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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 377 OF 1992.

Cuttack, this the 14th day of December, 1999.

Sunil Kumar Sahu.

Applicant.

Vrs.

Union of India & Others.

Respondents.

FOR INSTRUCTIONS.

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

S. Narasimham
SOMNATH S. NARASIMHAM
VICE-CHALMEN.



14.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 377 OF 1992.

Cuttack, this the 14th day of December, 1999.

CORAM: THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL)

Sunil Kumar Sahu,
Aged about 30 years,
Son of Jadunath Sahu,
At/Po. Salbani, via. Dukura,
District-Mayurbhanj.

Applicant.

By legal practitioner : M/s. R. N. Naik, B. S. Tripathy,
P. Panda, and D. K. Sahu,
Advocates.

- Vrs. -

1. Union of India represented by its Secretary,
in the Department of Posts, New Delhi.

2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist. Puri.

3. Superintendent of Post Offices,
Mayurbhanj Division, Baripada,
Dist. Mayurbhanj. ... Respondents.

By legal practitioner : Mr. S. B. Jena, Additional Standing
Counsel (Central).

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ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant, Sunil Kumar Sahu was provisionally appointed as Extra Departmental Branch Post Master, Salbani Branch Post Office after considering applications of three others. This selection was made by order dated 28.1.1991 (Annexure-1) till regular appointment is made. Applicant joined the post on 5.2.1991 (Forenoon). By order dated 29.7.1992, under Annexure-2, Respondent No. 3, Superintendent of Post Offices, Mayurbhanj Division, Baripada terminated the services of the applicant with immediate effect on administrative ground under Rule-6 of the EDAs (Conduct & Service) Rules, 1964 (in short 'Rules, 1964'). In this application this order of termination under Annexure-2 is under challenge. These facts are not in controversy.

2. In counter, it has been averred that the original incumbent Jadunath Sahu while tendering resignation on 24.11.1990, applied for leave from 1.11.1990 to 31.1.1991. This applicant was a substitute during his leave period. On 26.11.1990, the District Employment Exchange, Officer, Baripada was requested to sponsor candidates by 26.12.1990. As there was no response from the Employment Exchange, open notification was made on 26.12.1990 fixing last date as 15.1.1991 (Annexure-15). In response to this notification, four applications including that of the applicant, was received and the applicant was provisionally selected.



Thereafter, some members of the public complained to the Collector, Mayurbhanj alleging non-circulation of open notice. This was duly enquired and it was found that the applicant was the instrumental~~ity~~ for such non-circulation of the notice. According~~y~~ his service was terminated under Annexure-8.

3. During hearing none from the side of the applicant appeared. Shri S.B.Jena, learned Additional Standing Counsel for the Department was heard and records were perused.

4. It is not the case of the Department that the service of applicant was terminated because of ^{misconduct} regular selection and appointment made to that post. In fact, order dated 3.9.1992 reveals that the concerned Supdt. of Post Offices appeared before this Tribunal and submitted that the selection process was going on. This apart, as admitted by the Department, termination was on account of the fact that during enquiry it could be found that the applicant was ~~the instrumental~~ in noncirculation of the open notice. In other words, the termination order was on account of some misconduct committed by applicant. Be that as it may, as required under rule,-6 of the Rules, 1964, such termination can be made in respect of an employee who had not rendered of more than three years of continuous service by a notice in writing giving to that employee and the period of such notice shall be one month and in case the termination is effected prior to the period of one month's notice, the employee shall be paid a sum equivalent to the amount of his basic allowance plus DA for the period of notice at the same rate at which he was drawing them



immediately before the termination of his service or as the case may be for the period by which such notice fall short of one month. This has not been complied .Moreover, in a case of termination of this nature, as per natural justice, the concerned EDA is entitled to have his say in the matter prior to termination. No opportunity was given to him to explain the stand in the matter. Hence the order of termination can not be sustained.

5. While quashing the order of termination dated 29.7.1992(Annexure-2), we direct the Respondents to treat the applicant as though on duty from 29.7.1992 till the date of regular selection and appointment to that post was made and the pay and allowances for the period be calculated and paid to the applicant within a period of sixty days from the date of receipt of a copy of this order.

6. In the result, the original Application is allowed but in the circumstances, without any order as to costs.

Somnath Somi
SOMNATH SOMI
VICE-CHAIRMAN
11.12.99



11.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.