

Original Application No.416 of 1992 &
Review application No.17 of 1992.

DATE OF DECISION: July 9, 1993.

Applicant.

versus

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *NO*

9.7.93

(K. P. ACHARYA)
VICE-CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

ORIGINAL APPLICATION NO. 416 of 1992 &
REVIEW APPLICATION NO. 17 of 1992.

DATE OF DECISION: 09.07.1993

In both the cases: Premananda Patnaik ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... Mr. B. K. Nayak,
Advocate.

For the respondents.. Mr. Ashok Misra,
Sr. Standing Counsel (Central)

(in O.A. 416 of 1992) For respondent No. 6. .. Mr. S. P. Mohanty,
Advocate.

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN
A N D

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

J U D G M E N T

K. P. ACHARYA, V. C., Since both the review application and original application involve common questions of fact and law, though we have heard one after the other, it is directed that this common judgment would govern both the cases i.e. Review application No. 17 of 1992 and O.A. 416 of 1992.

2. Review application 17 of 1992 arises out of the judgment passed in O.A. 310 of 1990 disposed of on 15.7.1992. O.A. 310 of 1990 was filed by one Gopal Krishna Panigrahi challenging the termination of his service contained in Annexure-2 (of that application

The applicant in O.A. 310 of 1990, Gopal Krishna Panigrahi

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was appointed on 3.10.1989 and his services were terminated on 10.1.1990. The Bench by its judgment held that the termination of the services of the applicant, Gopal Krishna Panigrahi was justified but it was directed that a fresh selection process should be conducted and the case of the applicant, Gopal Krishna Panigrahi along with others should be considered and he whosoever is found to be suitable he/she should be appointed as Extra-Departmental Branch Post Master, Ambagaon Branch Post Office. This judgment was implemented as a result of which the services of the applicant in this review application, Premananda Patnaik ^{was} ~~were~~ terminated on 17.8.1992. O.A. 416 of 1992 was filed by Premananda Patnaik challenging the order of termination. Simultaneously this review application has been filed with the same prayer namely for a declaration to the effect that the direction given in the judgment in O.A. 310 of 1990 for a fresh selection to the post of Extra-Departmental Branch Post Master, Ambagaon, has already been complied with. This original application was admitted on 28.8.1992 in which orders were passed that without prejudice to the contentions of the applicant in this original application, his candidate ^{are} ~~is~~ be also considered for the post of Extra-Departmental Branch Post Master, Ambagaon Branch Post Office. Review application No. 17 of 1992 came up for admission on 29.4.1993 and it was admitted for hearing. Both these original application and the review application have been taken up for hearing.

3. We have heard Mr.B.K.Nayak, learned counsel for the applicant, Mr.Ashok Misra, learned Senior Standing Counsel (Central) and Mr.S.P.Mohanty, learned counsel for the Respondent No.6, Gopal Krishna Panigrahi in the original application.

4. The moot question that needs determination is as to whether there was any justification in ordering fresh selection process to be conducted in view of the fact that Premananda Patnaik was very much in service on 15.7.1992. The Bench gave such a direction in O.A.310 of 1990 because neither the applicant nor the respondents in the said original application brought it to the notice of the Bench that Premananda Patnaik, the applicant in O.A.416 of 1992 has already been appointed and as Premananda Patnaik was not a party to the O.A.No. 310 of 1990, and therefore he had no scope to bring this fact to the notice of the Bench. But now the fact remains that the cases of Gopal Krishna Panigrahi, Premananda Patnaik and few others were considered in compliance with the judgment passed in O.A.310 of 1990 and the interim order passed on 28.8.1992 in O.A.416 of 1992 and the applicant Premananda Patnaik has been found to be suitable, accordingly he is to be appointed. These are undisputed facts.

5. Learned counsel for the applicant submitted that since the applicant was functioning as Extra-Departmental Branch Post Master, Ambagaon Branch Post Office on 15.7.1992 and for no fault on his part his services have been terminated by virtue of the order passed in

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O.A.310 of 1990 he is entitled to have a declaration for continuity in service from 17.8.1992 to 9.1.1993 and according to Mr.Nayak, the applicant is entitled to back wages. We have given our anxious consideration to the arguments advanced at the Bar. We have absolutely no hesitation in our mind ^{that} but due to suppression of material facts by the respondents in O.A.310 of 1990 injustice has been done to the applicant. In order to mitigate the injustice done to the applicant we direct that the applicant should be deemed to be in service with effect from 17.8.1992 to 9.1.1993 and accordingly his seniority should be calculated in his favour for the purpose of future service benefits. But we are not inclined to ^{accept} the submission of Mr.Nayak that the applicant is entitled to pay and allowances. We are unable to grant this prayer in favour of the applicant. The applicant has admittedly not worked during this period. Therefore on the principle of 'no work no pay' the applicant is not entitled to be paid any back wages.

6. Thus, both the original application and the review applications are disposed of accordingly.

No costs.

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MEMBER (ADMN)

9.7.93.

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 9, 1993/Saranghi.