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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 120 OF 2002
Cuttack this the 17th day of January/2003

Chinmay Kumar Sahoo ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

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

Jaee
13/01/2003
(M.R. MOHANTY)
MEMBER (JUDICIAL)

lns
(B.N. SOM)
VICE-CHAIRMAN

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CUTTACK BENCH : CUTTACK

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Cuttack this the 17th day of January/2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

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Shri Chinmay Kumar Sahoo, aged about 20 years,
S/o. Sarat Ch. Sahoo, At/PO-Panchurukhi,
Via-Baliapal, District-Balasore,
at present working as Gramin Dak Sevak Branch
Post Master, Bada Simulia, Branch Post Office
in a/c with Baliapal S.O.,
Balasore

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Applicant

By the Advocates

Mr. D.P. Dhalasamant

- VERSUS -

1. Union of India represented through
Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist-Khurda
2. Superintendent of Post Offices,
Balasore Division, Balasore
3. Sub Divisional Inspector of Posts,
Jaleswar West Sub Division, Jaleswar,
Balasore
4. Shri Muralidhar Behera, At-Hatimunda,
PO-Nilgiri, Dist-Balasore - at present
India Guest House, At-Nilgiri,
Dist-Balasore

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Respondents

By the Advocates

Mr. A.K. Bose,
Sr. Standing Counsel
(Res. 1 to 3)

Mr. P.K. Khuntia
(Res. No.4)

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN : This application has been
filed by Shri Chinmay Kumar Sahoo, under Section 19 of
the Administrative Tribunals Act, 1985, challenging the
action of Superintendent of Post Offices, Balasore

Division, Balasore (Respondent No.2) in inviting applications for filling up the post of Gramin Dak Sevak Branch Post Master (in short G.D.S.B.P.M.) vide his notification dated 26.12.2001 (Annexure-4). His grievance is that the Respondents, at the first instance, should have considered his candidature for appointment against that post, advertised.

2. The case of the applicant, in short, is that he was regularly appointed as Gramin Dak Sevak Delivery Agent-cum-M.C. in the year 2001, that the Respondent No.2 appointed him vide his letter dated 10.1.2002 (Annexure-2) on a provisional basis as G.D.S.B.P.M., Bada Simulia Branch Office, in account with Baliapal S.O. under Balasore H.O. In terms of instructions of the D.G.(Posts) dated 28.8.1996, the applicant pleaded that the Respondents were bound to appoint him against that vacant post, without going through the Employment Exchange as he was suitable for that post and fulfilled all the required conditions. The Respondent No.2, he has stated, not only did not act according to instructions of D.G.Posts, referred to earlier, he also ignored the application made by the applicant expressing his willingness to be appointed against the said post. Finally he has stated that it was incumbent upon the Respondents to first ascertain the applicant's suitability for the post before going into the open market for recruitment. Being aggrieved by the said attitude of Respondent No.2, he has approached this Tribunal for redressal of his grievance.

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3. The Respondents, in their counter have stoutly denied the allegations. The Respondents admitted that the applicant, vide his application dated 26.11.2001, expressed his willingness to apply for the post of G.D.S.B.P.M., Badasimulia. They did not take any action on his application on the ground that the said letter was received after the Respondent No.2 had sent requisition to the Employment Exchange on 26.11.2001, that the applicant had not applied for his transfer to the post of G.D.S.B.P.M., Bada Simulia, but only had expressed his intention to apply for that post. As he had ample opportunity to apply in response to Annexure-4 of his application, the grievance of the applicant was not tenable. They denied that the applicant had ever applied for his transfer or had ever offered his candidature vide Annexure-1 by Regd. Post dated 20.4.2001. They further contended that as the Office of Badasimulia was opened on 26.11.2001, the applicant could not have applied for transfer to this post on 20.4.2001.

4. The moot point to be decided in this case is whether the letter of the applicant dated 26.11.2001 may be construed as an application submitted by the applicant for his transfer to the post of G.D.S.B.P.M., Badasimulia, in terms of sub-para I of D.G. Posts Circular dated 28. 8. 1996. The said letter dated 26. 11. 2001 of the applicant reads as follows, "translation generated from Oriya to English".

"To

The Superintendent of Post Offices
Balasore Division

Sir,

I, Shri Chinmay Kumar Sahoo, am working as EDDA/MC of Jamatula Branch Post Office. I came to know that Badasimulia Branch Post Office has been opened. I beg to state that my house is situate nearby the village Badasimulia. I am desirous applying for the post of Branch Post Master, Badasimulia.

Therefore, I pray fervently, if you could kindly supply me all the papers for the post of Branch Post Master, I shall be grateful.

Yours faithfully,

Sd/-

dt. 26.11.2001

(Chinmay Ku.Sahoo)"

5. It has been contended by the applicant and further buttressed by the learned counsel for the applicant Shri D.P.Dhalasamant that this letter dated 26.11.2001 was ignored by Respondent No.2 to the disadvantage of the applicant. The action on the part of Respondent No.2 was in clear violation of D.G.Posts' instruction in the matter. Shri A.K.Bose, the learned Senior Standing Counsel stating on behalf of the Respondents strongly refuted that Respondent No.2 had ever violated the instructions of D.G.Posts instruction dated 28.8.1996. He stated that if the applicant was keen to occupy the post of G.D.S.B.P.M., Badasimulia he should have asked for transfer from the post of EDDA/MC and not hedged his intention by saying that he intended to apply for the post for which he might be supplied with necessary application forms. In any case a copy of the open notification was sent to him

by Respondent No.2. In view of this, the learned Senior Standing Counsel concluded that the applicant has not been clear as to why he did not apply for the post nor did he write directly in an unambiguous term that he should be first considered for the post before appointing anyone else as he fulfilled all the conditions for appointment to the post of G.D.S.B.P.M., enclosing all the credentials in support of his claim. He also pointed out that the applicant had remained silent all this time and before he filed this Original Application he had never represented before the Respondent No.2 for any solution. In this view of the matter, he stressed that the application was devoid of merit.

6. Having heard both the parties and perusing the relevant records, we are of the view that there is no doubt, by virtue of D.G.Posts letter dated 28.8.1996, the appointing authorities have been authorised to fill up a vacant E.D. post either in the same office or in any office in the same place by one of the existing Gramin Dak Sevaks, should he prefer to work against such a post without going through the Employment Exchange, provided however, that the candidate is suitable for the post and fulfills all the requisite conditions. We agree with the argument of the Senior Standing Counsel that the applicant's letter dated 26.11.2001 was tentative and ambiguous, did not give clear bent of mind. Moreover, by remaining silent after sending that letter he did not add strength to his case. More than the silence, what appears to have created the communication gap between

applicant and the Respondents in examining his application dated 26.11.2001, in terms of D.G.Posts letter dated 28.8.1996 is that the said letter dated 28.8.1996 does not appear to be a part of the conditions laid down for recruitment of G.D.Ss. We notice that from time to time, D.G.Posts have been issuing instructions either by way of laying down recruitment conditions or clarifying recruitment conditions already laid down in D.G. Posts letter in bits and pieces. One such instance is this letter dated 28.8.1996. By virtue of this letter, D.G. Posts is amending the basic procedure of recruitment of G.D.Ss, in that in certain cases an internal candidate fulfilling all the conditions of appointment may be appointed without resorting to an open advertisement or sending requisition to the Employment Exchange. Until and unless this circular is made a part of recruitment procedure as enshrined in letter of the D.G.Posts, this type of problem, as has happened in this case, cannot be ruled out. However, we are unable to come to the rescue of the applicant as no one can call in question the recruitment process undertaken by Respondent No.2 in selecting and appointing Respondent No.4 to the post of G.D.S.B.P.M., Badasimulia, as bad in law. We would, however, direct Respondent No.1 to take immediate action to incorporate the instructions contained in his letter dated 28.8.1996 as a part of method

of recruitment of Gramin Dak Sevaks. We would, further like to observe that Respondent No.1 should also clearly lay down that for effective implementation of his

recruitment instructions as contained in letter dated 28.8.1996, the recruiting authorities should, in the first instance, satisfy themselves that there is no internal eligible candidate for appointment against the vacant post before going for open notification and/or sending requisition to the Employment Exchange.

7. Notwithstanding the fact that the applicant missed the bus for Badasimulia, should there be any vacancy in the same station or in the same office in future, his candidature should be considered first, in terms of D.G.Posts letter dated 28.8.1996, to meet the ends of justice.

8. With the aforesated observations and directions this Original Application is disposed of. However, there shall be no order as to costs.

26/10/2003
(M.R. MOHANTY)
MEMBER (JUDICIAL)

By/

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