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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 220 OF 1993.

Cuttack, this the 19th day of August, 1999.

MADAM MOHAN SAMAL.

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APPLICANT.

-VERSUS-

UNION OF INDIA & OTHERS.

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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? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 220 OF 1993.

Cuttack, this the 19th day of August, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL) .

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Madan Mohan Samal,
aged about 43 years,
S/o. Mani Bhadra Samal,
of Village-Ratalanga,
PO. Ratlanga, PS. Binjharpur,
DIST. CUTTACK.

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APPLICANT.

By legal practitioner: M/S. B. PATNAIK, M. K. NAYAK,
S. K. Dey, Advocates.

- VERSUS -

1. Union of India,
represented by Chief Postmaster General,
Orissa Circle, Bhubaneswar-751001,
Dist. Khurda.
2. Superintendent of Post Offices,
Cuttack North Division,
Cuttack.
3. Sub-Divisional Inspector (Postal),
Jajpur, At/Po/Ps. Jajpur,
Dist. Cuttack.

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RESPONDENTS.

By legal practitioner: Mr. S. B. Jena, Additional Standing
Counsel (Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for quashing the disciplinary proceeding initiated against him as far back as 11-9-1993 and for his reinstatement as E.D.B.P.M. with backwages and salary from the date of completion of 120 days from the date he was on put off duty. For the purpose of considering this application, it is not necessary to go into too many facts of this case. It is only necessary to note that the admitted position is that while the applicant was working as Extra Departmental Branch Post Master, Ratnanga Branch Post Office under Binjharpur Sub Post Office, he was put off duty on 8.9.83, at Annexure-1. This was ratified in order dated 12.9.83 at Annexure-2. Charges were issued to him in order dated 11-5-1984, at Annexure-3 series. There were five articles of charge and all the charges indicate that applicant misappropriated amounts in 17 money orders received by him as EDBPM for disbursement. It is stated by applicant that on his denial of charges, one Inquiring Officer was appointed and a few sittings of the enquiry was also held but there was no sitting of the enquiry after 24.1.1986. Applicant has stated that on the same charges, a CrI. case was filed against him in which the Police after investigation submitted final form. Departmental authorities filed a protest petition on consideration of which cognizance was taken and applicant was directed to face trial and the trial ended on 12.6.92 when learned Sub Divisional ^{Judicial} Magistrate ^{the} acquitted applicant.

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It has been admitted by learned counsel for applicant that during the pendency of the Criminal Case, he had asked the Authorities not to proceed with the Departmental Proceeding. It is stated by learned counsel for applicant that the Crl. case having ended on 12.6.1992, the Departmental Authorities should have completed the enquiry expeditiously thereafter. It is stated by learned counsel for petitioner that in the process, he has remained under put off duty for more than 16 years and he has not been given any put off duty allowances even though rules were amended and put off duty allowance became payable. Applicant has prayed that as there has been inordinate delay in finalisation of the Departmental proceeding, the same should be quashed as prayed for in the relief portion of the application, referred to earlier.

2. Respondents, in their counter, have taken the stand that copy of the judgment of the learned S.D.J.M. acquitting the applicant was not sent to Respondents and that is how they were not aware that the Crl. case was over and that is how they did not proceed with the Departmental proceeding. On the above grounds, Respondents have opposed the prayer of applicant.

J Sam 3. We have heard Mr. B.B. Patnaik, learned counsel for applicant and Mr. S.B. Jena, learned Additional Standing Counsel appearing for the Respondents and have perused the records. We are not inclined to accept the contention of learned Additional Standing Counsel that the delay has occurred because of their ignorance about the decision of the Crl. case. In this case, the investigating authorities

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had submitted the final report and only on the protest petition filed by the Departmental Authorities, the learned S.D.J.M. had taken cognizance and put the accused on trial. In view of this, it was incumbent on the part of the Departmental Authorities to keep track on the development of the Criminal Case and they can not take the stand that they were not aware of the ultimate outcome of the Criminal Case. The other point taken by the Respondents is that as the documents required for the Departmental proceeding, were also required in the Crl. Case and ^{as} these were with the police authorities, there was delay in disposal of the Departmental proceeding. As the Criminal case has admittedly ended in 12.6.1992, there should not have been any difficulty for the Departmental Authorities to get back those documents and proceed with the Departmental proceeding. We have looked into the charges against the applicant. The charges are that applicant had illegally falsified the accounts and misappropriated the money value of 17 money orders, some of which were old age pensions and received in the name of pensioners. Prima facie, the charges involved misappropriation falsification of Govt. records and also a pattern of conduct because of series of money orders alleged to have been misappropriated. It is true that there has been considerable delay on the part of the Departmental Authorities to finalise the Departmental proceeding after June, 1992. It is also the position that the inordinate delay in finalising the departmental proceeding may itself result in the proceeding to be struck down but in this case, in view of the nature of the charges, we feel that more appropriate action will be to give a direction

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to the Departmental Authorities to finalise the proceeding within a period of 60 (sixty) days from the date of receipt of a copy of this order. Applicant is directed to participate in the enquiry and co-operate with the IO and with the Departmental Authorities. In case the applicant does not co-operate in course of enquiry, without reasonable cause, the Departmental Authorities are directed to complete the enquiry ex parte within the aforesaid period.

4. We also note that in this case applicant is not in receipt of put off duty allowance. Originally ED employees were not entitled to any put off duty allowance but after the amendment of the relevant rules in pursuance of the direction of the Hon'ble Supreme Court in the case of SECRETARY, MINISTRY OF COMMUNICATIONS & OTHERS Vrs. S. GUNDA Achary, in Spl. Appeal No. 4917-27/90 and other cases on 10.7.1995, Rule-9 of the ED Agents Rules, has been amended and ED employees are entitled to ex-gratia amount by way of compensation during the put off duty period. The amount is also liable to be increased after the initial period of put off duty of 120 days is over in case the continuation of ED employee under put off duty beyond 120 days is not for the reasons directly attributable to him. In view of this, we hold that the applicant is entitled to ex gratia amount by way of compensation during the period of his put off duty from the date the rules have been amended in 1997 till the date he continues to be under put off duty. As in this case, his continuation under put off duty is not attributable to him, he is also entitled to a increase in the amount payable to him by way of ex-gratia amount as compensation. It is directed that the Departmental Authorities should sanction

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and pay the amount to the applicant within a period of 45 days from the date of receipt of a copy of this order.

5. With the above directions, the Original Application is disposed of. Not costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.9.99

KNM/CM.