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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

original Application No. 310/2001
Cuttack, this the 66th day of November, 2003

Hrudananda Patnaik.

....

Applicant.

-Versus-

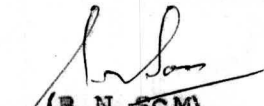
Union of India & Ors.

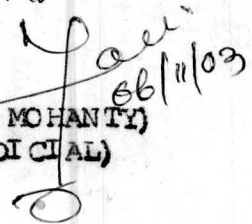
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Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? No
2. whether it be circulated to all the Benches of Central Administrative Tribunal or not? No


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 310 of 2001
Cuttack, this the 86th day of November, 2003.

C O R A M:-

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.).

.....

Hrudananda Patnaik, aged about 29 years,
S/o. Kartika Charan Patnaik of Village-
Jalapock, PO: Pokshyat, PS: Patkura,
Dist. Kendrapara.

..... Applicant.

By legal practitioner: M/s. N. P. Choudhury, R. S. Choudhury,
Ku. H. P. Choudhury, Ku. B. Nayak,
Advocates.

-Versus-

1. Union of India represented by the Secretary,
Ministry of Communications, Department of Posts,
Dak Bhawan, New Delhi.
2. The Chief Post Master General, Orissa, Bhubaneswar,
Dist. Khurda.
3. The Superintendent of Post Offices, Cuttack North
Division, Cantonment Road, Cuttack.
4. The Sub-Divisional Inspector (Posts) Salipur, Cuttack.
5. The E.D.BPM, Pokshyat, BPO.
6. Choudhury Girija Shankar Mohanty, M. Com.,
Aged about 36 years,
S/o. Late Radhashyam Mohanty,
E.D.D.A.,

Both are of PO: Pokshyat,
PS: Patkura,
Dist. Kendrapara.

..... Respondents.

By legal practitioner: Mr. A.K. Bose,
Senior Standing Counsel
(Central).



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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

This case under section 19 of the Administrative Tribunals Act, 1985 relates to recruitment of one Choudhury Girija Shankar Mohanty (Respondent No. 6) as the Extra Departmental Delivery Agent of Pakshyat Branch Post office under Danpur Sub Post office of Kendrapara Head post office in Orissa. The said post of E.D.D.A. fell vacant with effect from 10.06.2000 due to retirement of the incumbent (named Patitapaban Nayak) on his attaining the normal age of superannuation. Pending regular recruitment of any person to man the said vacant post of E.D.D.A., the Inspector of Salipur Postal Sub Division (Respondent No. 4) made an interim arrangement by asking the Branch Postmaster (of the said Pakshyat Branch Post office) to undertake the delivery (of Dak) work (in addition to his BPM work) vide his letter No. B/EDDA/Pakshyat/2000 dated 05.06.2000. Later, the vacancy in question was notified to local employment exchange (at Kendrapara) on 30.01.2001 requisitioning candidates therefrom and, simultaneously, open notification were issued, on the said 30.01.2001, inviting applications from intending eligible candidates for the said post. Although the Employment Exchange did not sponsor any names of candidates, total 20 candidates responded to the open advertisement dated 30.1.2001. On the selection (from among the 20 candidates applied) said Choudhury Girija Sankar Mohanty (Respondent No. 6) was appointed

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as E.D.D.A. of Pakshyat Branch Post Office; where he joined on 11.05.2001. Applicant, who apparently worked as a SUBSTITUTE in place of the permanent incumbent (during temporary absence of the regular E.D.D.A. Shri Patitapabana Nayak of Pakshyat Branch Post Office) for some time, was also one of the 20 candidates for the post/vacancy in question and, having not been recruited, he has filed this Original Application (a) challenging the appointment of the Respondent No. 6 and ^(b) seeking a direction (to the Respondents) to appoint him as E.D.D.A. of the Branch Post Office in question, by replacing the Respondent No. 6 therefrom.

2. The case of the Applicant is, as disclosed by the learned Counsel appearing for him at hearing, that he gathered experience of 72 days while working as a SUBSTITUTE of the permanent incumbent, as E.D.D.A. of the Branch Post Office, in question and, on the retirement of the permanent E.D.D.A., he was discharging the duties of E.D.D.A. (being requested by the Branch Postmaster, the Respondent No. 5) expecting to be regularised as such; but, instead of selecting him, the Respondent No. 6 (who happens to be the son/near relative of the Respondent No. 5) has been appointed by suppressing his (Applicant) application. It has also been pointed out, on behalf of the Applicant, that the Respondent ^{has} No. 6 been engaged in a nearby school.

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3. The Respondents having filed counter, have explained that a SUBSTITUTE has got no right to have any precedence (over other candidates) in course of recruitment to any extra Departmental posts in postal Department and that the candidature of the Applicant for the post in question was duly considered (in the recruitment process in question) and his merit position was at Sl.No.19. The Respondents also explained that the selected candidate (Respondent No.6) to be neither the son/near relative of the Branch Postmaster (Res.No.5) nor employed in any School and they produced materials in support of their stand.

4. By filing a rejoinder, the Applicant has reiterated his stand as taken in the Original Application.

5. We have heard Mr. Choudhury, learned Counsel for the Applicant, Mr. Bose, learned Senior Standing Counsel appearing for the Departmental Respondents and perused the materials placed on record.

6. The stand of the Applicant that he gathered some experience as a SUBSTITUTE (engaged at the personal risk of the permanent EDDA) was/is of no avail to him; as no right flows out of such experiences to get any precedence at the open recruitment. The other stand of the Applicant that he was assisting the Branch

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Postmaster(after the retirement of permanent EDDA) with expectation to get regularised, is equally of no assistance to him. The Applicant has miserably failed to substantiate that he discharged the duties of EDDA, following to retirement of the regular EDDA, and, therefore, his prayer/^{for}wages is hereby rejected. Applicant's stand in this Original Application that the Branch Postmaster (Respondent No. 5) withheld/ suppressed his application submitted in response to the open-advertisement, appears to be a misapprehension; because his application/candidature received due consideration in the recruitment process and his merit-position was found at Sl.No.19 out of the 20 candidates. Thus, the Applicant has made out no case to be allowed in his favour.

7. As to the allegation of the Applicant that the Respondent No.6 is gainfully engaged in a Sanskrit Tel/School, by producing a certificate from the School, the Respondents have not only denied the said allegation but have substantiated their rival stand.

8. By producing materials, the Respondents have also shown that the Respondent No.6 to be not the son of the Respondent No.5. The futile attempt made by the Applicant, by producing Annexure-4(said to be a Veterans' list) is of no assistance to him to substantiate the allegation that the Respondent No.5 and Respondent

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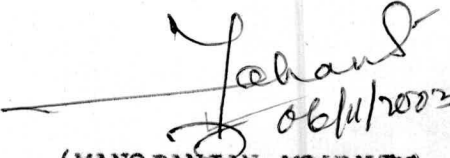
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No.6 are of same family joint mess. Apart from the fact that the document at Annexure-4 is not a certified copy of the Original voters' list, the same do not show that the Respondent No.5 and Respondent No.6 are in joint mess.

9.. Law is well-settled by now, that existence of a right is the foundation for a litigation. Applicant having failed to show infringement of any of his rights, in this case, this Original Application is bound to fail. When the Applicant has failed to stand on his own leg, it does not look nice to hear from his mouth that the selected candidate has been recruited wrongly; especially when he has miserably failed to substantiate even such a (negative) case against the Respondent No.6.

10. In these premises, this Original Application is dismissed. No costs.


(B.N. SOM)
VICE-CHAIRMAN


06/11/2003
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)