

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.688 OF 2002
Cuttack this the 21st day of November/03

Biswakeshan Barik ... Applicant(s)

-VERSUS-

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

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be circulated to all the Benches of *no* the Central Administrative Tribunal or not ?

Manoranjan Mohanty
(M.R.MOHANTY) 21/11/03
MEMBER (JUDICIAL)

Syamanta Sen
21.11.03
(S. MANICKA VASAGAM)
MEMBER (ADMINISTRATIVE)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.688 OF 2002
Cuttack this the 21st day of November/2003

CORAM:

THE HON'BLE MR. S. MANICKA VASAGAM, MEMBER (ADMN.)
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

Sri Biswakeshan Barik, 47 yrs.,
S/o. Janardan Barik, At: Gahirapal
PO- Kayan, Via: Mangalpur, Dist-Jajpur

Applicant

By the Advocates

Mr. P. K. Padhi

-VERSUS-

1. Union of India represented by it's Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, Dist-Khurda - 751 001
2. Superintendent of Post Offices, Cuttack North Division, At: P.K.Parija Marg, PO-Cuttack G.P.O., Dist-Cuttack-753 001

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Respondents

By the Advocates

Mr. B. Dash, A.S.C.

ORDER

MR.S.MANICKA VASAGAM, MEMBER(ADMINISTRATIVE): The applicant in this Original Application was initially appointed as Extra Departmental Branch Post Master, Kayan with effect from 24.8.1984. He continued in that post till 21.12.1987. Thus he had completed more than three years of service as EDBPM, Kayan. In view of the fact that permanent incumbent in that post was reinstated, the applicant was discharged from the provisional appointment. After his discharge when the applicant approached the Respondents for providing him alternative

employment, the same was rejected vide letter dated 15.5.1989. Thereafter the applicant approached the Department for considering his case for appointment in another E.D. post. This was again rejected vide letter dated 21.6.2002. Aggrieved of this position, the applicant has come before the Tribunal assailing the action of the Respondents.

2. The Respondents have filed a detailed counter. It is stated that the applicant can not be treated as retrenched candidate nor can he be provided with alternative employment in any other G.D.S. post. This is the main stand. Further, the Respondents have also raised the issue of limitation and laches.

3. The learned counsel for the applicant submitted that the applicant ought to have been given the benefit of instructions issued by D.G.(P&T) vide letter dated 18.5.1979, as amended, from time to time. The relevant portion of the letter reads thus.

" Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G., P&T, Letter No.43-4/77-Pen., dated 23.2.1979".

Therefore, it was argued that the Respondents are obliged to maintain a waiting list in respect of provisionally appointed candidates who are put in three years' of provisional service and discharged. Failure to do so has deprived the applicant his chance to get

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a regular appointment in the Department.

4. Per contra, the learned counsel for the Respondents submitted that the applicant's request was considered and rejected way back in the year 1989. If the applicant was aggrieved at that point of time he ought to have taken the matter then and there either in appeal or as advised. This he did not do. Further, it was also submitted that the Department did not maintain any waiting list as envisaged under the DG, P&T instructions (supra). The learned counsel also stressed the point regarding delay and laches.

5. After hearing the rival pleadings and on perusal of the records, it is seen that the applicant had served as a ~~provisionally~~ appointee in the Department for more than three years. This fact is not disputed. Following this, in the normal circumstances and in accordance with instructions on the subject, the Respondents are obliged to include the name of the applicant in the waiting list and provide him an alternative employment. This, the Respondents had failed to do. Having failed to implement and follow their own instructions at the first instance, now they cannot raise the plea of delay and laches against the applicant. It may also be mentioned that Article 162 ^{l.c.} of the Constitution of India is very clear and it ~~says~~ says that where there are no statutory provisions the executive instructions will act as if it has the statutory force. Having failed to discharge their statutory obligation of maintaining the waiting list and include the name of

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the applicant, the plea now raised by the Respondents with regard to limitation and laches must fail. Therefore, this plea is not acceptable.

6. In so far as instructions issued by the D.G. P&T are concerned, it is very clear that in respect of the employees, who have served the Department for more than three years as provisional employees, it is incumbent on the part of the Department to maintain a waiting list and to provide them alternative employment. By no stretch of imagination the Respondents can escape from this duty cast on them, which is of mandatory in nature. The mere fact that there was no post available in a particular place does not mean that the applicant could not have been accommodated elsewhere in the same capacity at that point of time or immediately thereafter.

7. In view of discussion above, we hold the view that the applicant has made out a case in his favour and accordingly the D.A. deserves to be allowed.

Ordered accordingly. The Respondents are directed to consider the case of the applicant for providing a suitable job within a period of three months from the date of receipt of copies of this order.

8. The O.A. is allowed to the extent indicated above.

No costs.

(Signature)
(M.R.MOHANTY) 21/11/2003
MEMBER (JUDICIAL)

(Signature) 21.11.03
(S.MANICKA VASAGAM)
MEMBER (ADMINISTRATIVE)

By