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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 123 OF 1993

Cuttack, this the 20th day of September, 1999

Chamara Jhankar 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
(SOMNATH SOM)
VICE-CHAIRMAN 20.9.99

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....
Chamara Jhankar, E.D.Packer, Manmunda, District-Phulbani
..... Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through Chief Post Master General, Orissa Circle, Bhubaneswar-751 001.
2. Superintendent of Post Offices, Phulbani Division, Phulbani, Orissa-762 001.
3. Sub Post Master, Boudhraj P.O., Boudhraj-762 004, District-Phulbani.
4. Sub Divisional Inspector (Postal), Boudhraj Subdivision, At/PO-Boudhraj-762 004, District-Phulbani Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

Scm.
In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed that the period during which the applicant was kept out of employment may be ordered to be treated as duty and allowances may be ordered to be paid to him for that period.

2. The applicant's case is that he worked as EDDA, Boudhraj S.O. from 1.12.1986 and was subsequently appointed to that post by Sub-Post Master, Boudhraj S.O.

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in letter dated 10.2.1988. He was relieved from that post on 4.8.1988 as per order dated 4.8.1988 of respondent no.3 at Annexure-1. The applicant was again appointed as EDMC, Manmunda, after a series of representations filed by him. He joined at Manmunda on 8.10.1991 and a formal order of appointment was issued to him on 10.12.1991 (Annexure-2). Respondent no.3 in his order dated 4.8.1988 had not terminated the services of the applicant nor had he cancelled the appointment but had set aside the earlier order of appointment. It is stated that the earlier order of appointment was issued by respondent no.3 himself and therefore he could not have legally set aside his own order. It is also stated that in order dated 10.12.1991 the applicant has been described as a retrenched candidate which is not correct. Because of the above facts, the applicant was irregularly and unlawfully kept out of employment from 4.8.1988 for no apparent reason. The applicant had made several representations to respondent no.2 to regularise the period during which he was irregularly kept out of employment but without any result. That is why he has come up in this petition with the prayers mentioned above.

3. Respondents in their counter have stated that the post of EDDA, Boudhraj S.O. had fallen vacant consequent upon resignation of the regular incumbent Sushil Kumar Jhankar on 1.4.1987. By that time the applicant Chamara Jhankar was working as EDDA, Boudhraj SO with effect from 1.12.1986 as substitute to the post on the responsibility of Sushil Kumar Jhankar who had applied for leave. Later on the regular incumbent Sushil Kumar Jhankar resigned from his post and his resignation was accepted. In order to manage the work of the said post, the applicant was provisionally appointed as EDDA,

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Boudhraj SO from 1.4.1987 and for making regular appointment requisition was placed by respondent no.3 with Junior Employment Officer, Boudh. After receipt of the list of candidates from the Employment Officer, selection was finalised and the applicant who was working as EDDA on provisional basis was selected to the post. The provisional orders of appointment in favour of the applicant for the period from 1.4.1987 till the date of his regular appointment were issued by respondent no.3 in three different spells. Thereafter in order dated 10.2.1988 appointment order was issued in favour of the applicant with effect from 1.2.1988 which is at Annexure-R/1 of the counter. In the appointment order it was made clear that his appointment is purely temporary and can be terminated without any notice. Because of some inherent lacunae in the selection of the EDDA, Boudhraj, the whole selection process was reviewed by respondent no.2, the Superintendent of Post Offices, Phulbani and a direction was issued to respondent no.3 to set aside the regular order of appointment of the applicant. By that time the post of ED Night Watchman at Boudhraj S.O. was ordered to be abolished and the incumbent working in the post had to be provided with alternative appointment. Accordingly, respondent no.2 further directed respondent no.3 to absorb the ex-ED Night Watchman, Nabin Chandra Jhankar against the vacant post consequent upon relief of the applicant. In pursuance of the above direction of respondent no.2, respondent no.3 issued order dated 4.8.1988 at Annexure-1 setting aside the order of regular appointment issued to the applicant which is at Annexure-R/1 of the counter. In this order it was also mentioned that the applicant would be absorbed in future vacancy as EDDA in Boudhraj Unit. Consequent upon a vacancy arising at Manmunda S.O. the applicant was

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offered the post of ED Packer, Manmunda SO with effect from 8.10.1991 as per the commitment made in Annexure-1 and as per the applicant's written request. Accordingly, the order of appointment of the applicant as ED Packer, Manmunda SO was issued at Annexure-2 of the OA. The respondents have stated that at the time of relief of the applicant from the post of EDDA, Boudhraj SO there was no vacancy in ED cadre at Boudhraj S.O. and therefore it cannot be said that the applicant was unlawfully kept out of employment. As soon as a vacancy was available, he was given appointment. It is further stated that respondent no.3 did not set aside his own order. He set aside the the order on the direction of respondent no.2. It is also stated that no principle of natural justice has been violated as in the conditions of appointment it was mentioned that appointment of the applicant EDDA, Boudhraj SO was temporary and could be terminated at any time without notice. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. The learned counsel for the petitioner submitted that the period during which the applicant was kept out of employment should be treated as duty and he should be paid the allowances for this. This period is from 9.7.1988 as it appears from Annexure-2, till 7.10.1991. The applicant was selected through a regular process of selection for the post of EDDA, Boudhraj SO and was given provisional appointment from 1.2.1988 in order dated 10.2.1988 at Annexure-R/1. His appointment was set aside in the order dated 4.8.1988 at Annexure-1.

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It has been submitted by the learned counsel for the petitioner that the appointing authority could not have set aside his own order and therefore this order dated 4.8.1988 is illegal. The respondents have pointed out that respondent no.2 who had the power of review, reviewed the selection and appointment of the applicant and directed respondent no.3 to set aside the order of provisional appointment and accordingly respondent no.3 issued the order at Annexure-1. It is also stated by the respondents that under the rules respondent no.2 was entitled to review the selection and issue orders for setting aside the selection and appointment of the applicant. Whatever may be the merits of the rival submissions on this point, it has to be noted that this order is dated 4.8.1988 and the applicant has approached the Tribunal only in 1993. Therefore, after a long lapse of five years he cannot be allowed to challenge the legality of the order dated 4.8.1988. The applicant has mentioned that he asked for getting appointment in some other ED post. In the order setting aside his appointment it has been mentioned that he will be absorbed in future vacancy in ED cadre in Boudh Sub-Division. Accordingly, on his request and on a vacancy arising in the post of ED Packer, Manmunda, he has been absorbed. The applicant not having challenged the order dated 4.8.1988 in time and having asked for the post of ED Packer, Manmunda and having accepted this, cannot therefore claim that the period from 8.7.1988 when he was relieved till his fresh appointment on 8.10.1991 should be treated as on duty. The respondents have further stated that the post of ED Night Watchman of Boudhraj SO was abolished. At the time of abolition of the post of Night Watchman it was provided that the existing Night Watchmen would continue in their posts till they are absorbed in some other ED

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vacancies. Accordingly, the ex-ED Night Watchman was absorbed against the post of EDDA. This action of the respondents cannot therefore be found fault with because after abolition of the post of Night Watchman, the incumbent became surplus and had therefore to be adjusted. In consideration of the above, we hold that the applicant has not been able to make out a case for the allowances for the period from 9.7.1988 to 7.10.1991.

6. In the result, therefore, the Original Application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
20.9.99
VICE-CHAIRMAN