

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 19 OF 2003
Cuttack, this the 21st day of December, 2004

MRUTYUNJAY UTTARAY.

APPLICANT.

-Versus-

UNION OF INDIA & ORS.

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?

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


(B.N. SOM)
VICE-CHAIRMAN


(J.K. KAUSHIK)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 19 OF 2003
Cuttack, this the 21st day of December, 2004

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER

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SHRI MRUTYUNJAY UTTARAY,
Aged about 37 years,
S/o Shri Bhagaban Barik,
Vill./PO: Bansbati,
Dist-Nayagarh,
at present working as
Care-taker, Inspection
Quarters, Ashok Nagar
Sub Post Office.

..... **Applicant.**

Legal practitioner: M/s. K. C. Kanungo,
Miss. Chitra Padhi,
S. Behera,
Advocates.

-Versus-

1. Union of India represented through its Secretary-Cum-Director General of Posts, Dak Bhawan, New Delhi-1.
2. The Chief Postmaster General, Orissa, Bhubaneswar-1, Dist-Khurda.
3. The Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar-9, Dist-Khurda.
4. The Assistant Superintendent of Post Offices, Bhubaneswar North Sub-Division, Bhubaneswar-1, Dist-Khurda.
5. Shri Laxman Kumar Gouda, S/o Late Krishna Gouda, At/PO: Udala, Dist. Ganjam, now working as GDS-MC-1, Ashok Nagar, Bhubaneswar-9, Dist-Khurda.

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6. Shri K.C.Das, GDS-MC,
Chandrasekharpur,
Housing Board Colony Sub Post Office,
At/PO/PS-Chandrasekharpur,
Bhubaneswar-30, Dist. Khurda.

.... Respondents.

By legal practitioner: Mr. U.B. Mohapatra, " "
Senior Standing Counsel (Central).

O R D E R

MR. J. K. KAUSHIK, JUDICIAL MEMBER:-

Shri Mrityunjay Uttaray has inter alia questioned the validity of Annexure-6 and has prayed for a direction to the Respondents-Department to consider the case of the Applicant for appointment to the post of GDS-MC-II of Ashok Nagar Sub Post Office in the same manner as has been done in the case of Respondent No.5 amongst other reliefs.

2. We have heard the elaborate arguments advanced by the learned Counsel for both parties and have anxiously considered the pleadings in the records of this case.

3. The abridged facts of this case are that the Applicant has been working as a Casual Labourer as Care-taker in the Inspection quarters at Ashoka Nagar Sub-Post Office since 20th February, 2002. Similarly,

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Respondent No.5 has been working as Gardener-Cum-Farash. Both of them completed more than 240 days casual service. A post of GDS-MC fell vacant on 19.2.2002 due to the promotion of the incumbent to the post of Postman. Respondent No.5 was appointed to the said post on Ad-hoc basis. A post was created as GDS-MC at Ashoka Nagar. Despite there being a regular vacancy in the cadre of GDS-MC-II, the Applicant was not regularised on the said post. On the other hand, Respondent No.5, Shri Laxman Kumar Gouda, a Casual Labour was given appointment on regular basis. This Original Application has been filed on multiple grounds intermixed with the factual aspects of the matter.

4. The Respondents have resisted the claim of the Applicant and have filed an exhaustive counter to the Original Application. The main defence of the Respondents as set out in the reply is that there is a complete ban on creation and appointment of Casual labourer in the entire Department of Posts, and various instructions have been issued that the Casual labourer whether full or part time who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts

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provided they fulfil all the conditions and have been put in a minimum service of one year. The Sub-post Masters who are working under the control of Senior Superintendent of Post Offices have no statutory power to engage any person as casual labourer/contingent worker without the approval of their controlling authority. As regards Respondent No.5 it has been indicated that his appointment has been irregular and the same is needed to be terminated but for the stay order granted by this Bench of the Tribunal and the order passed in the Original Application, he is being continued in service. The reply is also followed by show-cause by the Respondents.

5. A detailed rejoinder has also been filed almost reiterating the facts and grounds raised in the Original Application and also refuting the facts narrated in the counter reply. Alongwith rejoinder, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme as well as the letter containing the instructions regarding giving of preference to the Casual labourers in the matter of appointment of EDAs have also been annexed.

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6. Both the learned counsel for the parties have re-iterated the facts and grounds enumerated in the respective pleadings of the parties. Learned Counsel for the Applicant, who has been quite fair has drawn our attention to one of the very exhaustive judgments passed in O.A. No. 795/2002, decided on 22-12-2003 in the case of Niranjan Pradhan Vrs. Union of India and others. It has been submitted by the learned Counsel for the Applicant that the said judgment, no doubt, squarely covers the controversy in all force; but the matter on one point may be considered afresh, and that is relating to recruitment part of the Applicant. He has contended that the case of the Applicant, therein, came to be rejected only on the ground that he was not recruited as per the statutory rules. He has submitted that that part of the judgment needs to be reconsidered; inasmuch as the Casual labourers are generally not recruited as per the Rules in force. He has also submitted that even there is no need for any sponsorship through Employment Exchange of such casual labourers while considering their regularisation and in this view of the matter, this should not have been the condition. He has also contended that in case his view is acceptable either the

order may be passed in favour of the Applicant or else the matter may be referred to a larger Bench on the point of such disagreement.

7. We have considered the submissions of the learned counsel for the Applicant and are not impressed with the same. Since the reasons adduced by the learned counsel for the Applicant do not appeal to the reason, we are refraining from debating the matter afresh and are of the view that the discussions ~~in~~ said judgment be treated as a part of this order and for that purpose we are placing on record a copy of the said judgment i.e. judgment passed in the case of Niranjan Pradhan (supra).

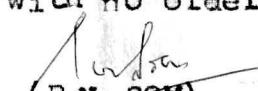
8. The other submission which has been adduced and contended on behalf of the Applicant is that similarly situated persons have been given a favourable treatment while the same treatment has not been extended to the Applicant. We are of the firm opinion that Article 14 of the Constitution of India cannot be used in negative sense and in case any one has been given any benefit by applying a wrong law or rules it is not for the Courts to perpetuate the illegality in the name of eradicating discrimination. The law on this point is, by now, well settled in the

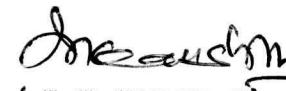
case of STATE OF HARYANA AND OTHERS vs. SURESH KUMAR (2003 (1) SLR 119) and in the case of STATE OF BIHAR Vs. KAMESWAR PRASAD SINGH (2000(9) SCC 94). Thus, the submissions of the learned counsel for the Applicant raising the plea of discrimination falls on the ground.

9. We can only assert that independent of the aforesaid authority, if we were to examine the matter afresh, we would have reached the same conclusion and in this view of the matter, we have absolutely no hesitation in applying the same to the instant case and in deciding this case on similar lines.

10. Before parting with this case, we would like to observe that the judgment in the case of Niranjan Pradhan (supra) is quite illustrative and instructive and the Respondents should apply the same in respect of the persons who may be similarly situated and have not approached to the Court of law so as to avoid multiplicity of litigation and cause hardship to the litigants.

11. In the premises, this Original Application sans merits and the same fails and stands dismissed with no order as to costs.


(B.N. SOM)
Vice-Chairman


(J. K. KAUSHIK)
Judicial Member