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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 217 OF 1993
Cuttack this the 2nd day of May, 1999

Pranabandhu Swain

Applicant(s)

Pranabandhu Swain

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not ? *No*

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
2.6.99

2.6.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 217 OF 1993
Cuttack this the 2nd day of May, 1999

CORAM:

Judge,
S. J. Som
**THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

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Pranabandhu Swain, aged about 56 years,
Son of Late Damodar Swain,
At/PO: Letheka, Via: Jenapur
P.S: Gondia, District: Dhenkanal

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Applicant

By the Advocates : M/s.Devanand Misra
R.N.Naik, A.Deo,
B.S.Tripathy,
P.Panda

-Versus-

1. Union of India represented by
its Secretary, Department of Posts,
Dak Bhavan, New Delhi
2. Chief Post Master General,
Orissa Circle, At/PO:Bhubaneswar
District : Puri
3. Superintendent of Post Offices,
Cuttack North Division
At/PO: Cuttack-753001
Dist: Cuttack
4. Assistant Post Master,
Office of the Postal Accounts,
Jajpur Town, At/PO: Jajpur
District : Cuttack

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this Original Application filed in the year 1993, seeking reinstatement to the post of Extra Departmental Branch Post Master, Lethaka B.O., earlier the applicant filed Original Application 325/89 before this Tribunal for the very same relief, by avering that he was serving as E.D.B.P.M., Lethaka B.O. in the district of Dhenkanal; that in G.R.Case No.220/69, he was ultimately honourably acquitted; and that after such acquittal he made application to the Department for reinstatement in the post in which he was put under off duty. The Department contested the application denying appointment of the applicant as E.D.B.P.M., Lethaka. Ultimately this Tribunal by judgment dated 10.2.1992 dismissed the application mainly on the ground that the applicant had not filed any document to indicate that he was ever appointed as E.D.B.P.M. in the said Post Office or had been put off duty.

In the present application he has come up with a story that Lethaka B.O. which was previously under Jajpur Head Office was newly opened in the year 1960 and Inspector of Post Offices, Jajpur appointed him in that year and he was the first E.D.B.P.M. of that Post Office. After acquittal in the Crininal Case, i.e. G.R.Case No.220/69 (wrongly mentioned in the application as 1989) he had applied to the Department to take him back in the job. In response to his application, Superintendent of Post Offices, Cuttack North Division (Res.3) in memo dated 12.1.1989(Annexure-1) directed him to produce a copy of the judgment in the Criminal Case as well as copies of his appointment order and order putting him off

duty. Thereafter the applicant submitted a copy of the judgment and prayed for reinstatement with a request that necessary papers can be called for from the office of Postal Accounts, Jajpur Town. According to applicant, Assistant Post Master, Jajpur (Res.4) sent all the relevant papers to Res.3.

Though the Original Application 325/89 was dismissed on the grounds of non-availability of any document in respect of original appointment and put off duty order, Personal Security Bond dated 8.8.1969 issued by the Indian Assurance Company Association, Bombay in his favour and its renewal dated 27.7.1964 and so also Personal Security Bond No.SSP/41 issued by the Postal Cooperative Multipurpose Policy of Burdwan Ltd., in favour of the applicant and the renewal of that Bond every year upto 1969 are available in the Office of Res.3 and these documents would establish that the applicant was appointed as E.D.B.P.M. in the year 1960. Since the Criminal case ended in acquittal the applicant is entitled to be reinstated in the post he was holding.

2. The respondents in their counter denied that the applicant was ever appointed as E.D.B.P.M. They also denied that papers relating to his appointment and put off duty were ever sent by Jajpur Post Office or received in the Office of Res.3. Xerox copies of the Security Bonds filed by them would not establish that the applicant was ever appointed as E.D.B.P.M. They also challenge the maintainability of this application on the ground of limitation, because the Criminal Case was finally disposed of on 8.2.1974 wherein the accused Pranabandhu Swain therein was discharged under Section

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253(2) of Cr. P.C. as is evident from Annexure-R/1. Certified copy of the information sheet furnished by the applicant revealed that the original record of the Criminal Case was destroyed on 18.2.1976. Hence the applicant could have approached the Department for reinstatement immediately after his discharge on 8.2.1974.

3. We have heard Shri A.Deo, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel. On the date of hearing, on the prayer of the applicant the respondents were directd to produce the records pertaining to the appointment of the applicant in case the same were available with them. Such records were however, not produced, apparently because in the counter the respondents take a positive stand that no document pertaining to the appointment of the applicant in the year 1960 was available with them. Hence non-production of such document, existence of which is disputed by the respondents will not invite inference agaist them.

At the outset we would like to observe that this application is not maintainable on the ground of res judi cata because the same issue was already heard and finally decided in O.A.325/89. It is not the case of the applicant in this application that he was not unaware of the existence of Personal Security Bonds when he filed O.A.325/89. Relevancy of those documents, could have ^{been} as well raised in that application. Hence simply on the ground of mention of those documents in this application, judgment in O.A.325/89 is not opened to be reconsidered. We have considered the xerox copies of the Personal Security Bonds under Annexure-R/3. We are of the view

that these by themselves would not establish that the applicant was appointed as E.D.B.P.M., Lethaka B.O. in the year 1960. Even if the applicant was appointed in the year 1960, in the absence of put off duty order, it cannot be assumed that because of his involvement in the Criminal Case he was put under off duty.

This apart the respondents vehemently opposed this application on the ground of limitation. At this stage we may note that on 30.4.1993, when the application was listed for admission, the then Hon'ble Vice-Chairman of this Bench sitting as Single Member, admitted the application after hearing the learned counsel for the applicant and observed that question of limitation did not arise in this case because it was a continuous cause of action. As the relevant order reveals, none from the Department was heard in the matter. It is also relevant from the fact that notices were ordered to be issued on that day to the respondents. Since respondents were not heard in the matter of limitation by the then Vice-Chairman of this Bench, they are under law and/or entitled to re-agitate the question of limitation. The applicant was discharged by the Criminal Court on 8.2.1974. It is not clear from the application on which date he made an application to Res.3 for resintatement on the ground of his acquittal in the Criminal Case. However, in para-4(b) of the application it has been mentioned that after the applicant made the application to Res.3 in letter dated 12.1.1989(Annexure-1) directed him to produce copies of his appointment order, put off duty order and judgment of the Criminal Court. In other words, a combined reading of para-4(c) and (d) of this

application will give rise to inference that the applicant had addressed only one letter to Res.3 for reinstatement and Res.3 responded that application in his memo dated 12.1.1989 under Annexure-1. A close reading of Annexure-1 would reveal that this was issued in response to the representation dated 22.12.1988/31.12.1988. It is thus obvious that prior to 22.12.1988 the applicant had not submitted any representation praying for his reinstatement. In other words, he slept over the matter for near about 14 years after his discharge from the criminal case without making any attempt to move the authorities for reinstatement. It has been made clear by the Apex Court in **S.S.Rathore case reported in AIR 1990 SC 10** that a person who loses his remedy by lapse of time also loses his right. The applicant could have approached the then competent Court of Law for his reinstatement within the period of limitation from the date of discharge in the criminal case in the year 1974. We, therefore, do not agree with the observations made in order dated 30.4.1993 that question of limitation in this case would not arise because it is a continuous cause of action. We are of the view that the application is hopelessly barred by limitation. In the result the application is without any merit and the same is therefore, dismissed. There shall however, be no order as to costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO

2-6-99
(G.NARASIMHAM)
MEMBER(JUDICIAL)