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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 90 OF 1998
Cuttack this the 17th day of March, 1999

(PRONOUNCED IN THE OPEN COURT)

Unwar Sheriff

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 Tribunal or not ? *No*

17.3.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17.3.99

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.90 OF 1998
Cuttack this the 17th day of March, 1999

CORAM:

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

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Sri Unwar Shariff,
S/o. Late Yakub Shariff,
aged about 25 years,
At/Po: Gopalpur Main Road,
Dist: Ganjam-761002

...

Applicant

By the Advocates : M/s.A.K.Mishra
N.K.Mishra
K.K.Sahoo
S.Mishra
M.Rath

-Versus-

1. Union of India represented through
Director General of Posts,
Dak Tar Bhawan
New Delhi
2. The Post Master General,
Orissa, Bhubaneswar-751001
Dist: Khurda
3. The Senior Superintendent of Post Offices,
Berhampur-760001
Dist: Ganjam
4. The Sub-Divisional Inspector(Posts)
Berhampur-760021
Dist: Ganjam

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Respondents

J.Som By the Advocates : Mr.S.B.Jena
Addl.Standing Counsel
(Central)

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the notice at Annexure-5 inviting applications for filling up of the post of Extra Departmental Delivery Agent, Gopalpur S.O. and also for quashing the process of selection initiated in pursuance of the above notice.

2. The short facts of this case, according to applicant are that he was engaged on 7.7.1998 as Extra Departmental Delivery Agent. He belongs to village Gopalpur and he has all the necessary qualifications for being appointed to the said post of E.D.D.A. Earlier one Sri Akabal Shariff was working as E.D.D.A. On his being appointed to a regular Class III post in the department, the post fell vacant and the respondents engaged the applicant initially for 90 days from 7.7.1998 to 4.10.1997 and later on from 5.10.1997 to 13.12.1997 and again from 1.1.1998 to 28.2.1998. The applicant has thus completed 220 days of continuous engagement under the respondents as E.D.D.A. The applicant states that the departmental authorities have issued notice at Annexure-5 inviting applications from the persons belonging to SC/ST for filling up of that post. Even though the local people objected to this action of the department in reserving the post for SC/ST, no action has been taken by the departmental authorities. It is also submitted that roster point system is not applicable to E.D. Agents and there is no reservation for SC/ST. In view of this the applicant has come up in this application with the prayers referred

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to earlier.

3. The respondents in their counter have submitted that on appointment of regular incumbent to the post a Class III in the department, it was not possible to make immediate recruitment for the post of E.D.D.A. and therefore, the applicant was allowed to work in that post from 5.10.1997 to 31.12.1997 and again from 1.1.1998 to 28.2.1998 or till a regular selection is made. A requisition was sent to the Employment Exchange and the post was reserved for SC/ST candidate only as there was a short-fall in the representation of SC/ST candidates. The Employment Exchange did not sponsor any names within the date fixed. Accordingly a public notice has been issued vide Annexure-5 to the O.A. It is submitted that the applicant's appointment was temporary and on adhoc basis and was not made through any process of selection. It has also been stated that prior to 5.10.1997 he was allowed to work from 7.7.1997 to 4.10.1997 as substitute of the previous incumbent Akbal Shariff, who had been granted leave during that period. The respondents have further stated that under the Recruiting Unit, viz. Berhampur (South) Sub-Division, out of total number of 114 E.D.posts, percentage of SC is required to be 15 and of S.T. 23, i.e., the total number of SC and ST should 17 and 26 respectively. As against this actual representations of SC and ST persons are 11 and 1 respectively. Because of this large short-fall in the engagement of ST/SC candidates the post has been reserved. It is also submitted by the respondents that the applicant's appointment was only for a stop gap

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period till a regular selection is made and therefore, he has no right to be considered for regularisation. On the above grounds the respondents have opposed the prayer of the applicant.

4. This matter was posted to to-day for final disposal at the admission stage at the instance of learned counsels for both sides. Learned counsel for the petitioner is not present when called nor any request has been made on his behalf seeking adjournment. In view of this as the pleadings in this case have been completed, we have heard Shri S.B.Jena, learned Addl. Standing Counsel appearing for the departmental respondents on merits and have also perused the records.

5. The applicant's initial engagement against the post of E.D.D.A. was as a substitute of the regular incumbent. A substitute is appointed to work at the instance of the regular incumbent and his working is at the risk and responsibility of the regular incumbent. Working as substitute does not give a person any right to get himself regularised. From 5.10.1997 the applicant has worked under the orders of the departmental authorities, who states that he was appointed as a stop gap arrangement without any process of selection because the earlier regular incumbent went on promotion and there was necessity to manage the work. As the applicant has not ^{through} come the process of selection, he cannot claim regularisation in that post. The main ground urged by the applicant is with regard to reservation of ^{the} post by virtue of Annexure-5 for SC/ST candidates. The departmental instructions do provide that where in a recruiting unit

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representations of SC/ST candidates are less than the required percentage of E.D. posts, in that recruiting unit E.D. posts can be reserved for SC/ST candidates. In this case in the recruiting unit of Berhampur(South) Sub-Division as against the requirement of 17 E.D. Agents belonging to S.C. there are only 11 and as against the requirement of 26 nos. E.D. agents belonging to S.T. only 1 S.T. person are working. In view of this large short-fall the departmental authorities have acted strictly in accordance with departmental instructions in reserving the said post of E.D.D.A., Gopipur S.O. for SC/ST candidate. It is submitted by the learned Addl. Standing Counsel that in pursuance of notice at Annexure-5, the selection process has been completed and one S.C. candidate has already been appointed and he has already joined. As the reservation of the said post of E.D.D.A. for SC/ST has been done in accordance with departmental instructions in view of the large short-fall of such candidates in the recruiting unit, we hold that the applicant has not been able to make out any case for the relief(s) prayed for by him in this O.A.. In the result the application is held to be without any merit and the same is rejected, but without any order as to costs.

17-3-99

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN