

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A. NO. 475 OF 2003
Cuttack, this the 18th day of August, 2005.

DILIP KUMAR JENA APPLICANT

VERSUS

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? yes
3. Whether it be circulated to all the Benches of CAT? yes

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

Jahan
18/08/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

Original Application No. 475 of 2003.
Cuttack, this the 18th day of August, 2005.

C O R A M:-

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

Dillip Kumar Jena, Aged about 26 years,
S/o. Bhimasen Jena, At/Po- Bodel,
Via- Naugaon Hat, Dist.Jagatsinghpur,
At present continuing as Extra Departmental
Branch Post Master at Angeswarapada Branch
Post Office, At/Po. Angeswar Para,
Via- Naugaon Hat,
Dist. Jagatsinghpur.

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APPLICANT.

For the Applicant : M/s. P.Mohanty, D.N. Mohapatra, G.S. Satapathy,
Smt.J. Mohanty, Advocates.

-VERSUS-

1. Union of India, represented by its Chief Postmaster General,
Orissa, At/Po. Bhubaneswar, District- Khurda.
2. Superintendent of Post Offices, Cuttack South Division,
At/Po/District- Cuttack.
3. Assistant Superintendent of Post Offices,
Jagatsinghpur Sub Division,
At/Po/Ps/Dist. Jagatsinghpur.

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RESPONDENTS

For Respondents - Mr. B.N. Udgata, Ase



O R D E R

MR. M.R.MOHANTY, MEMBER(JUDICIAL):

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for a direction to the Respondents to regularize his service in the post of Extra Departmental Branch Post Master/Gramin Dak Sevak Branch Post Master of Angeswarpada Branch Post Office (in account with Nuagaonhat Sub Post Office) for the reason of his long continuance in the said post w.e.f. 27-03-2005; he having been appointed, on provisional basis, under Annexure-3 dated 25-03-2000. In support of this prayer, the Applicant has also prayed that he, being a physically handicapped person there is no reason not to regularize him in the post especially when no deficiency in discharging duties (as GDSBPM/EDBPM) have been pointed out against him.

2. Having heard Mr. G. Satpathy, learned counsel appearing for the Applicant, and Mr. B.N. Udgata, Learned Additional Standing Counsel representing the Respondents-Department, we have also perused the materials placed on record.

It is revealed from the records that due to retirement of the permanent incumbent of the post in question, the post was advertised under

Annexure6 dated 07.02.2000 to be filled up by an SC candidate (failing which, by OBC candidate) and, pending the regular selection, in order to manage the day to day work of the said post, the Applicant was asked provisionally (by an order dated 25.3.2000) to manage the work of the post (of GDSBPM/EDBPM); with the clear understanding that his said continuance was purely on temporary basis and that such engagement shall not confer any right on him to claim any sorts of permanency.

From Annexure-8 dated 24.4.2001 (which is the inspection report of the ASP, I/c of Jagatsinghpur Sub Division,) it appears that the Applicant did not make over the charge of the Office of the BPM in question, to the regularly selected candidate and that is how he is continuing in the post.

It further appears from the record that when he was asked to vacate the post and to hand over the charge to the regularly selected candidate (Shri Biswanath Behera) the Applicant sought the intervention of this Tribunal in the present Original Application.

3. Having considered the various submissions made by the counsel appearing for the parties and having gone through the materials placed as Annexures to this Original Application we are convinced that the Applicant has no right to claim regularization as his entry into the service was through back door method/not through any open selection and that no regular

process of selection was conducted , while engaging him and that, in the very appointment letter, it was specifically stipulated that the said engagement of the Applicant was purely a temporary arrangement (vesting no right to him to claim any regularization. That-apart, we are convinced that the post is/was reserved for Scheduled Caste candidates and a regularly selected candidate having now been selected and appointed to the post, the Applicant has no right to claim to continue in the said post for a day even.

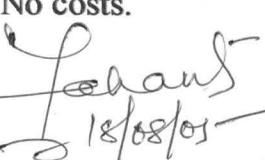
4. In the case of **STATE OF HARAYANA VRS. SURINDER KUMAR** (Reported in AIR 1997 SC 2129), the Hon'ble Apex Court held that any appointment made to the service shall be in accordance with the statutory rules and the guidelines laid down there-under and that one cannot have any right to a post until he is duly selected and appointed. In the present case, as revealed from the pleadings of the Applicant, he was not selected and appointed, after following due process of recruitment recognized under the Departmental Rules/instructions.

5. In course of hearing, learned counsel appearing for the parties disclosed that the Applicant did not apply for facing the regular recruitment, even in response to the open Advertisement. That being the position, the present claim of the Applicant to the said GDSBPM/EDBPM post is also devoid of any merit.

6. Apart from the above, Applicant seeks direction for regularization and, in case such direction is given, the selected candidate has to be debarred from getting the employment/appointment. The minimum requirement of natural justice demands that before passing any order adversely affecting a party, he/she be given an opportunity of hearing, (**RANGA REDDY vrs. STATE OF AP** reported in 1987 SCC (L&S) 271; **J.S.DHILLON vrs. UNION OF INDIA AND OTHERS**, reported in (1989) 11 ATC 499 and **PRABODH VERMA AND OTHERS VRS. STATE OF UTTAR PRADESH AND OTHERS**, reported in AIR 1985 SC 167). As the Applicant has not made the selected candidate (Biswanath Behera) a party to this case, the present Original Application is bound to be dismissed for non-joinder of necessary party.

7. **In the result, this O.A. stands dismissed. No costs.**


(B.N.SOM)
VICE-CHAIRMAN


18/08/03
(M.R.MOHANTY)
MEMBER(JUDICIAL)