

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 145 of 2003  
Cuttack, this the 30th day of June, 2005

Shri Suvendu Mahapatra

..... Applicant

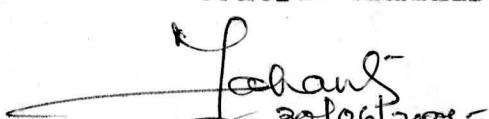
-VERSUS-

Union of India & others

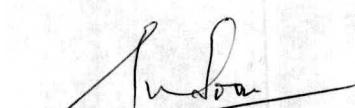
..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

  
30/06/2005  
(M.R. MOHANTY)

MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.145 of 2003  
Cuttack, this the 30th day of June, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

...

Shri Suvendu Mohapatra, aged about 30 years, S/o. Santosh Kr. Mohapatra, resident of Village/Post-Bhadigaon, PS-Bhatli, Dist-Baragarh.

..... Applicant

Advocates for the applicant

..... Mr.K.C.Kanungo,  
H.K.Swain,  
B.D.Rout,  
S.Behera &  
S.Mohapatra.

Versus-

1. Union of India represented through its Secretary-cum-D.G.Posts, Dak Bhawan, New Delhi-1.
2. The Postmaster General, Sambalpur Region, Sambalpur, Dist-Sambalpur.
3. The Superintendent of Post Offices, Sambalpur Division, Sambalpur, Dist -Sambalpur.
4. The Assistant Superintendent of Post Offices, Incharge of Baragarh Sub-Division, Dist-Baragarh.

..... Respondents

Advocates for the Respondents

..... Mr.U.B.Mohapatra.

.....

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN:

Shri Suvendu Mohapatra has filed this O.A. assailing the instruction issued by the Director General of Posts dtd.6.6.98 (Annexure-2) as discriminatory on the ground that the benefit of preferential category in recruitment <sup>EDA</sup> to ~~ED~~ category has not been extended to the substitutes who are similarly placed.

2. The applicant's main contention in the O.A. is that he had completed more than 480 days as substitute in the department and therefore he could legitimately expect some long term appointment in the department. Referring to the instruction issued by Res. No.1 for appointment of EDDA and casual labourers for full time engagement as regular Group-D employees, he has stated that the same benefit if not given to the substitutes like him that would constitute ~~the~~ discrimination. Referring to the instructions of DG Posts in his letter No.17-141/38-EDC & Trg., dtd.6.6.1988, he submitted that the casual labourers have been given preference in ED (GDS) employment subject to their fulfilling the recruitment conditions if they have completed 240/480 days of casual service in a year for full time casual labourers/2 years in case of part time casual labourers. It is, therefore, highly unjust if the same facility is not given to him when he has rendered substitute service of more than 480 days in a period of two years.

3. Per contra, the Respondents have opposed the application being not sustainable in the eye of law. They have submitted that the applicant, contrary to his claim, is not a casual worker, either full time or part time. He has worked as substitute but the status of a substitute has been clearly defined by the department. A substitute is not appointed through any process of selection. A substitute is inducted into an ED/GDS post by the regular incumbent when he goes on leave under his own risk and responsibility. He does not get any wages from the Department. Thus the status of substitute ~~is~~ can hardly be compared with that of the casual labourer. Hence to claim any parity in the matter of employment with casual labourer is untenable. Further, a substitute cannot be working continuously for 480 days because no ED/GDS employee is granted leave for more than 180 days and if the regular incumbent ceases to be in service, the substitute also loses his position.

4. We have heard the Lt. Counsel for both the parties and have perused the records placed before us.

5. The rights and privileges of substitutes have already been decided by the Apex Court. A substitute not being an appointee of the department can hardly claim any relief from the department. The status of the substitute we have already discussed in detail while disposing of O.A. No. 146/03 relying on the decision of the High Court of Karnataka in WP Nos. 21331-333/2000.

6. However, there appears to be another angle to the matter. The case of the substitutes as discussed in O.A.146/83 referred to earlier on the rights and privileges of the substitutes decided by the Apex Court are those who are engaged in leave ~~vacancy~~ of GDS in rural postal set up. But there appears to be another category of substitutes as referred to in DG Posts circular dtd. 17.5.89. In that circular this grade has been given some rights to be considered for appointment by stating that "substitutes will rank last in priority, but will be above outsiders". This circular appears to be still holding the ground. If that be so, we see no reason why the Respondents in the counter have stated that the substitutes have no ~~leg~~standi. In their circular dtd. 17.5.89 referred to above, the Respondents department has granted priority to the substitutes (not working in metro-politan cities) priority No. (v) and for those substitutes working in metro-politan cities priority above No. (iv) in the list i.e., the EDDA of other divisions in the same region. In other words, the substitutes have been allowed to be considered for Group-D posts after consideration of the casual labourers. In effect the substitutes who are appointed against absentees have been granted right to regular appointment.

*by the Department*

7. We, therefore, dispose of the O.A. giving a direction to the Respondents to consider the case of the applicant for appointment to Group-D post according to the priority of his group to which he

*V3* ✓  
belongs as envisaged under the Departments circular  
dtd.17.5.89 as and when vacancy arises. No costs.

*T. Mohanty*  
30/06/05  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*B.N. Som*  
( B.N. SOM )  
VICE-CHAIRMAN

SAN/