

Date of decision : July 16, 1991.

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Versus

Respondents.

M/s. Ganeswar Rath,
P.K. Mohapatra,
A.K. Patnaik, J. Ch. Sahu,
Advocates.

Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT).

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

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Source: *Author's calculations*

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24.12.1987 quashed the order of removal of said Shri Routray and directed the Postal authorities to reinstate Shri Routray within one month from the date of the judgment. On the reinstatement of Shri Routray the Postal authority directed the applicant to hand over the charge of the office of Shri Routray. The applicant being aggrieved against the above order filed an O.A.137 of 1983 which was disposed of on 2.5.1988.

2. The Division Bench observed;

" We would recommend to the Postmaster General, Orissa, to sympathetically consider the case of the applicant and if possible the applicant be adjusted in any other suitable post. "

Thereafter the respondents have issued the order of appointment of the applicant as Extra-Departmental Delivery Agent at Mota.

3. The applicant in this present Original Application has stated that the post of Extra-Departmental Branch Post Master, has fallen vacant in village Haja which is 3 K.Ms. away from village Chhanagiri. He prayed that he may be transferred as Extra-Departmental Branch Post Master of village Haja. A representation was filed by the applicant on 4.1.1990. When the applicant filed the Original Application the post of Extra-Departmental Branch Postmaster at Haja had not been filled up and he prayed that the post should not be filled up, ~~Thus~~ the applicant's prayer for being transferred to Haja village will be defeated.

4. The Application was admitted on 13.6.1990 and an interim order was passed to the following effect;

" If nobody has yet been appointed, let none be posted as E.D.B.P.M., Haja till 29.6.1990. "

It may be mentioned that this stay order has been continuing by separate orders and is still in effect till today. The applicant has prayed that the respondents may be directed to transfer the applicant to village Haja as E.D.B.P.M.

5. In a reply filed by the respondents it is pointed out that the earlier order of the Tribunal dated 2.5.1983 had been carried out by the respondents by appointing the applicant as Extra-Departmental Delivery Agent-cum-Extra-Departmental Mail Carrier at Motta Branch Post Office. It was stated further that the post of E-D.B.P.M. of Haja Branch Post Office is lying vacant with effect from 18.11.1989 due to the death of the incumbent. His widow has applied for the said post on compassionate ground in relaxation of normal recruitment rules. Orders are still awaited on the same. The respondents further took the stand that the request of the applicant for transfer from the present to Haja as E.D.B.P.M. does not come under the purview of consideration and contravenes the decision of the Postal Directorate communicated under Director General, Posts, New Delhi letter No.43-27/85-PM(EDC and Trg) dated 13.8.1988. Copy of the said letter was marked as Annexure-R-3. It was stated that the applicant does not fulfil any condition as prescribed under the Rules for his transfer from the post to Haja. He does not also fulfil the condition of residence of Extra-Departmental agents which is laid down in Annexure-R-2. The respondents therefore urged that the applicant is not entitled to any relief in this Original Application.

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6. We have heard learned counsel for the parties and we have also perused the relevant provision of Annexure-A-3 which is a copy of the Director General, Posts, New Delhi letter No.43-27/85-PM(EDC& Trg) dated 13.8.1988. The subject was " transfer of E.D.Agents from one post to another ". The relevant portions of this letter are quoted herein below.

" Normally EDAs are to be recruited from local area and they are not eligible for transfer from one post to another but in cases where post has been abolished EDAs are to be offered alternate appointment within the sub-division in the next available vacancy, in accordance with Directorate orders No.43-24/64-Pen.dt.12.4.64 and further clarified in No.43-4/77-Pen dt.23.2.79, as per orders, those of EDAs are held as surplus consequent to the abolition of ED posts are to be adjusted against the posts that may occur subsequently in the same office in the neighbouring offices. In view of this it will not be correct to allow transfers of EDAs freely from one post to other. However, it has now been decided that exception may be made in the following cases:-

(i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed to work against that vacant post without coming through the Employment Exchange provided he/she is suitable for the other post and fulfils all the required conditions. "

A perusal of the above would show that normally the rule is that ED Agents are recruited from the local area and they are not eligible for transfer from one post to another and in case where the post has been abolished, the ED agents are to be offered alternate appointment within the sub-division in the next available vacancy. The above instruction clearly makes out that the transfer of ED Agents freely from one post to another was not to be allowed except for two exceptions. The second exception has no application in the present case because it is not the case where the applicant has become surplus due to abolition of posts.

The first exception which has been quoted above, shows that where an ED post falls vacant in the same Office or in any office in the same place, then the question of transfer may be considered. But in the present case the ED post that has fallen vacant is in village Haja which is not in the same place, i.e. in village Motta and as such this exception would not be applicable to the applicant. The other requirement is that the applicant is suitable for the other post and fulfils all the required conditions. One of the conditions required is with regard to the residence. Annexure-R-2 which pertains to the method of recruitment also contains a clause for residence which is in the following words.

" The ED BPM/ED SPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which need not be adopted to suit his convenience or his main avocation. "

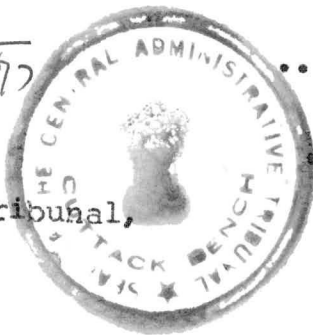
It is very clear therefore, that the ED BPM/ED SPM must be a permanent resident of the village where the post is situated. On his own showing the applicant is not resident of village Haja but of village Motta. It was argued that the distance between the two villages is only 3 K.Ms. That may be so. But these are two different villages.

7. Interpreting the rule as indicated above, we are clearly of the view that the applicant is asking for a relief to which he is not entitled to under the Rules. He has not acquired the right to be posted in any village of which he is not a resident. He is therefore, not entitled to

any relief as sought for by him. In the first place, his case is not covered under the exception as seen in Annexure-R-3. The essential ingredient of the exception is not established in his case, since he is not a resident of the said village. He is therefore, not entitled to the relief prayed for.

8. In view of the above, we do not find any merits in this Original Application. The applicant has failed to make out a case for interference. There shall be no order as to costs. The stay order dated 13.6.1990 which has been continued by a series of orders is vacated.

[Signature]
.....
MEMBER (ADMINISTRATIVE) 16/7



[Signature] 16.7.91
.....
CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 16, 1991./Sarangi.