

O-A-17/2000

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Comster beef.
copy of Comster not
served.

Registration

13/10/1988

Onder dr. 14-7-2000

LD SSC files a
memo stating the
copy of counter has
been served on the
applicants. LD
Petner Counsel is
absent on call. Put
up on att 28-7-2nd for
~~Petner Counsel~~ file
reconsider.

~~REGISTRAR~~

Order dated 24.1.2001

Learned Counsel for the petitioner
also present. Heard & Shri. Ashok K. Mishra, the
learned Counsel in favor of the applicant
and ~~xxxxxxxxxxxx~~ Shri A.K.Bose, the learned Senior
Standing Counsel appearing for the Respondents and
also perused the records.

In this Application the applicant has prayed for a direction to respondents to pay him allowance for the period from 1.12.1998 to 7.6.1999 along with interest at the rate of 12% within a specified period. Respondents have filed their counter opposing the prayer, copy of which has been served on the applicant, who has not filed any rejoinder.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that one Ratnakar Jena was working as EDBPM, Palasahi B.O. He applied for leave from 1.12.1998 to 31.12.1998. Respondents have stated that leave application was sent by Shri Jena directly to the Senior Superintendent of Post Offices, instead of routing it through the S.D.I.(P) (Respondent No.3), as is required under the rules. Shri Jena engaged a person, the present applicant, as his substitute without getting any clearance from the departmental authorities and handed over the charge to him. After this Shri Jena the regular incumbent continued to remain on leave from time to time and ultimately superannuated on 9.6.1999. Apparently before his superannuation, on 8.6.1999 he took over the charge from the applicant. Be that as it may, the applicant's prayer in this case is that as he had worked as substitute for the regular incumbent w.e.f. 1.12.1998 to 7.6.1999, he is entitled to get the allowance for the job and even though he has filed representation, no action has been taken in order to pay him the allowance; that is why he has come up in this O.A. with the prayers referred to earlier.

Respondents in their counter have pointed out that Shri Ratnakar Jena the regular incumbent EDBPM superannuated after rendering 35

NOTES OF THE REGISTRY

Dt. 28.7.2000

The learned counsel for petitioner prays to file rejoinder. Prayer allowed. Time till 18.8.2000 is granted to file rejoinder.

28/7/2000
REGISTRAR

Rejoinder not filed.

~~17/8~~ Registration

Dt. 18.8.2000

The applicant counsel prays for time to file rejoinder. Prayer allowed. Time granted till 30.8.2000 for rejoinder as last chance.

18/8/2000
REGISTRAR

Rejoinder not filed.

Last chance
over
~~28/8~~ 29/8 Rejoinder

years of service and he was fully aware of Rules and procedures with regard to E.D. staff. It is further mentioned that when the papers of the applicant, who was brought in as substitute by Shri Jena was examined and it was found that the date of birth of the applicant is 2.7.1981 and therefore on the date of his induction as substitute EDBPM on 1.12.1998 he had not even attained majority. Shri Jena deliberately engaged him as substitute till 7.6.1999 and the applicant continued as substitute in that post when he did not attain majority. As the applicant, during the relevant period was a minor and this fact was within his knowledge, he had obviously ~~acted~~ ^{act} ~~John~~ himself engaged as substitute knowing fully well that he was not entitled to act as such.

In many cases in the past, we have allowed the claims for allowance of the post to the persons who had performed duties in spite of certain ~~deficiencies~~ ^{deficiencies} in the method of their engagement on the ground that when the concerned person has worked in the post he should be entitled to emoluments thereon. But in the instant case we are unable to follow the same analogy because in this case the applicant ~~had~~ ^{John} not even attained majority when he was inducted as substitute EDBPM. This was ~~done~~ obviously done illegally by the regular incumbent and was acted upon illegally by the applicant. Therefore, he cannot be allowed to get the benefit of an illegal action on his part. In view of this we hold that the applicant is not entitled to allowance as prayed for in this application for the period from 1.12.1998 to 7.6.1999 when he continued to be a minor and this prayer of the applicant is accordingly rejected.

So far as interest at the rate of 12% on the allowance, last prayed for by the applicant is concerned, this being the prayer consequential to the first prayer, the same is rejected.

No order as to costs.

MEMBER (JUDICIAL)

John Mathew
VICE-CHAIRMAN
24.1.2001