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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTECK.

ORIGINAL APPLICATION NO. 240 OF 1999.
Cuttack, this the 21st day of November, 2000.

JAGANNATH NAYAK. ... APPLICANT.

VRS.

UNION OF INDIA & 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
21/11/2000

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 240 OF 1999.
Cuttack, this the 21st day of November, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

Jaganath Nayak, Aged about 32 years,
Son of Akadeshi Naik,
Village-Palanalissahi (Harijan Basti),
Dist:Puri.

: Applicant.

By legal practitioner: M/s. S.K.Swain, D.P.Dhalsamant, Advocate.

- Versus -

1. Union of India represented through
Chief Postmaster General,
Orissa Circle,
Bhubanswar-1.
2. Senior Superintendent of Post Offices,
Puri Division,
Puri-1..

: Respondents.

By legal practitioner : Mr. A.K.Bose,

Senior Standing Counsel.

S. K. Swain

O R D E R

MR.SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for a direction to the Senior Superintendent of Post Offices, Puri Division, Puri, Respondent No.2 to consider the case of the applicant for appointment to the post of EDDA cum EDMC lying vacant in Lions Gate, Balisahi and Labanikhia Sub Post Office. There is also a prayer to consider him for the vacant post of EDDA, Kapileswarpur and Rahodimal Sub Post Office. The third prayer is for a direction to the Respondents to give weightage to the experience gained by the applicant while considering him for any of these posts.

2. Respondents have filed counter opposing the prayers of the applicant.

3. For the purpose of considering this Original Application, it is not necessary to record all the averments made by the parties in their pleadings. These will be referred to while considering the submissions made by the learned counsel for both sides.

S. Som 4. We have heard Mr.D.P.Dhalsamant, learned counsel for the Applicant and Mr.A.K.Bose, learned Senior standing Counsel appearing for the Respondents and have also perused the records.

5. The admitted position is that applicant belongs to SC community and has read upto Class-IX. It is also admitted that he has worked as substitute in leave vacancy of one Manmath Jena, EDPacker, SCS College SO on eight occasions for different spells from 13-9-1988 to 2-7-1996. He has also

worked as substitute against the leave vacancy of N.Sahu, EDMC Cum EDPACKER of Labanikhia Chhak S.O. from 1.8.1996 to 1.9.1996. As he had worked for long years as substitute in short spells, he has come up in this Original Application with the prayers referred to earlier.

6. Respondents in their counter have stated that no post of EDMC /EDDA are lying vacant at Balisahi or Labanikhia SO. They have stated that there is a Gr.D post lying vacant in Singhadwar Post Office and Balisahi Post Office and a post of ED Packer Cum E.D.M.C. in Labanikhia Chhak. They have stated that the post of EDDA is lying vacant at Kapileswarpur EDSO due to unauthorised absence of the regular incumbent. As regards EDDA Rahadmal BO, the Respondents have stated that as this Branch Post Office is running beyond permissible loss the post of EDDA, Rahadmal BO has been kept vacant. In short, the Respondents have stated that there are no vacancies available in the offices mentioned by the applicant and that is why, they have opposed the prayers of the applicant. In the Original Application, the applicant has mentioned about the post of EDDA cum EDMC in Lion's Gate Post Office. Respondents have stated that in the Singhdwar Post office, there is no post of ED packer and Gr.D officials are working in both the SOs. The post of EDDA cum EDMC/Packer is also not available. As regards Balisahi Post Office, the Respondents have stated that no post of ED Packer is available. Respondents have stated that the post of EDDA, Rahadmal BO and Kapileswar are lying vacant but no notification have yet been made by the ASPO, incharge inviting

applications from the general public. Respondents have stated that as and when such notification is made and in case the applicant applies for the same, the candidature of the applicant will be considered. As the Respondents have denied about the existence of the vacancies in each post offices as mentioned by the applicant, except two post offices at Rahadmal and Kapileswar, applicant's prayer for a direction to appoint him in any of the either vacancies is held to be without any merit.

7. The other prayer of the applicant is for giving weightage to his experience as a substitute. We find that from 1.9.1988 till 1996 the applicant had worked as substitute against the leave vacancy of different ED Agents. But law is well settled that experience of an employee as substitute can not be taken into consideration for giving weightage while considering him for a regular employment. This is because the substitute works at the risk and responsibility of the regular incumbent and he is not appointed by the Departmental Authorities. If such experience is given weightage then it would always be open for the incumbent to proceed on leave and allow one of his relations to work as substitute thereby giving him an undue advantage over fresh candidates when a regular vacancy comes up for getting filled up. In view of this, the prayer of the applicant to direct the Respondents to give weightage to the experience of the applicant as substitute at the time of consideration of his candidature is held to be without any merit and is rejected.

8. The second aspect of the matter is that Respondents have stated that some Gr.D posts are lying vacant but according to the Rules, Gr.D posts are to be filled up by giving appointment to regular ED employees on the basis of their seniority. Therefore, the applicant can not claim to get appointed against a Gr.D post straightaway.

9. The last point to be noted is that the Respondents themselves have admitted that two vacancies of ED posts are existing at Rahadmal and Kapileswar BO. They have indicated that so far selection process for filling up of these two posts have not been initiated. In view of this, we dispose of this Original Application by giving a direction to the Respondents that as and when the selection process is undertaken for filling up of the vacant posts of ED Agents of the above two BOs and in case the applicant applies for the post in time and with necessary documentation then his case shall be considered along with others for such of the vacancies for these two vacancies as also such of the other vacancies for which the applicant may apply.

10. With the above direction, the Original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN