

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.202 OF 1999
Cuttack, this the 2nd day of July, 1999

Achyuta Kumar Pradhan 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
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CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....

Achyuta Kumar Pradhan,
E.D.Packer, Singla,
now working as B.P.M., Dundukote, Via-Jamsuli,
District-Balasore Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through
Chief Post Master General,
Orissa Circle,
Bhubaneswar-751 001.
2. Superintendent of Post Offices,
Balasore Division, Balasore.
3. Sub-Divisional Inspector (Postal),
Jaleswar (West Sub-Division),
Jaleswar Respondents

Advocate for respondents - Mr.S.B.Jena, A.S.C

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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 EDBPM, Dundukote.

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2. According to the applicant, he was working
as E.D.Packer, Singla S.O., from 18.6.1976 and he had
applied to Superintendent of Post Offices, Balasore Division
(respondent no.2) on 1.3.1997 for the post of E.D.B.P.M,

Dundukote B.O. He was informed in letter dated 11.3.1997

(annexure-1) that he should apply at the time the vacancy is notified. Later on the applicant was provisionally appointed to work against the post of EDBPM, Dundukote, in memo dated 13.2.1998 and 16.3.1999, and he has been working as such till date. In the meantime respondent no.2 notified the vacancy and called for applications for the post of EDBPM, Dundukote. The applicant was never notified of the vacancy and was not even asked to apply for the post. Ultimately somehow he came to know of the notification calling for applications and submitted his application on 9.5.1998. The applicant states that he apprehends that his application will not be entertained as it has not been submitted in time. The applicant has further stated that respondent nos. 2 and 3 were very much aware that the applicant was interested in the post and non-entertaining of the application of the petitioner is illegal moreso when he had applied for the post very much earlier. It is further stated that the rules lay down that working ED Agents are to be given priority for appointment and it is not necessary to get their names sponsored by Employment Exchange. He has also stated that in this case it was necessary for the Department to ascertain the wishes of the applicant and because of this he has come up in this petition with the prayers referred to earlier.

Sejm. 3. Respondents in their counter have pointed out that the vacancy in the post of EDBPM, Dundukote, arose on 17.6.1997 on superannuation of the earlier incumbent. The petitioner had applied for the post earlier. But he was informed in letter dated 11.3.1997 at Annexure-1 that he should apply afresh when the vacancy is notified. When the selection process was taken up, requisition was placed with Employment Exchange to sponsor names. Accordingly 40 names were sponsored. Those persons were asked to apply in proper form with necessary documentation. In response 10 candidates

applied for the post. But on scrutiny it was found that none of the candidates was eligible in terms of the minimum requirement for the post of EDBPM. Accordingly, open notification was issued on 20.8.1997 fixing last date for receipt of application on 10.9.1997. In response thirteen candidates applied in time for the above post. The applicant did not apply for the post within the last date fixed. His application was received only on 1.5.1998. The respondents have stated that as the application of the petitioner has been received much after the last date for receipt of applications, his candidature has not been taken into consideration. They have also stated that the selection process amongst the candidates who have applied for the post within time is in progress and will be finalised after observing all formalities. The respondents have further pointed out that after superannuation of the earlier incumbent on 17.6.1997 the applicant, who was working as ED Packer, Singla and was willing to work in the post of EDBPM, Dundukote B.O. on provisional basis, was allowed to work from 30.12.1997 to 30.6.1998 and again from 28.12.1998 to 28.6.1999 in two spells. The present spell of the provisional appointment in favour of the applicant will expire on 28.6.1999 and the arrangement will be terminated by making another provisional appointment. The respondents have stated that by Annexure-1 of the OA the petitioner was specifically asked to apply for the post at the time of notification of the vacancy, but he did not do the same. There is no provision to send copy of the notification to working agents for their information. The respondents have also stated that the notification was given wide publicity, but the applicant has pleaded ignorance of such

notification. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the respondents and have perused the records.

5. The admitted position is that vacancy in the post of EDBPM, Dundukote, arose on superannuation of the earlier incumbent on 17.6.1997. The petitioner applied to respondent no.2 much before that date on 1.3.1997 and he was informed in letter dated 11.3.1997 that he should make a fresh application as and when the vacancy is notified. This letter is at Annexure-1 and the memo of this has been sent to the applicant when he was working as in-charge EDBPM, Ghantua B.O., Singla S.O. informing him that he should apply at the time of notification for the post of EDBPM, Dundukote B.O. Notwithstanding this, the applicant did not apply in time. It is submitted by the learned counsel for the petitioner that he had earlier intimated his willingness to work in the post of EDBPM, Dundukote B.O. and the departmental authorities should have ascertained his continued willingness and in any case should have sent a copy of the notification to him. We are unable to accept this contention because a person who wants a job must apply for the job. This is the basic system. It is not for the departmental authorities to ask the petitioner to apply for the job. Moreover, as the petitioner had applied prior to the superannuation of the earlier incumbent, presumably he was aware of the fact that the vacancy is going to arise at such and such time and he should have kept track of the recruitment process and should have applied in time. If in one case a direction is issued to consider an application which has been submitted after the last date for receipt of

applications is over, it will set a very bad precedent and the recruitment process would be undermined.

6. Learned counsel for the petitioner has stated that as he is a serving ED Agent and was willing to work in the post of EDBPM, Dundukote B.O. there was no need for the Department to call for names from Employment Exchange. This contention is wholly without any merit. In support of his contention the learned counsel for the petitioner has relied on Director General of Posts' circular dated 12.9.1988 which has been enclosed at Annexure-R/2 by the respondents. This circular is also printed in pages 84 and 85 of **Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department (6th Edition)**. This circular is in continuation of an earlier circular dated 6.5.1985, the gist of which is also printed in same page 84 of **Swamy's Compilation (supra)**. For appreciating the contention of the learned counsel for the petitioner both the circulars will have to be considered. In the circular dated 6.5.1985 it was mentioned that normally ED Agents are not liable to or entitled to be transferred from one post to another. However, a few cases have arisen where some ED Agents have been shifted from one post to another at their request. Those ED Agents are asked to resign their posts and a fresh appointment order is issued against new posts in such cases. In that connection, Director-General of Posts clarified in letter dated 6.5.1985 that in such cases the formality of calling for nomination from Employment Exchange, calling for applications, etc., should be gone through. The ED Agents already in service should apply through Employment Exchange and their applications/appointment should be accepted or rejected under the normal rules for appointment of ED Agents. In the subsequent circular dated 12.9.1988 exceptions to the above

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position were laid down. It was mentioned that normally the Employment Exchange does not register/sponsor the names of persons already in employment except in the cases for appointment to higher posts. It was further stated that a proposal that ED Agents may, therefore, be considered in a limited manner for appointment in other ED posts without coming through the agency of Employment Exchange in exceptional cases has been under examination and it has been decided that exception may be made in the following cases. Two sets of classes of exemptions have been mentioned in this circular. Of these, the second type of exemption refers to cases where ED Agents have become surplus due to abolition of posts. This does not concern us in the present case. We are concerned with the first exception and the learned counsel for the petitioner has relied heavily on this. In view of this, this part of the circular is quoted below:

".....However, it has now been decided that exception may be made in the following cases:

(i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions."

In the instant case, the applicant's basic post is that of ED Packer, Singla S.O. and he wants to come to the post of EDBPM, Dundukote B.O. The first exception quoted above relates to a case where the ED post falls vacant in the same office or in any office in the same place. That is not the case here. The basic post of the applicant is ED packer, Singla S.O. and he wants to come as EDBPM, Dundukote B.O. Therefore, his case is not covered in terms of the first exception quoted by us above. The fact that he has been provisionally appointed to the post of EDBPM, Dundukote B.O.

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does not change the situation because this appointment is only for a specific period from 30.12.1997 to 30.6.1998 and again from 28.12.1998 to 28.6.1999. When the vacancy was notified on 20.8.1997 calling for applications by 10.9.1997 the applicant was not provisionally working as EDBPM, Dundukote and therefore, his case is not covered under the first exception. Moreover, even in case of an ED Agent who is covered by the first exception, the basic point is that he must apply and that too, in time. As the applicant in this case has not applied in time even though he was informed long ago to apply when the post is notified and applications are invited, he has no case for being considered for the post. His prayer is therefore held to be without any merit and is rejected.

7. In the result, therefore, the Original Application is held to be without any merit and is rejected but under the circumstances without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

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