This contention is, therefore, held to be without any merit and is rejected.

6. The second submission of the applicant is that Secretary, Department of Communitation (respondent no.1) called for option from persons to get permanently absorbed in the Civil Wing and in response to that the applicant gave his option. Here also the applicant has not enclosed the order calling for option. The respondents have submitted that no option has been called for from the staff working in the Postal Department because Civil Wing continues to be a part of the Department of Post. In support of their contention, the respondents have enclosed the letter dated 8.6.1999 from the Superintending Engineer (C) of the Department of Post in which it has been clarified that the Postal Civil Wing never called for option from officials of Postal Circle for absorption in the Civil Wing. The learned counsel for the petitioner has stated that the Executive Engineer, Postal Civil Division, Cuttack, had written to the Chief Post Master General in his letter dated 2.9.1997 (Annexure-5) recommending the absorption of the applicant in the Postal Civil Wing as per his option. On the basis of the Executive Engineer mentioning about option given by the applicant the learned counsel for the petitioner has argued that option has been called for and the applicant has given his option. In the OA it has been specifically averred that the Secretary, Department of Posts called for options, but no such letter has been produced. In view of this, it must necessarily be held that no option was called for by the Secretary, Department of Posts, asking officials of Postal Circle to opt for permanent absorption in the Civil

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Wing. As a matter of fact, the Superintending Engineer (C), Department of Post, has mentioned in the letter at Annexure-R/2 that the Chief Post Master General has been requested to depute minimum postal staff temporarily from Postal Circle to Postal Civil Wing to ensure day-to-day working of Postal Civil Wing. It is further mentioned that the representation of the applicant dated 6.11.1996 sent by the Chief Post Master General, Bhubaneswar, to the Superintending Engineer, Postal Civil Circle, has no meaning. It is further mentioned that if the applicant wants his transfer to Postal Civil Wing permanently, he may apply to his parent Circle for transfer to Postal Civil Wing under Rule 38 of P&T Manual, Vol.IV. From all these, it is clear that no option was ever called for and therefore, the averments of the applicant giving option and the departmental authorities not acting upon his option are without any basis. In view of this, all the averments made by the applicant that his representation has been wrongly rejected and thereby he has been discriminated against are held to be without any merit.

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7. The applicant has stated that some other persons have been permanently absorbed in Civil Wing. He has, however, not mentioned the name of even one single person who has been so absorbed and vis-a-vis whom he has been discriminated against. The respondents have pointed out that some people had come on deputation to Postal Civil Wing from other Departments of Government and they have been considered for permanent absorption on the basis of their option. As the Civil Wing continues to be a part of the Department of Post and the applicant is an employee of the Department of Post, he cannot claim that as an employee of other Department, he should be allowed to exercise option and get absorbed in the Civil Wing. If he wants to come from Postal Circle to Civil

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Wing, then he has to apply under Rule 38 of P&T Manual, Vol.IV. It has been submitted by the learned counsel for the petitioner that during the pendency of the petitioner's OA, the petitioner had applied under Rule 38 for his transfer to Postal Civil Wing and this has already been allowed. This itself shows ~~that~~ the Postal Civil Wing continues as another Division within the Department of Post and under Rule 38 a postal employee can ask for transfer from one Division to another Division subject to certain conditions as laid down in the rule. As his prayer for coming to the Civil Wing has already been allowed, as submitted by the learned counsel for the petitioner, his prayer has already been substantially met by the departmental authorities. In any case, we have already held that no option was ~~called~~ ever called for and the applicant could not have given an option, being an employee of the same Department. In view of this, his prayer to quash Annexures 7 and 8 is held to be without any merit and is rejected.

8. In the result, therefore, we find no merit in the OA and the same is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
21.3.2001
VICE-CHAIRMAN

21st day of March, 2001/AN/PS