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DA.338/99

## NOTES OF THE REGISTRY

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ORDER DATED 10-5-2001.

In this Original Application, the applicant has prayed for quashing the illegal selection of Shri Jitendra Kumar Mishra, Res. No.3 to the post of Extra Departmental Branch Post Master, Dalikainda Branch Post Office and also for a direction to the Respondents to make fresh selection as per law or to appoint the applicant to the post of EDBPM on the grounds of he is being more suitable than Shri Jitendra Kumar Mishra, Respondent No.3.

Departmental Respondents have filed counter opposing the prayer of applicant. Res. No.3 has also filed a separate counter.

No rejoinder has been filed.

Learned counsel for the applicant and his associates are absent. There is also no request for adjournment from their side. In view of this, the matter can not be allowed to drag on indefinitely. We have, therefore, heard Shri B.K. Mishra, learned counsel for the Res. No.3 and Shri B.Dash, learned Additional Standing Counsel for the Departmental Respondents and have also perused the records.

For the purpose of considering this Original application is not necessary to go into too many facts of this case. Admittedly the regular incumbent in the post of EDBPM, Dalikainda Branch Post Office, one Shri Purander Naik was put off duty and in that vacancy, the applicant was provisionally selected and appointed. Naturally, consequent on reinstatement of the original EDBPM, the appointment of applicant was terminated.

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It also appears that Shri P. Nayak was directed to take leave from his post and work as postman, for some period and during this period, the applicant worked as his substitute. Thereafter, Shri Nayak was regularly promoted to Gr. D post in the Deptt. and selection process for the post of EDBPM in question was undertaken by the Departmental Authorities. The case of the applicant along with some others were considered and Respondent No. 3 having got the highest mark in the matriculation examination was appointed. Applicant has come up with the prayer referred to earlier; firstly on the ground that he had worked as provisionally appointed EDBPM and therefore, when the final vacancy had come his past experience should have been taken into consideration. Law is well settled that the period during which he had worked as substitute his experience as a substitute can not be taken into consideration. This is because if such consideration is permitted then it would always be open for a Departmental employee to go on leave providing one of his relations as substitute thereby giving him an unfair advantage over fresh candidate when vacancy in similar post comes up elsewhere. In view of this experience of the applicant as substitute can not be taken into consideration.

As regards his period of work as provisionally appointed EDBPM during the put off duty period of Shri Nayak, applicant in para 4.4. of his Original application has merely stated that the Supdt. of Post Offices, Cuttack North Division (Respondent No. 2) selected the

P. Nayak

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applicant provisionally for the post. It has not been mentioned that he was selected for such provisional appointment through any process of selection where other persons were also considered and he was adjudged more suitable. In view of this his period of service as a provisionally appointed candidate could not have been taken into consideration and he could not have been shown any preference over others. Rules are clear that for the post of EDBPM the person who has secured highest mark in the HSC examination will be adjudged most meritorious. From the check list enclosed by the Respondents at Annexure-R/1, we find that applicant has secured 348 out of 800 marks in HSC examination representing 43.05% whereas Respondent No. 3 has got 472 out of 750 marks in the HSC representing 62.93%. In view of this it can not be said that the selection of Respondent No. 3 is illegal.

It has been submitted by the applicant that his annual income is more than the income of Res. No. 3. There are instructions that while making selection for the post of EDBPM a person having higher income will not get preference. It is only to be seen that to become eligible a candidate must have independent source of income so that he does not have to depend on the allowances for the post for his sustenance. In this case Departmental Respondents have stated that the selected candidate has been found eligible on this count.

In view of the above we hold that the applicant is not entitled to the reliefs claimed for by him in this Original Application. The Original Application is accordingly ~~disposed of~~ <sup>rejected</sup> No costs.  
(G. NARASIMHAM)

MEMBER (JUDICIAL)

VICE-CHAIRMAN

Five copies of final  
order dt. 10.5.2001  
issued to counsel  
for both sides

S. C. J.

16/5/01

(SOMNATH SOMI)  
10.5.2001