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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 688 OF 1992  
Cuttack, this the 15th day July, 1999

Jaya Krishna Mahananda ..... Applicant

Vrs.

Union of India and 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,

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN  
15-7-99

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 688 OF 1992  
Cuttack, this the 15th day of July, 1999

CORAM:

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

Jayakrishna Mahananda,  
son of Murali Mahananda  
Vill/PO-Tampersara,  
Dist.-Sambalpur .....

Applicant

Advocates for applicant -M/s J.N.Acharya  
B.B.Mishra.

Vrs.

1. Union of India, represented by Chief Post Master General,  
Orissa, Bhubaneswar, District.-Puri.
2. Senior Superintendent of Post Offices,  
Sambalpur Division, At/PO/Dist. Sambalpur.
3. Sub-Divisional Inspector of Posts, Sambalpur (West),  
At/PO/Dist.Sambalpur ..... Respondents

Advocate for respondents - Mr.S.B.Jena  
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 14.3.1992 terminating the service of the applicant as EDMC, Tampersara B.O. with immediate effect. The second prayer is for a declaration that the petitioner is deemed to be continuing in service till regular appointment is made to the post of EDMC. The third prayer is for all service benefits from 14.3.1992 till date.



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2. The applicant's case is that on superannuation of his grandfather Baikuntha Mahananda on 18.11.1991 from the post of EDMC, Tampersara B.O., the applicant was appointed as EDMC on 18.11.1991 on provisional basis. Though no regular appointment was made to the post, the services of the applicant were terminated on 14.3.1992 without any ground and without prior notice by order at Annexure-2. Soon after termination of the service of the applicant, one Jagat Ram Panda was provisionally appointed to the post of EDMC on the same day i.e., 14.3.1992. The applicant made several representations but without any result. On the other hand, Sub-Divisional Inspector (Postal), Sambalpur (West) (respondent no.3) provisionally appointed one Narendra Kumar Panda, son of the above mentioned Jagat Ram Panda, as E.D.M.C. in order at Annexure-5. The applicant has stated that the way in which Jagat Ram Panda and Narendra Kumar Panda have been appointed as E.D.M.C. and the representation of the applicant has been ignored, it is clear that his service has been terminated only to give engagement to the above persons. The applicant has further stated that both Jagat Ram Panda and his son Narendra Kumar Panda have been involved in misappropriation, but the departmental authorities have taken no action nor have they reported the matter to the police. In this connection, the applicant has mentioned regarding wrong payment of a Money Order of one Kuhunga Mahananda even though the payee had died long ago on 8.11.1991. The applicant has further stated that he belongs to SC and is a person in indigent condition and that is why he has come up in this petition with the prayers referred to earlier.

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3. Respondents in their counter have stated that consequent upon superannuation of Baikuntha Mahananda, EDMC, Tampersara B.O. , the applicant was

given provisional appointment as EDMC on 18.11.1991 with clear stipulation that Sub-Divisional Inspector (P), Sambalpur (West) reserves his right to terminate his service without assigning any reason. The applicant joined the post after accepting the above condition. It is further stated that one H.S.Acharya, the original E.D.B.P.M. of Tampersara was put off duty on 28.6.1989 as there was certain allegation against him. Departmental proceedings were initiated against Shri Acharya and ultimately he was reinstated in service on 14.3.1992. During the put off duty period of the original incumbent in the post of EDBPM, Jagat Ram Panda worked as provisional EDBPM from 10.7.1989 to 14.3.1992, and as Jagat Ram Panda had worked as EDBPM continuously for more than two years, after he ceased to be EDBPM on the original incumbent coming back to the job, Jagat Ram Panda was provisionally appointed as EDMC, Tampersara B.O. in order dated 14.3.1992 and services of the applicant, who had worked only for 117 days, were terminated. It is further stated that Jagat Ram Panda expressed his unwillingness to work as EDMC and requested to appoint his son Narendra Kumar Panda as EDMC in his representation dated 20.4.1992. The Sub-Divisional Inspector(P), Sambalpur (West) requested the Employment Exchange to sponsor names of candidates. Employment Exchange sponsored seven candidates including Narendra Kumar Panda, son of Jagat Ram Panda. The name of the applicant was not sponsored by the Employment Exchange. The departmental authorities after considering the candidature of the seven persons sponsored by the Employment Exchange, selected and appointed Narendra Kumar Panda as EDMC, Tampersara B.O. As regards the allegation regarding wrong payment of old age pension Money Order, the respondents have stated that an amount of Rs.300/- being old age pension in favour of Khungu

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Mahananda in M.O.No.892/457 was received in the Branch Office on 28.12.91. Prior to this Khungu Mahananda had expired on 8.11.1991. The Money Order in question was wrongly paid to another person named Kanhu Mahanda. But the amount was voluntarily returned to Government account by Kanhu Mahananda and further enquiry in the matter is in progress. On the above grounds, the respondents have opposed the prayers of the applicant.

4. In this case on the date of hearing the learned counsel for the petitioner Shri J.N.Acharya and his associate were not present nor was any request made on their behalf seeking adjournment. As in this 1992 matter pleading had been completed long ago, it was not possible to delay the disposal of the matter any further. We therefore heard Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and perused the records.

5. The admitted position is that on superannuation of the grandfather of the applicant on 18.11.1991 the applicant was given provisional appointment as EDMC till regular appointment is made. Respondents have stated that the applicant accordingly joined on 18.11.1991 and his services had to be terminated on 14.3.1992 because one Jagat Ram Panda who was provisionally appointed to the post of EDBPM in the put-off duty vacancy of the regular incumbent had to be disengaged because of returning to duty by the original incumbent H.S.Acharya and since Jagat Ram Panda had worked for two years he had to be adjusted in some other post and that is how he was given appointment as EDBPM in the place of the applicant. In OA No. 689/92 <sup>which was disposed of today,</sup> filed by H.S.Acharya, the regular incumbent in the post of EDBPM, who came back to duty after he was reinstated, the departmental respondents in their counter have submitted that Jagat Ram

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Panda created problems in handing over charge and in spite of repeated efforts he did not hand over charge to H.S.Acharya. The matter was reported to District Magistrate, Sambalpur and B.D.O., Attabira-cum-Executive Magistrate along with police force was deputed to the village to make Jagat Ram Panda hand over charge to H.S.Acharya. But Jagat Ram Panda absconded and the police force and the Executive Magistrate had to come back from the village after sunset without making Jagat Ram Panda hand over charge to H.S.Acharya. Subsequently, on another date the police force and the Executive Magistrate were deputed and when steps were being taken to break open the door of the Branch Post Office, Jagat Ram Panda appeared and handed over the charge to H.S.Acharya. Such conduct of Jagat Ram Panda to our mind should have disentitled him to any sympathy and in any case for further appointment under the respondents. But strangely enough the departmental authorities chose to ignore such insubordinate conduct of Jagat Ram Panda and have come up in their counter to the present OA that Jagat Ram Panda having worked for two years had to be adjusted in the post of EDMC and that is how the applicant's service was terminated. We find the conduct of the departmental authorities in providing job to Jagat Ram Panda under these circumstances to be rather strange to say the least. But in any case Jagat Ram Panda subsequently indicated his unwillingness to work as EDMC and names were called for from the Employment Exchange and Narendra Kumar Panda, son of Jagat Ram Panda was selected from amongst the seven candidates sponsored by the Employment Exchange and was appointed to the post. The applicant's name was not sponsored by the Employment Exchange and therefore, he could not be considered for regular appointment. In the context of the above, we dispose of this OA by issuing a direction to the departmental authorities to consider the candidature

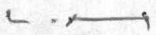
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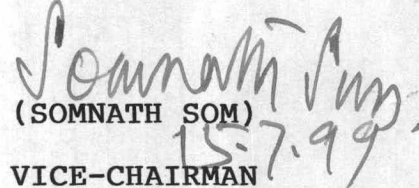


of the present applicant J.K.Mahananda for any ED post in case he applies for the same and is eligible for the post. While considering the candidature of J.K.Mahananda for such post, his previous experience as provisional EDMC should be given weightage in accordance with the law as laid down by the Full Bench of the Tribunal in the case of G.S.Parvati v. Sub-Divisional Inspector (P) and others, 1991-93 ATFBJ 23.

6. The applicant in this petition has prayed that termination of his service should be declared illegal. But as at the time of provisional appointment it was clearly mentioned that his service could be terminated at any time without any notice, it is clear that his services have been terminated strictly in terms of the conditions of appointment which were accepted by the applicant when he joined as provisional EDMC. He has also not stated in the O.A. that after going through any process of selection he was provisionally appointed as EDMC. In view of this, his prayer for quashing the order of termination is held to be without any merit and is rejected. His other prayers also accordingly fail and are rejected.

7. In the result, the O.A. is disposed of in terms of the observation and direction given above but without any order as to costs.

  
(G.NARASIMHAM)  
MEMBER(JUDICIAL)

  
(SOMNATH SOM)  
15-7-99  
VICE-CHAIRMAN