

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

22. ORDER DATED 23-8-2001.

Heard Shri S.K. Swain, learned counsel for the applicant and Shri B. Dash, learned Additional Standing Counsel for the Respondents and have perused the records.

In this Original Application the applicant has prayed for a direction to the Departmental Authorities to permanently absorb the applicant in any Gr. IV post in the Department more particularly to appoint him on regular basis in the post of EDMC, ~~Post-2~~ to Chaitana. He has also prayed for quashing the notification dated 23.5.1999 at Annexure-8 calling for applications for the post of EDMC, Chaitana.

Applicant's case is that from 20-2-1992 till 1998, he has worked on various days in the post of EDMC and postman. Applicant has given details of the number of ~~years~~ <sup>days</sup> in each year he has worked as EDMC and postman and has stated that as he has worked ~~for~~ <sup>for</sup> more than 240 days in a calendar year he is entitled to be regularised against any ED or class IV posts. His grievance is that without considering his case, Departmental Authorities have issued public notice at Annexure-8 inviting applications for filling up of the post in question. In the context of the above fact, he has come up in this Original application with the prayers referred to earlier.

Respondents in their counter have opposed the prayers of applicant. It is not necessary to refer to all the averments made by the Respondents in their counter. These will be

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	<p>taken into account while considering the submissions made by Shri B. Dash, learned ASC for the Respondents. No rejoinder has been filed. Respondents have pointed out that the applicant has never been appointed to the post of EDMC or Postman provisionally. All along he has worked as substitute during the leave vacancy of regular incumbents. Law is well settled that period of service rendered as substitute can not be taken into account, at the time of filling up of the post on regular basis. If this is allowed then it would always be possible for the regular incumbent to go on leave providing one of his relations as substitute thereby giving him undue advantage over fresh candidates when regular vacancy in the post arises. In view of this, the applicant's service as substitute can not be taken into consideration both for filling up of the post as also regularising him against the post. Respondents have stated that for filling up of the post of EDMC, Chaitana public notice was issued and Employment Exchange was also moved. Applicant's case was considered along with others, for the post of EDMC. For the post of EDMC the minimum educational qualification is class VIII pass but rules provide that preference should be given to matriculates. It is submitted by Respondents that the applicant has passed class IX and he is not a matriculate whereas one Pradip Ku. Ray who is a matriculate and has secured <del>and has secured</del> 61.23% of marks in HSC which is the highest percentage amongst all the candidates, was selected and appointed.</p>

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<sup>The</sup>  
As Rule specifically provides for giving  
<sup>S. Som</sup>  
preference to Matriculate and as the Respondents  
have selected a person who has got highest  
percentage of marks, we find no illegality in the  
action of the Departmental Authorities. We  
therefore, hold that the applicant is not entitled  
to get any of the reliefs. The O.A. is  
accordingly rejected. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 2001

KNM/CM.

Free copies of  
final order  
dt 23-8-01 issued  
to counsel for  
both sides.

*Handwritten signature*  
S.O (T)

Rs  
28/8/01