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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.663/92, 10/93 AND 148/93
Cuttack this the 5th day of January 1999

Rafi Ahemad Khan and others Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

1-5-99
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
5.1.99

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CUTTACK BENCH, CUTTACK.

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Cuttack, this the 5th day of January 1999

CORAM:

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

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In OA No.663/92

Rafi Ahemad Khan,
aged about 35 years
son of Sayed Hado Khan of Dewanbazar,
P.S-Lalbag, P.O-Cuttack-1,
District-Cuttack, at present working as
Office Assistant, Office of the Superintendent of Post
Offices,
Cuttack South Division, Cuttack.Applicant

Vrs.

1. Union of India, represented through
its Secretary, Department of Posts,
Dak Bhawan, New Delhi.
2. Chief Post Master General,Orissa,
At/PO-Bhubaneswar,District-Puri.
3. Superintendent of Post Offices,
Cuttack South Division, Cuttack ...Respondents

In OA No.10/93

Brahmananda Lenka,
aged about 39 years,
son of Sri Raghunath Lenka,
of village Kuanarpur,P.O-Bhera,
Via-Moua, P.S-Salepur,
district-Cuttack, at present working as
Postal Assistant at Kendrapara H.O.
Head Post Office, At/PO-Kendrapara,
DDistrict-CuttackApplicant

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1. Union of India, represented through
its Secretary, Department of Post,
Dak Bhawan, New Delhi.
2. Chief Post Master General,Orissa,
At/PO-Bhubaneswar, Dist.Puri.
3. Superintendent of Posts Offices Cuttack North
Division,Cuttack.....Respondents

In O.A.No.148/93

Sukanta Chandra Mishra, aged about 33 years
son of Sri Bansidhar Mishra,
At/PO-Kantapada Sasan,
Via-BNanamalipur,
District-Cuttack-752 103,
at present working as Office Assistant,
Office of the Senior Superintendent of Post Offices,
Bhubaneswar Division,
Bhubaneswar, DDistrict-Puri Applicant

Vrs.

1. Union of India, represented through its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.Puri.
3. The Superintendent of Post Offices, BalangirDivision, Balangir Respondents

Avocates for applicants - M/s Sk.Aziz,
S.K.jena
J.K.Nayak
R.N.Chaini.

Advocates for respondents - Mr.Ashok Mishra,
Sr.Panel Counsel
(In OAs 663/92 &
10/93)
&
Mr.Akhaya Ku.Mishra
Addl.S.C. in
OA No.148/93

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These three cases have been argued separately, but facts of these three applications are the same. The relief claimed in the three applications is also the same except that in OA No.663/92, besides the relief claimed in the other two applications, an aitional relief has also been claimed. As the point for determination is the same, one order would govern these

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three cases. The facts of these three cases are, however, set out separately.

2. In OA No.663/92 the applicant was initially appointed on 25.9.1980 as Postal Assistant under Superintendent of Post Offices, Cuttack South Division (respondent no.3) and is working as an Office Assistant. The post of Inspector of Post Offices/Railway Mail Services is a promotional post to be filled up by Departmental Competitive Examination from amongst the eligible Postal Assistants/Sorting Assistants. Under the Rules, only four chances are given to a particular employee to take the test and to qualify for the post. According to Rule 279.1 of Posts & Telegraphs Manual, Volume IV, examination for recruitment of Inspector of Post Offices/Railway Mail Services will normally be held once a year at the discretion of the Director-General. It is open to the Director-General not to hold the examination in any year in a Circle if the number of qualified candidates on the waiting list is adequate for the vacancies likely to occur in the next 12 months. It is the case of the applicant that in accordance with the above stipulation, posts are to be identified keeping in view the existing and anticipated vacancies in the next twelve months. It is further provided that qualifying marks are 40% in each paper and 45% in the aggregate. The applicant has already availed two chances unsuccessfully and has been left with two chances. His case is that because of limited chances, the candidates preferred to appear in a particular year when the number of vacancies is more. The applicant further states that

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Superintendent of Post Offices, Cuttack South Division in his letter dated 15.1.1991 at Annexure-1 notified the revised date of the above examination from 6.5.1991 to 8.5.1991. In this letter, applications were invited from eligible officials by 8.2.1991 and it was indicated that the examination was intended to fill up the vacancies arising in the calendar years 1991 and 1992. It was also mentioned that the applicant should specifically mention if he ~~should~~ appear at the examination for the vacancies of 1991 or vacancies of 1992 or for both. It is further stated that in the letter dated 2.3. 1990 at Annexure-2 Chief Post Master General ~~declared~~ the vacancies to be 18 of which general category vacancies were 12, SC category 5 and ST category 1. At this stage, it is necessary to note that the applicants in all the three O.As. are general category candidates and it is, therefore, not necessary for us to refer to SC and ST vacancies. Thus, in the order dated 2.3.1990 the vacancies for General category candidates were noted as 12. In another letter dated 26.4.1990 (Annexure-3) vacancies were notified as 15, but the general category vacancies for the I.P.O. remained the same at 12. The examination for the posts of I.P.O. was conducted from 11.6.1990 to 13.6.1990 and the results were declared. None of the examinees qualified in the examination. The respondents selected two persons through Army Postal Services who had successfully qualified in the examination. This order dated 14.8.1990 is at Annexure-4. Later on in the order dated 12.7.1990 (Annexure-5) Chief Post Master General declared the general category vacancies for I.P.O. as 16. It is further stated by the applicant that as no candidate qualified for the post of I.P.O. from Orissa Circle,

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initially it was decided by the departmental authorities to hold a supplementary examination. But later on this decision was changed and it was decided by the authorities that the examination that was to have been held in the year 1991 would be for the year 1992 as well and there would be no separate examination for the year 1992. The applicant who was a candidate for supplementary examination in 1990 thus automatically became a candidate for the examination for the years 1991 and 1992. The applicant further states that he had the heartening information that the number of vacancies was 15 and that is why he and others were "lured" to appear at the examination. But ten days prior to the examination, the Chief Post Master General in his letter dated 12.6.1991 (Annexure-6) declared vacancies in the posts of I.P.O. to be 11, all for general category candidates. The applicant has stated that this letter reducing the vacancies to 11 was not intimated to any of the applicants. It is further stated that on the date of examination, the Chief Post Master General, Orissa, in his letter dated 19.6.1991 declared the vacancies to be 10, all for general category candidates. The applicant has stated that even though he and other candidates had given option for both 1991 and 1992 vacancies, in the results which were published on 26.9.1992 (Annexure-8) no separate lists of qualified and empanelled candidates were made out for the two years. The applicant did not qualify and his name was not included in the list of 10 successful candidates. After he got the marksheets the applicant entertained serious doubt about marking in Paper IV, i.e., Law Paper where he got only 40. It is

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stated by the applicant that question no.6 in that paper (Paper IV) was objective type and the applicant expected that he would secure at least 70% marks in that paper. He applied for recounting of marks in Paper-IV. He was asked to deposit Rs.25/- towards recounting charges, but no action was taken to recount the marks. It is further stated that the departmental authorities have conducted another examination from 4.8.1992 to 6.8.1992 for the vacancies of 1992, but the specific vacancy position has not been disclosed. It is claimed by the applicant that this examination should have been for 1993 vacancies as in the original letter dated 15.1.1991 it has been indicated that that examination would be for 1991 and 1992 vacancies. In the context of the above facts, the petitioner has prayed for a direction to the respondents to calculate the vacancies for both the years 1991 and 1992 and to prepare a waiting list from the candidates who had taken the examination along with the applicant and to give them postings according to the waiting list. There is also a prayer for a direction to the respondents for revaluation of Paper IV, i.e., Law Paper of the applicant.

3. The respondents in their counter have submitted that this examination is conducted by Director-General of Posts, New Delhi and the result is declared on each Postal Circle basis. It has also been mentioned that number of vacancies for each examination is calculated by each Circle as per instructions received from Director-General of Posts from time to time. The respondents have stated that in the year 1990 the examination was held from 11.6.1990 to 13.6.1990. Number of vacancies was initially declared as 18 (OC -

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12, SC - 5 and ST - 1) including carried forward vacancy for SC community of the year 1989. In the meantime, the result of failed candidates belonging to SC community for 1990 examination was reviewed and three SC candidates were declared qualified. Therefore, number of vacancies was reduced to 15 (OC - 12, SC-2 and ST-1). At this stage it was communicated that at least five more trained I.P.Os. should be available in each Circle for posting so that no ad hoc promotion of untrained officials is made. This direction of Ministry of Communication is dated 20.6.1990 and is at Annexure-R/1. Accordingly, the vacancy position was increased to 20 (OC-16, SC -2 and ST-2). In the examination of 1990 from Orissa Circle nobody qualified on merit. Two candidates of Orissa Circle who were working in Army Postal Services, however, qualified in the examination and were appointed. Initially it was decided to hold a supplementary examination in December 1990, but for some administrative reason the examination had to be postponed as the regular examination of 1991 was at that time proposed to be held on 6th and 8th of May, 1991. Therefore, it was decided to hold only one examination. This examination for the year 1991 was further postponed and was actually held on 24.6.1991 to 26.6.1991. The respondents have stated that in the early part of 1991 some change in the recruitment to I.P.Os. was under active consideration and there was a proposal for abolition of 154 posts of I.P.Os. cadre, i.e., Savings Bank Development Officers). In Orissa Circle there were seven such posts of Savings Bank Development Officer. Director-General, Posts in his letter dated 18.4.1991 directed to calculate the vacancy position in the year

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of examination taking the vacancies upto 31.12.1992 and reducing the same by adjusting the number of officers working as Savings Bank Development Officers. It was also indicated that 33.33% vacancies should be reserved for direct recruitment. Accordingly, for the examination to be held in 1991, the total existing and anticipated vacancies for period from 1.1.1991 to 31.12.1992 were calculated afresh and these came to 26. From these, seven existing posts of S.B.D.Os. and three candidates of SC and ST communities, who had qualified on review, were taken into account and the vacancies were reduced to 16, i.e., 26 minus 10. These vacancies were further reduced by 33.33% for direct recruitment quota and vacancy was ultimately notified in letter dated 12.6.1991 at Annexure-R/2 as 11, all for general category candidates. Thereafter, Director-General of Posts informed telegraphically that in view of orders passed by Jabalpur Bench of Central Administrative Tribunal in OA No.312/91 and on advice of Ministry of Law, the vacancies were to be recalculated upto 31.12.1991 and not upto 31.12.1992, and the vacancies should not be reduced by 33.33% as the proposal for direct recruitment to IPOS cadre had not by that time materialised. The respondents have stated that the vacancies were accordingly recalculated and the number of vacancies covering the period upto 31.12.1991 came to 10 only. It is further stated that in letter dated 19.6.1991, 10 vacancies were notified and the examination was held and ten candidates were declared qualified. It is stated that the applicant took the examination in Cuttack Centre but did not qualify. The

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respondents have furtherstated that in accordance with the order 24.5.1991 of Jabalpur Bench of the Tribunal and the advice of the Ministry of Law, vacancies were recalculated for the year 1991 only and this was notified to all the Units of Orissa Circle and the Heads of Circles were intimated to bring these vacancies to the notice of all concerned. As regards the applicant securing 40% marks in Law Paper(Paper IV), it has been submitted that there is no provision in the Rules for revaluation of marks in the paper, but recounting can only be done on payment of prescribed fee. It is further stated that the applicant has not exhausted the departmental remedy for approaching the higher authorities and as such the petition is not maintainable. On the above grounds, the respondents in their counter in OA No.663/92 have opposed the prayers of the applicant.

4. The applicant in OA No.10/93 was also an Office Assistant. He is working in Head Post Office, Kendrapara. In his application, he has made same averments as in OA No.663/92. As a matter of fact, the application is identical and it is, therefore, not necessary to recount the same except on one point. The applicant has stated that in the examination he did not qualify. But after he got the marksheet on 1.2.1992 he found that he has secured total 284 marks and has been placed in 11th position. The applicant has also stated that the examination held in June 1991 is a crucial one for him because he is on the verge of reaching his 40th year and as such he would not get any more opportunity to appear at the examination. The applicant has made the

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same averments about the unauthorised reduction of vacancies. He has further stated that if the vacancies are to be 11, as had been notified in letter dated 12.6.1991, then he would stand qualified and would be eligible for appointment. On the above grounds, he has prayed for a direction to the respondents to declare the vacancies for both the years 1991 and 1992 and to prepare a waiting list in accordance with merit and to give appointment to candidates on the basis of the waiting list.

5. The counter file by the respondents in OA No.10/93 is identical to the counter filed in OA No.663/92 and it is, therefore, not necessary to indicate the stand taken by the respondents in this O.A.

6. The applicant in OA No.148/93 is a Postal Assistant and is working as Office Assistant in the Divisional Office, Bhubaneswar. In his application he has made the same averments as in the other two O.As. except on one additional point. He has stated that the examination taken by him from 24.6.1991 to 26.6.1991 was his last chance for sitting at the examination for I.P.Os.. After he got his marksheets he found that he got total 278 marks and the marks of last successful candidate are 286 which is clear from the list of successful candidates issued by the departmental authorities. In the context of the above facts, he has made the same prayer as in the case of the applicant in OA No.10/93.

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7. Respondents in their counter to OA No.148/93 have made the same averments as in their counters in the other two cases except that they have averred with reference to the applicant in OA No.148/93 that age restriction is applicable for all candidates and cannot be relaxed in any individual case. Thus, the respondents have opposed the prayers of the applicants in all the three cases.

8. We have heard Janab Sk.Aziz, the learned counsel for the petitioners and Shri Ashok Mishra, the learned Senior Panel Counsel appearing for the respondents in OA Nos.663/92 and 10/93 and Shri Akhaya Kumar Mishra, the learned Additional Standing Counsel appearing for the respondents in OA No.148/93, and have also perused the records.

9. The first point made by the learned counsel for the petitioners is that the respondents having once declared the vacancies to be 18 in letter dated 2.3.1990, are estopped from reducing it to 15 in letter dated 26.4.1990. This point is not very material because as earlier noted the three applicants in these cases are general candidates and in both these letters the general category vacancies have remained as 12. It is further submitted by the learned counsel for the petitioners that in letter dated 12.7.1990 the general category vacancies were shown as 16 and therefore, the respondents were estopped from reducing it to 11 in letter dated 12.6.1991 and further to 10 in letter dated 19.6.1991. The respondents have pointed out that in letter dated 26.4.1990 the total vacancies were taken to be 15 of which general category vacancies were 12. Thereafter the Ministry directed in their letter dated

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20.6.1990 that vacancies should be increased by 5 so that five qualified candidates would be available and there would not be any necessity for giving ad hoc promotion to untrained and unqualified candidates to the posts of Inspector of Post Offices. Accordingly, in letter dated 12.7.1990 the vacancies were increased by five to 20 and the general category vacancies were correspondingly increased to 16 instead of 12 as notified in letter dated 26.4.1990. About reduction of vacancies to 11 in letter dated 12.6.1991 the respondents have pointed out that because of adjustment of seven S.B.D.Os. and 3 SC & ST candidates who were declared qualified on review and also keeping 33.33% vacancies reserved for direct recruitment, the vacancies were reduced to 11 in letter dated 12.6.1991. The respondents have stated that these 11 vacancies were for the period from 1.1.1991 to 31.12.1992, i.e., for two years. Later on because of the order dated 24.5.1991 of Jabalpur Bench of the Tribunal and the advice of the Ministry of Law, it was decided to calculate the vacancies for only one year, i.e., from 1.1.1991 to 31.12.1991 after doing away with 33.33% reservation for direct recruitment to IPOs and the vacancies for that one year came to 10 only.

10. It has been submitted by the learned counsel for the petitioners that the respondents having once declared the vacancies as 16 for the general category candidates, they are estopped from reducing it to 11 and further to 10. We are unable to accept this contention because reduction of vacancies has taken place from 16 to 11 due to the fact that 33.33% of

vacancies were reserved for direct recruitment to I.P.Os. cadre. These 11 vacancies were for the two years from 1.1.1991 to 31.12.1992. Later on because of the decision of Jabalpur Bench of the Tribunal the vacancies for one year i.e., 1.1.1991 to 31.12.1991 have been worked out and the vacancies have come to 10. As the instructions provide for calculation of existing and anticipated vacancies for twelve months and as because of decision of Jabalpur Bench of the Tribunal and advice of the Ministry of Law, the vacancies for one year have been calculated, it cannot be said that the respondents are estopped from recalculating the vacancies, moreso when this has been done on the basis of a direction of the Jabalpur Bench of the Tribunal. This contention of the learned counsel for the petitioners is, therefore, held to be without any merit and is rejected.

11. The second point made by the learned counsel for the petitioners is that 10 (ten) vacancies were notified only on the date of examination. We note that the examination was held from 24.6.1991 to 26.6.1991 and the vacancies of 10 were notified in letter dated 19.6.1991 and all Superintendents of Post Offices and other Unit officers were instructed to bring the same to the notice of the candidates. The contention of the petitioners that the vacancies were notified on the date of examination is, therefore, not correct.

12. The next point made by the learned counsel for the petitioners is that the vacancies have not been correctly calculated. The respondents have given two detailed calculation sheets in OA No.10/93 and we have examined these two calculation sheets carefully.

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The first calculation sheet is for the vacancies for two years from 1.1.1991 to 31.12.1992. From this it is seen that the vacancies have been calculated rightly as 26 and deducting the seven posts of S.B.Os., three posts for SC & ST candidates who qualified on review, an 33.33% of vacancies for direct recruitment, the resultant vacancies come to 11 for the two years. It is important to note that in this calculation, the existing vacancies have been taken as 4. In the calculation sheet made for the vacancies of one year from 1.1.1991 to 31.12.1991, calculation has been correctly done, but the existing vacancies have been taken as 3. As there is a discrepancy because the existing vacancies cannot go

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notified prior to the examination. It is not the case of the applicants that they came to know of the vacancies only after the examination. In consideration of this, we hold that the respondents were within their rights to declare the vacancies as they have done.

13. It is further submitted by the learned counsel for the petitioners, on the basis of a report in ORISSA POST, which is apparently a news letter of the Department, published in January-June 1992 Issue, at page 5, that eight officers working as I.P.Os. have been promoted to A.S.P.Os. with effect from 21.4.1992. Learned counsel for the petitioners has submitted that these vacancies have not been taken into account. From this news letter it does not appear when these promotion orders were issued and whether these were before or after the vacancies were calculated and notified on 19.6.1991. Obviously, therefore, even if these vacancies are taken into account, these eight vacancies might have arisen after calculation of vacancies for the year 1991 in letter dated 19.6.1991. Therefore, these promotions cannot be said to have any bearing on the vacancy position for the year 1991. In consideration of the above, we hold that the prayer of the applicants to calculate the vacancies of two years 1991 and 1992 together and to prepare a waiting list is held to be without any merit and the same is rejected.

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14. As regards the prayer of the applicant in OA No.663/92 for revaluation of his answer papers in

Paper-IV, the respondents have pointed out that there is no provision for such revaluation, but recounting of marks can be done on payment of fees. The applicant in OA No.663/92 has stated that he has deposited Rs.25/- for recounting of his marks at the direction of the respondents, but his marks in Paper-IV have not been recounted. This averment at paragraph 4(t) and (v) of the OA has not been denied by the respondents. Thus the position is that the applicant in OA No.663/92 has deposited Rs.25/- for recounting of his marks in Paper-IV and this deposit of money has been done according to the applicant on the direction of the respondents, but no recounting has been done. In view of this, this prayer of the applicant in OA No.663/92 is disposed of with a direction to the respondents to recount the marks of the applicant in OA No.663/92 in Paper-IV, if the same has not already been done and re-determine the applicant's eligibility in case his marks in Paper-IV undergo some upward revision because of recounting.

15. In the result, therefore, OA Nos.10 and 148 of 1993 are dismissed, and the main prayer of the applicant in OA No.663/92 is also rejected. O.A.No.663/92 is partly allowed in terms of our direction above. No costs.

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 (G.NARASIMHAM)
 MEMBER(JUDICIAL)

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 VICE-CHAIRMAN S.1.99