

Order dated 4.11.2003

Heard Shri P.K.Padhi, learned counsel for the applicant and Shri J.K.Nayak, learned Addl. Standing Counsel for the Respondents and also perused the materials available on record.

By filing this Original Application under Section 19 of the A.T.Act, the applicant has sought a direction to be issued to Respondent No.2 to treat him as a retrenched candidate and to appoint him in any E.D.Post in nearby locality.

The case of the applicant is that he was appointed by Respondent No.2 as Extra Departmental Branch Post Master, Khajuripada B.O. against a put off duty vacancy. His services were terminated after a period of 2 years 10 months & 15 days, when the permanent incumbent of the post was to be reinstated. The grievance of the applicant is that soon thereafter the permanent incumbent of this B.O. was again put off duty with effect from 1.1.1999. However the Respondents did not put him back to duty in the resultant vacancy; on the other hand, they notified the vacancy to the Employment Exchange and selected a new person for the said post. Thus, they have denied him the benefit of his experience of working against that post for about 3 years. During the course of hearing, the learned counsel for the applicant drew our notice to[^] decision rendered by this Tribunal on 13.7.2002 in O.A.278/99, wherein we had directed the Departmental authorities to relax the conditions of three years in respect of the applicant in that case for the purpose of keeping her name in the waiting list and to offer her an alternative employment as EDBPM in accordance


with the circular of D.G. Posts. Shri Padhi further submitted that the same concession should be extended in case of the applicant herein.

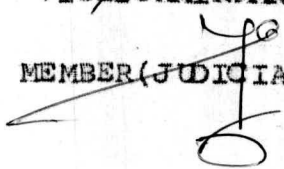
The Respondents-Department have contested the application by filing a counter on the ground that there is no merit in this application, because the applicant was recruited on provisional basis with explicit condition that his tenure in the office would be limited to the date when the regular incumbent of the post would be reinstated or the said post would be filled upon a regular basis. In the circumstances, when the regular incumbent of the post was reinstated on completion of disciplinary proceedings against him on 28.2.1995, the services of the applicant was terminated in terms of the contractual employment under Annexure-R/6. The Respondents have further averred that the benefit of being considered for alternative appointment against an ED post is available only in case of EDBPM/Extra etc. who has served minimum of three years in an ED Post on provisional basis. In the instant case as the applicant's period of employment fell short of three years, (which was exactly 2 years 10 months & 15 days), he was not entitled to this concession for being kept in the waiting list with a view to considering him for selection to any ED Post. The learned Addl. Standing Counsel for the Respondents have further submitted during oral argument that the concession that is given to such individual is only limited to consideration for a post according to his eligibility for that post and it does not give any right to be appointed to an alternative post, such a right being available only

in respect of these ED Agents, who were regularly appointed against ^{ED} posts only. He has, therefore, submitted that the prayer made by the applicant to be treated as a retrenched employee/ED Agent does not stand to reason.

We have considered the rival submissions. We have also perused our decision rendered in O.A.278/99. Having regard to the facts and circumstances of the case, we are of the opinion that the facts and circumstances of the instant O.A. are distinguishable to the facts and circumstances of the O.A.278/99. In the present case the applicant was not educationally qualified for selection to the post in question and therefore, he could not take the ^{benefit} of concession of DG Posts circular bearing lr.No.43-4-/77-Pen. dated 18.7.1979. Viewed from this angle, we are entirely in agreement with the learned Addl.Standing Counsel that the applicant having not served for minimum of three years as EDBPM cannot be termed as a discharged ED Agent for the concession as provided in the aforesaid DGP&T circular referred to above.

For the reasons discussed above, we see no merit in this O.A. which is accordingly dismissed. No costs.


VICE CHAIRMAN 4/11


MEMBER (JUDICIAL)