

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Compl. not
CPM not
For not
ad 3 to 29.8.2000

1
28.8.2000

Original maintained

Respondents not not
ad 7 to 11.9.2000

For not

1
8.8.2000

Rejoinder not filed.

Bench

19/11

Rejoinder not
filed.

20/11

Rejoinder not filed.

25.1.01

Bench

Rejoinder not filed.

28/1/01

Bench
J. S. M.

9. 29.1.2001.

Copy of counter served on the
other side on 23.8.2000. Rejoinder
not filed. Further time can not
be allowed to file rejoinder.
Pleadings are taken to be
complete. Ad. to 19.03.2001
for hearing and final disposal
of the scope of admission.

John
V. K. S. M.

Member (J)

10. ORDER DATED 19-3-2001.

When this matter was called for hearing,
Shri D.N. Mohapatra, learned counsel for the
applicant sought for an adjournment. As prayer
for adjournment was not made at the mention
time and as we never grant an adjournment when
the matter was called for hearing, prayer for
adjournment is rejected. We have therefore, heard
Mr. D.N. Mohapatra, learned counsel for the applicant
and Shri U.B. Mohapatra, learned Additional Standing
Counsel (Central) appearing for the Respondents and
perused the records.

2. In this Original Application the applicant
has prayed for a direction to the Respondents to

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For my,

add to 19.3.2001.

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16.3.2001.

B.L

consider the case of the applicant on preferential basis as a casual worker for absorption on regular basis against the vacant post of EDMM or any other subsequent vacancy and till such absorption to give him temporary status keeping in view the circular of the Director General of Posts dated 6-6-1988.

3. Respondents have filed counter opposing the prayer of the applicant.

4. No rejoinder has been filed.

5. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case. Applicant's case is that he started working as a casual labourer against leave vacancy in the RMS Sorting office at Baripada from April, 1992 with nominal break but he was not give equal pay for equal work and not even absorbed against any ED post. In 1999 in a Disciplinary proceedings against a regular employee, he was called upon in the notice at Annexure-1 to give evidence and according to the applicant's counsel this shows that in 1999 he was working under the Department. ^{Now} Applicant has further stated that since March, 1997 he is working as Parash cum water man. Onepost of EDMM has fallen vacant because of promotion of Shri S. Bindhani to the post of Gr.D and for filling up of the said post, the Departmental Authorities have asked to the Employment Exchange, Baripada to sponsor names of candidate. Employment Exchange, Baripada had sponsored 40 names including the name of applicant. Applicant states that in accordance

J. J. J.

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with the Director General's circular dated 6-6-1988, he is required to be given temporary status as he has put in 240 days of work as casual workers and he is also entitled to preferential treatment for being absorbed as EDMM. In the context of the above he has come up with the prayers referred to earlier.

6. Respondents in their counter have stated that applicant has worked from April, 1992 till January, 2000 as substitute in Baripada Sorting Office in the absence of regular EDMM on leave on being provided by the regular EDMM. In para-4 of the counter they have indicated a chart giving specific dates year-wise in which he had worked as substitute in all these years. They have stated that he had never been appointed by the Departmental Authorities. The regular incumbent has provided him as substitute while proceeding on leave. Rules are very clear that the service as substitute can not count while making regular appointment. It is further stated that the applicant's name has been sponsored by the employment exchange and the process for filling up of the post is going on. Respondents have stated that as the applicant has not worked as a casual labourer he is not entitled to be conferred with temporary status. We have considered the above submission made by the parties in their pleadings as also submission made by learned counsel for both sides carefully. Respondents have pointed out that the

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applicant has worked from April, 1992 to January, 2000 as substitute in different posts. Law is very clear that service as substitute can not be taken into consideration while making regular appointment and therefore, the applicant can not claim that his service as a substitute should be taken into consideration. This contention is accordingly rejected.

7. Respondents have admitted in their counter that from March, 1997 to August, 1999 on different dates the applicant has worked as Farash cum water carrier in Baripada sorting office and has been paid as an outsider ^{cooly} on voucher. They have indicated the number of days he has worked as Farash cum watercarrier in 1997, 1998 and 1999.

From this it is clear that the applicant from 1997 atleast has been working as a part time casual labourer but as per the details given by Respondents with regard to this engagement which has not been denied by applicant by filing any rejoinder, it is seen that in none of these years he has completed 240 days and therefore, he is not entitled for getting temporary status. But Director General of Posts has issued circular dated 6.6.1988 which has been enclosed by the Respondents at Annexure/R/2 dealing with the case of ^{whole time and} part time casual labourers. As the applicant has worked as part time casual labourer from 1997 his case is squarely covered under this circular. In this circular the Director General of Posts has stated that for absorption in regular Gr.D post, a scheme of priority is maintained by the Department in which ~~part time~~ casual labourers

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occupied the last position. Because of this ^{and} because of large number of ED employees waiting to be appointed as Gr.D employees, full time casual labourers and part time casual labourers hardly get any chance to get absorbed in Gr.D posts. In consideration of this, the Director General of Posts had ordered that while considering filling up of the ~~pos~~ ED posts, casual labourers/^{both} full time and part time should be given preference provided that they have the requisite qualification and they have applied for the post. In the instant case we note that the applicant's name has been sponsored by the Employment Exchange and Respondents have stated that the process of selection is underway. It is also admitted by the Respondents that the applicant has worked as a part time casual labourer from 1997 as Farash cum water carrier. In view of this while we reject the case of applicant for being conferred with temporary status as also the prayer for being given straightaway appointment to the post of EDMM, we direct the Respondents that while considering filling up of the post of EDMM, the case of applicant should be considered and he should be given preference in accordance with the Director General's circular dated 6.6.1988.

3. In the result, the OA is disposed of with the directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.

Free copies of
final order 24.9.01
issued to counsels
for both sides.

Ans
S.O. (T)

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23/3/01