

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 285 of 1991

Date of Decision: 31.1.94.

Damodar Routray

Applicant(s)

Versus

Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

l/m  
VICE-CHAIRMAN

1.5.1.1  
MEMBER (ADMINISTRATIVE)

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Respondents

For the applicant

M/s. B.K. Patnaik  
A.K. Mohapatra - I,  
Advocates

For the respondents

Mr. A.K. Mishra,  
Standing Counsel  
(Central)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): Shri Damodar Routray was an applicant for the post of Extra Departmental Branch Post-master, Sankhameri, E.D.B.O. in Athagarh Sub-division of Cuttack (S) Postal Division. The vacancy arose due to the resignation of the earlier incumbent, Shri Mayadhar Mohanty. Shri Damodar Routray was duly selected and appointed to the post and joined as E.D.B.P.M., Sankhameri on 20.5.1980.

2. One Shri Maheswar Mohanty, a rival candidate for the said post who unsuccessfully competed for selection challenged Shri Routray's appointment before the Hon'ble High Court of Orissa (O.J.C. No. 997 of 1980) on the ground that the selected candidate, Shri Damodar Routray, was not a resident of Sankhameri village. The case was transferred to this Tribunal and Shri Mohanty's application was allowed

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on 21.10.1986 in T.A. No.113/86, Pursuant to the above orders, the services of the applicant, Shri Damodar Routray, were terminated upon which he filed a Review Petition (R.A.No.3/86) which was also dismissed by this Tribunal on 30.3.1987.

3. Next, the applicant went to the Hon'ble Supreme Court in Special Leave Petition (A.L.P.(Civil) No.381/88) which was admitted. An interim order was passed by Their Lordships on 18.4.1988 directing the respondents not to fill-up the post until the disposal of the civil appeal. On 8.8.1988, Hon'ble Supreme Court was pleased to set aside the judgment of this Tribunal passed in T.A.No.113/86 and R.A.No.3/86, and remitted the case for disposal on merits, after taking into consideration such additional document(s) as may be sought to be filed by the applicant. The Apex Court ordered further that the post of EDBPM, Sankhameri, shall not be filled up till the disposal of the case by the Tribunal.

4. While this was the position, Shri Maheswar Mohanty sought permission to withdraw the case and the same was allowed. Thereupon the applicant approached the Superintendent of Post Offices to permit him to join the post which was earlier held by him and to which he was duly appointed after proper selection. The Superintendent of Post Offices was said to be of the opinion that specific orders from this Tribunal are required before he is permitted to re-join as EDBPM. The applicant thereupon filed a Misc. application (M.A.No.158/91) praying for a direction to be issued to the Superintendent to allow him to rejoin the duties.

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On 9.5.1991, This Tribunal disposed of the Misc. application as not maintainable, but at the same time allowed Shri Damodar Routray to file a suitable application, if so advised, for redressal of his grievances, if any. The present original application, has, therefore, been filed.

5. In the present application, Shri Routray, the applicant prays for a direction to be issued to the Superintendent of Post Offices, Cuttack (S) Division to reinstate him as EDBPM, Sankhameri, as Shri Mayadhar Mohanty, who was the applicant in QJC No. 997/88 and T.A. No. 113/86 has since withdrawn his case.

These facts are not disputed by the Respondents. They, however, state that :

- i) One Shri Bhabagraghi Mohanty was provisionally appointed to fill-up the post of EDBPM, before the orders of Hon'ble Supreme Court were communicated to them. Shri Mohanty is said to be continuing in the post on provisional basis.
- ii) As regards the claim of Shri Damodar Routray, the respondents say that the same was dependent on whether or not he is actually a person of Sankhameri village, as the Tahasildar, Baramba issued two contradictory certificates in quick succession, - on the first occasion that Shri Routray is a resident of Kantapara and not of Sankhameri, on the second occasion that Shri Maheswar Mohanty is the resident of Sankhameri with the additional information that Sankhameri and Kantapara are separate revenue villages.
- iii) Since the case was withdrawn by Shri Maheswar Mohanty, the aspect concerning Shri Routray's village could not be finally investigated or established.

6. It is an admitted fact that the applicant, Shri Damodar Routray, was appointed after a due process of selection to the post of EDBPM, Sankhameri. It is to be assumed that the process of selection included the

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verification of his residential status in the village.

His services have had to be terminated entirely due to successfully the fact that a rival candidate challenged his appointment in a Court of Law.

Shri Maheswar Mohanty, who originally questioned the selection, has since withdrawn the case for reasons best known to himself. The whole case hinges around the two certificates issued by the Tahasildar, Baramba. It is logical, therefore, to ascertain afresh as to whether Shri Routray is a resident of Sankhameri or or Kantapara, and whether these two villages are separate revenue units. Simultaneously, the fact as to whether there are two different EDBOs in Sankhameri and Kantapara would be relevant. If it is established that;

- a) Shri Routray belongs to Sankhameri village; and
- b) even if he belongs to Kantapara( and not to Sankhameri), but if there is no EDBO in Kantapara and that the village is served by Sankhameri E.D.B.O., —

the right of Shri Routray to be considered for re-appointment as EDBPM, Sankhameri, would become uncontestible.

If, on the other hand, -

- a) Shri Routray belongs to Kantapara village; and
- b) Kantapara village has a separate EDBO and/or is not served by Sankhameri EDBO, then <sup>he</sup> would have no claim to the post, and it has to be assumed that the original selection itself was irregular.

We now direct the Superintendent of Post Offices, Cuttack(S) Division, to carry out an independent enquiry about the aspect of Shri Routray's permanent residence and satisfy himself as to his eligibility, or otherwise, on the basis of the criteria indicated above. This enquiry may

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be got completed within 30 days of the receipt of a copy of the judgment. If the Superintendent is satisfied on the basis of the outcome of his enquiry that Shri Routray is eligible to be considered for re-appointment as EDBPM, he will straightway issue necessary orders and ensure their immediate compliance. In case of his reappointment, Shri Routray will not be entitled to any back-wages from the date of termination of his appointment to the date of his re-appointment since he did not discharge any departmental functions during the period. In case Shri Routray is finally re-appointed on the basis of a fresh independent enquiry, Shri Bhabagrahi Mohanty, who was provisionally appointed to function as EDBPM, Sankhameri, <sup>and has been functioning</sup> for the past several years, should be appointed as EDBPM in the next available vacancy within the Division, keeping in view the latest Departmental instructions on the subject. If the Superintendent is not satisfied as to the residential qualification of Shri Routray, the present arrangement will continue. In such an eventuality, the services of Shri Bhabagrahi Mohanty should be regularised at the earliest, terminating his provisional status.

7. Thus the case is disposed of. No costs.

VICE-CHAIRMAN

31.1.94

MEMBER (ADMINISTRATIVE)

31 JAN 94

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 31<sup>st</sup>. Jan, 1994 / B.K.Sahoo