

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.563 OF 2004
CUTTACK, THIS THE 12th DAY OF December, 2006

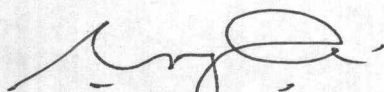
Siba Narayan Patra..... Applicant

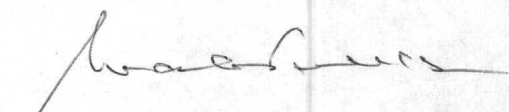
Vs.

Union of India & Others..... Respondents

FOR INSTRUCTIONS

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


(V.K.AGNIHOTRI)
MEMBER (ADMN.)


(M.A.KHAN)
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.563 OF 2004
CUTTACK, THIS THE 12th DAY OF December, 2006

CORAM:

HON'BLE MR. JUSTICE M.A.KHAN, VICE-CHAIRMAN

HON'BLE MR. V.K.AGNOHOTRI, MEMBER (ADMN.)

.....

Siba Narayan Patra, aged about 26 years, S/o. Late Maheswar Patra, of
Village/PO- Chanahat, P.S. Balipatna, Dist.- Khurda.

.....Applicant

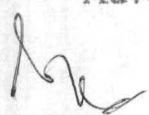
Advocate(s) for the Applicant - M/s. A.K.Swain, B.Parida,
T.Mohapatra.

VERSUS

1. Union of India, represented through Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist.-Khurda.
2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, Dist. Khurda.
3. Assistant Superintendent of Post Officers, In-charge, Bhubaneswar Sub-Division, Bhubaneswar, Dist. Khurda.
4. Senior Postmaster, Bhubaneswar G.P.O., Bhubaneswar, Dist. Khurda.

.....Respondents.

Advocate(s) for the Respondents - Mr. U.B.Mohapatra (Sr.S.C.).



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ORDER

MR. JUSTICE M.A.KHAN, VICE-CHAIRMAN:

The applicant has assailed the order of Respondent No.3 dated 29.03.2004 (Annexure-A/5) and has sought a direction that respondents should be directed to appoint and regularize him in the service.

2. Briefly, the allegation of the applicant in the O.A. is as follows. The applicant was appointed as Gramin Dak Sevak Stamp Vendor (GDS SV), Bhubaneswar Secretariat Sub-post Office, on provisional basis for the period from 19.02.1999 to 31.03.2001 initially. Period was extended 9 times for varying periods and the last extension was from 01.03.2004 to 31.03.2004. The Departmental studies were carried out to assess the justification of the continuance of the post of GDS SV for the said Post Office and revealed that the workload was one hour and 15 minutes only as against requirement of 5 hours. Accordingly, the post was abolished and the further extension in provisional appointment of the applicant was not granted. The applicant's father, who was working as Sub-Postmaster in the said Post Office, died in January, 2002 and the applicant's mother applied for being appointed on compassionate ground. Her case was processed, but finally the Circle Relaxation Committee did not recommend her case. According to the applicant, the termination of his service is illegal, arbitrary and in violation of the principles of natural justice.

3. The Respondents had rebutted the allegation of the applicant that the termination of his provisional appointment was not according to the law. It is submitted that there was no justification for further continuance of the post and considering the irregularity committed in the provisional appointment of the applicant and rejection of the compassionate appointment

here

by the competent authority, the applicant was disengaged with effect from 31.03.2004. No other person was appointed in the said post. It is submitted that the appointment and regularization of the applicant in the service of the Respondent-Department are not permissible under law, as held by the Hon'ble Supreme Court, and the Hon'ble High Court of Delhi in Civil Writ Petition No. 8615/04 and Civil Writ Petition No. 9282/04, which is titled as Ms. Kamla Devi and Ms. Kamlesh respectively vs. Union of India and others. Other allegations of the applicant have also been controverted.

4. We have heard the Ld. Counsel for both the parties and have perused the records.

5 The applicant is challenging the irregularity in the order dated 29.03.2004 (Annexure-A/5) which calls for discontinuance of his provisional appointment as GDS SV. The relevant extract of the said letter is as follows.

“ On review of work hour of GDS Stamp Vendor of your office as per recent norms, the work hour come to the 15 Minutes against requirement 5 hours. Please terminate present provisional arrangement vide this office letter. Even No. dt. 22.03.04 in GDS Stamp Vendor post on 31.3.04 A.N. send charge report, manage the work by existing staff temporarily.”

6. The applicant has not been able to satisfy us that his initial appointment on provisional basis was in accordance with the departmental rules applicable to the said post. The authorities who have power to create a post have also power to abolish it. It has also been held in the case of State of Haryana vs. Shri Des Raj Sangar and another in Civil Appeal No. 1942 of 1974 decided on 16.12.1975 by the Hon'ble Supreme Court and reported in Vol.I of Supreme Court Services Rulings 1950-1992 published by Allied

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Book Company and in the case of State of Haryana and others vs. Piara Singh and others reported in AIR 1992 SC 2130. In the present case, the respondents have submitted that the decision for not filling up the post by extension of the provisional appointment of the applicant has been taken as a result of the work study carried out by the Department, which did not justify the continuance of the post any further. We, therefore, do not find anything in the brief of the applicant that the aforesaid letter suffers from any legal infirmity or illegality and is liable to be quashed.

7. The applicant claimed for his regularization in service of the respondents-Department on the ground that he had been working as GDS SV on provisional basis for a period of 5 years. The Ld. Counsel for the applicant has referred to the judgment of Hon'ble High Court of Orissa dated 01.08.2006 in W.P©.No. 9747/06 in the case titled Shri Pramod Kumar Dalai vs. Union of India & Ors., copy of which has been produced before us. The Writ Petition was filed for assailing the order of this Tribunal in O.A.No. 349/04. The petitioner therein was provisionally appointed as Extra Departmental Stamp Vendor in a vacancy of put-off duty in Utkal University, Sub-post Office for more than 5 years regularly, but his term of appointment was not extended beyond 31.03.2004 mainly because of the fact that the workload could be well managed by the then existing regular employees. Facts of the said O.A. are identical to the present case. The Hon'ble High Court relying upon the circular of D.G., P.& T. dated 23.02.1979 disposed of the Writ Petition with direction to the respondents to include the name of the petitioner in waiting list as provided in the circular and that he shall be given appointment in accordance with his place in the waiting list in any available vacancy as and when it becomes available in accordance with the law. The relevant DG, P&T letter dated 23.02.1979

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which was referred to by Hon'ble High Court is related to the put off duty. In the present case, the Ld. Counsel for the applicant has drawn our attention to Para-15 of the DG, P&T letter dated 18.05.1979 and circular dated 30.12.1999 which relate to the provisional appointment made to the ED post.

8. It is clearly admitted on behalf of the respondents that the aforesaid instruction of the DG, P&T covers the case of the applicant. He has also similarly not denied that the order of the Hon'ble High Court of Orissa in the cited case fully covers the case of the applicant. He has also cited two judgments of Delhi High Court in W.P©.No. 8615/04 and W.P©.No. 9282/04 in the case of Ms. Kamla Devi and Ms. Kamlesh respectively vs. Union of India and others decided on 08.07.2004, copy of which has been filed as Annexure-R/5. That case was also more or less on the same fact with the distinction that DG, P&T instructions dated 21.10.2002 were also taken into consideration which it seems they have not been brought to the notice of the Hon'ble High Court of Orissa. Those instructions read as under:

“ The extant provisions provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments, approval of the next higher authority should be taken in respect of all provisional appointments exceeding 180 and where the period exceeds one year express approval of the Head of the Region/Circle, as the case may be, would be necessary. Where the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh recruitment.”

9. It is submitted that the extension of the provisional appointment of the applicant in the post of GDS SV was not in accordance with the law and instruction. It was irregular and, therefore, the Ld. Counsel for the

respondents has argued that the Delhi High Court in its judgment has relied upon the judgment of the Supreme Court in rejecting the claim of the applicant for regularization although they had worked for about 12 years on provisional basis.

10. We have given our due consideration to the submissions made at the Bar. As we have observed applying the doctrine of precedence, the order of the Hon'ble High Court of Orissa will be binding on this Bench at Cuttack unless there is a judgment of the Hon'ble Supreme Court which has laid down the law contrary to the same.

11. A five-Judge Bench of the Hon'ble Supreme Court in Secretary, State of Karnataka and others vs. Uma Devi (3) and others, 2006 SCC(L&S) 753, considered the whole gamut of case laws relating to the regularization of the services of the persons who are appointed on casual, contractual, adhoc or temporary basis. In para-43,45 and 46, it has been held as under:

“ 43. Thus, it is clear that adherence to the rule of equality in public employment is a basis feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a roper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is permanent on the expiry of his term

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of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.....

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a

casual or temporary employment if one is not on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad, Piara Singh, Jacob and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the post been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the

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decision-maker that they will not be withdrawn without giving him first an opportunity or advancing reasons for contending that they should not be withdrawn. (See Lord Diplock in Council for Civil Services Union v. Minister of Civil Service, National Buildings Construction Corpn. V. S.Raghunathan and Chanchal Goyal (Dr.) v. State of Rajasthan.) There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme....."

Now, the Hon'ble Supreme Court has held that irregular appointment, appointment de hors the rule, casual or contractual or temporary employment are contrary to the Constitutional scheme of employment and, therefore, they are not permissible. Applying the principles of law enunciated in that judgment, it may be held that the departmental instruction contained in DG,P&T letter referred to above, is not in conformity with the constitutional scheme and, therefore, does not give any right to the applicant for regularization of his service.

12. In view of the five-Judge judgment of Hon'ble Supreme Court in the case of Uma Devi & Ors.(Supra), we find ourselves unable to decide this O.A. in terms of the order of the Hon'ble High Court of Orissa.

13. For the reasons stated above, this O.A. is dismissed. No costs.



(V.K.AGNIHOTRI)
MEMBER (ADMN.)



(M.A.KHAN)
VICE-CHAIRMAN(J)