

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

09. 10. 05. 2001

As per request made on behalf of learned counsel for the petitioner matter is peremptorily adjourned to 15. 05. 2001.

For Admonition

B  
195-0

Breach

S. C. J. M.  
vice-chapman.

Member (J).

10. ORDER DATED 16. 5. 2001.

S. C. J. M.  
Heard Shri A.K. Mohapatra, learned counsel for the applicant and Shri A.K. Bose, learned Sr. Standing counsel for the Respondents. Shri D.K. Sahoo and his associates, learned counsel for Respondent No. 4 are absent without any request for adjournment and that is why we didnot have the benefit of hearing them.

In this O.A., the applicant has prayed for transferring the Respondent No. 4 from Biraharekrushnapur Branch Post Office to ~~any~~ other nearby Branch Post Office and for a direction to the Supdt. of Post Office, Puri, Respondent No. 3 to hold recruitment to the post of EDMC, Biraharekrushnapur BO in accordance with the prescribed rules and procedure. The third prayer is for a direction to the Respondent No. 3 to appoint the applicant as regular EDMC in view of his past experience.

Departmental Respondents have filed counter opposing the prayers of applicant. Private Respondents appearing through the counsel has not filed counter. No rejoinder has

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been filed.

For the purpose of considering this O.A., it is not necessary to go into too many facts of this case. Applicant has stated that the Supdt. of Post Offices, Puri had engaged him as Extra Departmental Mail Carrier from 1.6.1985 against the leave vacancy of the existing incumbent for a period of 15 days and in the same manner, he was engaged in different spells during the leave vacancy of the regular EDMC. The regular EDMC retired on 3.1.1997 and consequent upon his retirement Respondent No. 3 temporarily engaged the applicant as EDMC. Applicant has stated that the Departmental Authorities assured him that his case will be considered for regular appointment to the post of EDMC but without considering his case, Respondent No. 4 was appointed to the post of EDMC. On enquiry it was learnt by the applicant that in pursuance of direction of this Tribunal Respondent No. 4 has been given appointment to the post. Applicant has stated that in the process of his long period of experience of holding the post of EDMC, has been ignored and in the context of the above facts, he has come up with the prayers referred to earlier.

JJm

It is not necessary to refer to the averments made by the Departmental Respondents in their counter as these will be referred to while considering the submissions made by learned counsel for both sides. It is submitted by learned counsel for the applicant that the Tribunal in their order dated 10.2.1994 in

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O.A.No. 47/94 had directed consideration of the case of Respondent No.4 for appointment to the post of EDBPM and in case he is not a matriculate his case should be considered for the post of other ED Agents. The Tribunal also directed the Respondent No.4, applicant before them in that OA to make an application to the appropriate authority within 15 days. It is submitted by learned counsel for the applicant that the Tribunal in their above order directed consideration of the case of the Respondent No.4. This necessarily means that at the time of such consideration, Respondent No.4's candidature should be considered alongwith others but without following the regular process of selection, Departmental Authorities have straightaway appointed Respondent No.4 to the post of EDMC, Biraharekrushnapur Branch Post Office without any selection process. The second point urged by learned counsel for the applicant is that the above order of the Tribunal is based on the consideration that Respondent No.4 has worked for 9 years as EDDA cum EDMC in Mohura Branch Post Office as against this, it is submitted by Mr. Mohapatra, learned counsel for the applicant that the applicant has worked as EDMC from 1985 to 1997 in different spells and therefore, it is submitted that his case is also required sympathetic consideration. We have heard and considered the above two submissions carefully.

The second submission made by learned counsel for the applicant is taken up first. Law is well settled that experience gained as a substitute either ~~can not be taken into consideration~~ while <sup>either</sup> ~~can not be taken into consideration~~ while <sup>either</sup> *J.V.M.*

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filling up of the post on regular basis or for the purpose of regularisation. This is because if such consideration is allowed then it would always be open for the regular incumbent to go on leave and induct one of his relations as a substitute thereby giving undue advantage to the candidate over the fresh candidates. Moreover, substitutes are not appointed by the Departmental Authorities. They are inducted by the regular incumbents at the risk and responsibility of the regular incumbents. In view of the above position on the basis of his experience as a substitute, the applicant can not claim any preferential treatment. Moreover, applicant has not indicated any details of his work as substitute. Departmental Respondents have stated that the applicant had worked as substitute only for 15 days in 1985. Applicant has stated that he had worked as substitute in May, 1997. From the relevant charge report enclosed by the applicant which is at running page-15 of the OA it appears that this spell of work as substitute was after the Respondent No. 4 joins the post of EDMC. In consideration of above, this contention is held to be without any merit and is rejected.

The first contention of learned counsel for the applicant is that the Tribunal had only directed for consideration of the case of Respondent No. 4 and as such consideration should have been made along with other candidates in the process of selection. Learned Sr. Standing Counsel, has in this connection drawn our attention to DG (Posts) letter dated 18.5.1979 gist of which has been printed in Swamy's compilation of ED Agents (conduct and Service) Rules. Xerox copy of which has been filed at Annexure-R/6.

JMM

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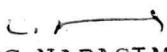
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This provides that ED Agent who was appointed provisionally and was subsequently discharged due to administrative reason and if at the time of such discharge, he has put in not less than three years of service, his name should be kept in the waiting list for ED Agents and he should be given alternative employment.

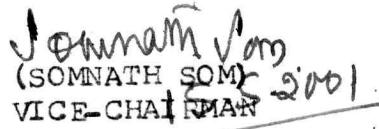
In other circular issued by Director General of Posts, which has been printed in Swamy's compilation, it is laid down that when service of an ED Agent is dispensed with because of the reasons unconnected with his official work and in case such person has put in three years of service or more, then his name is to be kept in the waiting list and he should be offered alternative employment. This circular do not provide that such ED Agents whose name appears in the waiting list have to compete with other candidates for getting alternative employment of ED Agent.

In consideration of the above, this contention of learned counsel for the applicant is held to be without any merit and is rejected.

In the result, therefore, the OA is held to be without any merit and is rejected. No costs.

  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

KNM/CM.

  
(SOMNATH SOM)  
VICE-CHAIRMAN

Free copies of final  
Order at 15-1-2001  
issued to counsels  
for both sides  
*By*  
*S. C. T.*