

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 432 of 2006
Cuttack, this the 28th day of September 2007.

Sribash Kumar Dalai ... Applicant
Versus
Union of India & Others ... Respondents

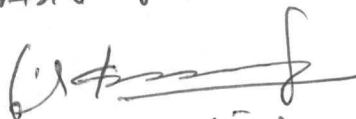
FOR INSTRUCTIONS


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

(TARSEM LAL)
MEMBER(ADMN.)

(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

For circulation pl.


H(5)


Not to be referred (A)

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C O R A M:

THE HON'BLE **DR.K.B.S.RAJAN**, MEMBER (J)

A n d

THE HON'BLE **SHRI TARSEM LAL**, MEMBER(A)

1. Sri Sribash Kumar Dalai, aged about 37 years, son of Sri Mahenddra Kumar Dalai, At/Post: Dhanupali, Dist. Sambalpur-768 001.


..... Applicants.

By legal practitioner: Mr.P.K.Padhi, Advocate.

-Versus-

1. Union of India represented by it's Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General (Orissa Circle), At/Po: Bhubaneswar, Dist. Khurda-751 001.
3. Superintendent of Post Offices, Sambalpur Divison, At/Po/Dist. Sambalpur.
4. Head Post Master, Sambalpur Head Post Office, At/Po/Dist. Sambalpur-768 001.

...Respondents.

 By legal practitioner: Mr. S.B.Jena, ASC

ORDERDR.K.B.S.RAJAN, MEMBER(J):


Initially having functioned as a substitute from 1990 to 1995, the applicant was later in 1995 appointed as a provisional Stamp Vendor in Sambalpur Post Office, vide Annexure A-1 order dated 30-12-1995. The provisional appointment was for a short spell at each occasion, when such provisional appointments were made. In other words, the break was only technical break. This situation continued till 2001 i.e. for 6 years. In 2003, the applicant had requested the Superintendent of Post Office, Sambalpur Division to afford him alternative appointment as provided for in the DG Posts order dated 18-05-1979. Annexure A-3 refers. Reply was received by the applicant suggesting that he should approach the Post Master, Sambalpur P.O., vide Annexure A-4 and accordingly, by Annexure A-5 letter, the applicant has approached the Post Master, Sambalpur P.O. As there was no response, the applicant has preferred this OA.



2. Respondents have contested the OA, more with customary and conventional objection. The fact that the applicant was appointed on provisional basis as ED Stamp Vendor has not been denied (vide para 5.3 of the counter), though, it has been contended that the applicant's engagement was only on some occasion on daily wage basis vide para 5.5. of the counter. According to them, the provisions of order dated 18-05-1979 (which provides for alternative appointments of surplus ED Agents who worked for more than 3 years either on provisional basis.

3. Applicant has filed his rejoinder, reiterating his points as canvassed in his OA and denying the other contentions of the respondents.

4. Counsel for the applicant, at the time of hearing also made available a communication dated 03-05-2007, which he had received from the respondents under the R.T.I. Act which reflects that the applicant's appointment in 1995 to 2001 was for a substantial period, with a confirmation that there was no break




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exceeding one month during the period from 1996 to 2001. He has also produced copies of orders dated 30-01-2004 in OA No. 527/01 and order dated 21st November, 2003 in OA No. 688 of 2002. In these, on similar facts, the O.As were allowed and direction given to the respondents to consider the case of the applicants therein for adjusting in the **ED** Post for which they had requested or in any other nearby post that is vacant or likely to fall vacant in the immediate future, keeping his name in the waiting list until such absorption is finalized.


5. Counsel for the respondents has submitted that as stated in the counter, the applicant was not continuously working.

6. Arguments were heard and documents perused. That the applicant was working for a substantial period from 1996 to 2001 cannot be denied by the respondents, in view of the order dated 03-05-2007 obtained by the applicant from the respondents under the RTI Act. Nor can the respondents deny the fact that the applicant's appointment was provisional and the span is for more

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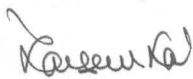
than 3 years. Thus, he was entitled to have his name enlisted in the waiting list and he ought to have been offered any suitable post in the nearby areas of his native place. Admittedly this was not done in the case of the applicant. Fault lies on the part of the respondents, though, of course, due to a mistaken impression that the applicant's provisional appointment did not qualify for such enlistment in the waiting list. It is declared that the applicant is entitled to in view of the aforesaid discussion to have his name kept in the waiting list in accordance with the provisions of order dated 18-05-1979 of the D.G. Posts. The respondents shall thus, keep the name of the applicant in the waiting list from now and on locating a suitable ED post, within the sub division of Sambalpur, they should offer the same to the applicant. In the event of his refusing to accept the offer in the native place, his name shall be deleted from the list and in case the refusal is in respect of a place of posting other than the native/nearby native place, then the name shall be kept in the waiting list for a period of one year at a time, to be renewed in case no vacancy arises during the waiting period.

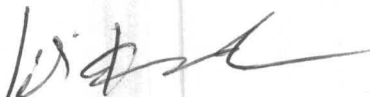


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This process may continue till the applicant is offered suitable alternative appointment. If there by any vacancy immediately available, then the same should be offered to the applicant within a period of two months from the date of receipt of this order and in case no such vacancy is available, then, the time limit calendared shall reckon from the date of availability of such vacancy.

7. OA is allowed on the above terms. Under these circumstances, there shall be no orders as to cost.


(TARSEM LAL)
MEMBER(ADMN.)


(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

KNM/PS.