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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No.38 OF 1987

Date of decision ... September 9, 1987.

Babaji Charan Rout ... Applicant.

Versus

Union of India & others ... Respondents.

For Applicant : ... M/s A.Pasayat, B.Pattnaik
and B.Mohanty, Advocates.

For Respondents : ... Mr. A.B.Misra, Senior
Standing Counsel (Central).

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes .
 2. To be referred to the reporters or not ? No .
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .
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J U D G M E N T

K.P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges ^{the} ~~an~~ order of termination from service as Extra- Departmental Branch Postmaster of Ali Pingal Sub- Post Office within the Jagatsinghpur Sub-Division .

2. Shortly stated the case of the applicant is that he was appointed as an Extra- Departmental Branch Postmaster in Ali Pingal Branch Post- Office within the Jagatsinghpur Sub-Division on 7.9.1976. Suddenly vide Annexure-3 dated 29.12.1976, the services of the applicant was terminated for which he feels aggrieved and has invoked the jurisdiction of this Bench for necessary interference.

3. In their counter, the respondents maintained that there is no illegality committed by the Departmental Authorities in the termination of the services of the applicant and therefore, the application being devoid of merit is liable to be dismissed .

4. We have heard Mr. Pattnaik, learned counsel for the applicant and Mr. A.B.Misra, learned Senior Standing Counsel for the respondents at some length . True it is that the applicant was appointed on 7.9.1976 but his appointment was due to a vacancy caused in the said Post Office as Opposite Party No.2 who was then the Post Master was proceeded against on an allegation that he had committed an offence under section 409 of the Indian Penal Code . First Information Report was lodged against

Opposite Party No.2 who was then the Post Master and a charge-sheet was submitted under section 409/468, Indian Penal Code and the Opposite Party No.2 was tried by the Sub-Divisional Judicial Magistrate, Jagatsinghpur, who by his judgment and order dated 28.2.1980 passed in G.R. Case No. 76 of 1970 acquitted Opposite Party No.2 of the charges levelled against him. By virtue of the acquittal of Opposite Party No.2 in the criminal trial, the departmental authorities ordered re-instatement of Opposite Party No.2 to the post of Extra- Departmental Branch Post Master, Ali Pingal Branch Post Office. We are told by the learned counsel for the applicant that the reinstatement has taken effect on 7.1.1987 and this is admitted. In such circumstances, we find that no illegality has been committed by the departmental authorities as they had no other option ^{to} to reinstate ~~the~~ Opposite Party No.2 into service. Mr. Patnaik, learned counsel for the applicant vehemently urged before us that ^{for} no fault of his client, the services of his client has been terminated. True it may be so. Even though it is ^{very} unfortunate case but the legal right accrued to Opposite Party No.2 cannot be overlooked and therefore we find that there was all justification on the part of the departmental authorities to reinstate Opposite Party No.2 into service and in consequence thereof there was no option but to terminate the services of the petitioner. Hence we find no merit in the application which stands dismissed leaving the parties to bear their own costs.

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5. Before we part with the case , we must point out certain striking features in this case for the sympathetic consideration of the Post Master General and the Superintendent of Post Offices, Cuttack South Division, Cuttack.

The applicant has served in the Post Office since 7.9.1976 and therefore he has rendered service to the Departmental Authorities for about 11 years. In the counter, nothing has been said against the applicant regarding his efficiency, competency, integrity, credibility and loyalty and therefore we presume that the applicant was a good employee in the Postal Department. Here is a case where the applicant deserves utmost sympathy from the departmental authorities. Therefore, we would say that the case of the applicant should be very sympathetically considered and if any vacancy occurs in near future , the applicant should be given appointment to a Sub- Post Office. That apart , it was submitted before us by Mr. Patnaik , learned counsel for the applicant that in the F.I.R., the age of Opposite Party No.2 has been given as 50 years in the year 1969. In case the age of Opposite Party No.2 is 50 years in the year 1969, then he has long crossed the age of superannuation. From the facts mentioned in the F.I.R., we cannot conclusively say that actually the Opposite Party No.2 was aged 50 years in the year 1969. We donot know what is the age recorded in the Service Roll of Opposite Party No.2 but we wish ~~that~~ the Post Master General to issue appropriate directions to the concerned Superintendent of Post Offices

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to effect an inquiry regarding the present age of Opposite Party No.2 and in case the appropriate authority comes to the conclusion that ^{O.P. No.2} ~~he~~ has crossed the age of superannuation, then in that case orders according to law should be passed retiring Opposite Party No.2 and in his place the applicant should be appointed especially in view of the experience of the applicant since 1976.

In very many cases we have found that certain persons are being appointed in certain Post Offices due to the vacancy caused on account of disciplinary proceedings/ criminal cases being launched against a particular employee and due to such vacancy the substitute who is being appointed does not know that there is a chance of his service being terminated if the person proceeded against is acquitted from the departmental proceeding or in the criminal trial. Suddenly the substitute is being informed that his services has been terminated because his predecessor has been reinstated into service. We feel that this is unfair. Before appointing the substitute he should be informed in his appointment letter that his appoint^{ment}/is subject to the condition that his services will be terminated if his predecessor is reinstated due to acquittal from the departmental proceeding or criminal trial. We strongly recommend that this should form subject matter of the order of appointment which would be issued in favour of the person filling up the vacancy. The word "provisional appointment" is not sufficient. Our view gains support

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and is reinforced by the directives issued by the Director General of Posts & Telegraphs in his letter No. 43-4/77, Pen. dated the 18th May, 1979 which runs thus :

" Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/ judicial proceedings are likely to be finalised, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent the provisional appointment will be terminated and that he shall have no claim to any appointment. "

If this direction is followed , there would be no ground for the provisional appointee to rush to court. We hope that the Post Master General would issue appropriate directions to his subordinates to meticulously follow up this directive of the Director General of Posts & Telegraphs.

We would bring another very important fact to the notice of the Post Master General about which we feel very much disturbed and discontented. The order of acquittal was passed by the learned Sub-Divisional Judicial Magistrate on 28th February 1980 in favour of Opposite Party No.2 . In natural sequence of human

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conduct, none including Opposite Party No.2 would even leave any stone unturned to secure his job as soon as possible. We cannot conceive for a moment that the Opp. Party No.2 would have delayed for seven years to approach the authorities to receive the reinstatement order. It is far beyond our comprehension that Opposite Party No.2 would have ever delayed to secure his job in the same Post Office. Opposite Party No.2 must have approached the authorities immediately but we feel very discontented for the delay that has occurred in giving re-appointment to Opposite Party No.2 after lapse of seven years. We cannot express any definite opinion on this matter in the absence of positive data before us but we would bring this to the notice of the Post Master General and we would request him to immediately cause an inquiry as to the level at which the matter was enormously delayed and the person or persons who were responsible in causing such delay should be severely dealt with if he or they is/are found to be guilty. We would also like to know the result of the inquiry caused by the Post Master General and we hope the Post Master General will inform the Registrar of this Bench soon after the preliminary inquiry is concluded which should be concluded ^{preferably} within two months from the date of receipt of a copy of this judgment

A copy of this judgment be specially sent to the Post Master General under his name cover

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specially inviting his attention to the concluding paragraph of this judgment.

.....*9/9/87*.....
 Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

g agree.



.....*9.9.87*.....
 Vice Chairman.

Central Administrative Tribunal,
 Cuttack Bench.
 September 9, 1987/ Roy.