

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 707 of 1993

Date of Decision: 13. 1. 1994

Prafulla Kumar Rath      Applicant (s)

## Versus

Union of India & Others      Respondent(s)

(FOR INSTRUCTIONS)

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

2. Whether it be circulated to all the Benches of *ND*  
the Central Administrative Tribunals or not ?

Key 18-1-94

**VICE-CHAIRMAN**

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Prafulla Kumar Rath Applicant

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Union of India & Others Respondents

For the applicant M/s. S.

M/s. S. N. Misra  
S. K. Nayak - 2  
A. N. Misra,  
Advocates

### For the respondents

Mr.Ashok Mishra,  
Sr.Standing Counsel  
(Central)

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C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

## JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash Annexures 5, 6 and 7 and direct the opposite parties to allow the petitioner to continue in service with effect from 30.09.1993.

2. Shortly stated the case of the petitioner is that he had appeared in a selection test held by the Staff Selection Commission for the post of Inspector, Central Excise and Customs in December, 1991. The petitioner was selected and joined the post in question on 9.7.1993. Prior to the joining of the post of Inspector, Central Excise and Customs, the petitioner had appeared <sup>in</sup> ~~in~~ another competitive examination for recruitment to the post of Probationary Officer in the State Bank of India. The petitioner was communicated regarding his preliminary

selection in respect of the post of Probationary Officer and with the sole intention of not putting the authorities in the Central Excise and Customs to any difficulty, the petitioner vide Annexure-3 dated 30.8.1993, informed the Assistant Collector, Central Excise and Customs, Cuttack that he (the petitioner) had been selected for appointment in the State Bank of India as Probationary Officer and the petitioner expects to receive the order of appointment by October, 1993. In the last paragraph of the letter (Annexure 3) the petitioner stated that this matter may be considered as an advance notice for leaving the department. After receipt of Annexure-3, the concerned authority in the Office of the Collector, Central Excise and Customs, ordered that the resignation tendered by Shri Prafulla Kumar Rath (the present petitioner) is hereby accepted with effect from 30.9.1993. Vide Annexure-6, it was ordered that the petitioner be relieved with effect from 30th September, 1993 and in pursuant thereto, the petitioner has been relieved. For some unknown reasons, the petitioner has not yet received any order of appointment from the State Bank of India, and therefore, this application has been filed with the aforesaid prayer.

3. In their counter, the opposite parties maintain that according to rules, the petitioner was duty-bound to give one months' notice to relinquish the post he was holding and such notice having been given as per Annexure-3, the departmental authorities had no other option, but to accept the same and order relief of the petitioner from the post which he was holding. Once the petitioner's  
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resignation has been accepted, it cannot be revoked or recalled by the petitioner, and therefore, it is maintained by the opposite parties that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr.S.N.Mishra, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel

5. Mr.S.N.Mishra, learned counsel for the petitioner submitted that Annexure-3 has been mis-construed as <sup>a</sup>letter of resignation. Nowhere, the petitioner has mentioned that he is tendering his resignation, and therefore, the principle that once a resignation has been accepted, the concerned employee is not permitted to express his intention for withdrawal of the same has no application to the peculiar facts and circumstances of the present case.

On the other hand it was urged with vehemence by Mr.Ashok Mishra, learned Standing Counsel that on a reading of the contents of Annexure-3, there could not be any other interpretation <sup>except</sup> that the intention was clear that the petitioner was tendering his resignation and undisputedly once the resignation has been accepted, it no longer remains open to the petitioner to withdraw the same, and in addition to the above, it was submitted by Mr.Ashok Mishra, learned Standing Counsel that the post which the petitioner was holding has already been filled up by another incumbent, who should not be deprived of his bread and butter. Hence it is finally submitted by Mr.Ashok Mishra that the application should be in lime line dismissed

6. I have given my anxious consideration to the argument advanced at the Bar by the counsel for both sides  
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Since the petitioner has not used the word 'RESIGNATION' and has only given one month's notice to the concerned authority regarding his intention to vacate the post in question if he receives an appointment from the State Bank of India does not amount to tendering of resignation. In my opinion the concerned authority in the department has in good **faith** and **bonafide** believed that Annexure-3 is a letter of resignation. I am of further opinion that some amount of confusion has arisen in this case without any fault to be ascribed either to the petitioner or to the concerned departmental authorities. The mis-construction of contents of Annexure-3 has taken place on **bonafide** basis and therefore, I am of further opinion that it cannot be said with **almost** certainty that in Annexure-3, the petitioner had **not** intended to tender his resignation and therefore, the relief order passed by the concerned authority forming the basis of a **bonafide** mis-construction of the contents of Annexure-3 cannot be sustained. I fully appreciate the sympathetic attitude of Mr. Ashok Mishra, learned Standing Counsel in advancing the argument that another person, who has been functioning in the post, held by the present petitioner would be deprived of **his** bread and butter. Even though I share fully with the sympathetic attitude of Mr. Mishra, yet, I must have to see and I am duty-bound to see that the petitioner, who is also claiming for his bread and butter does not lose his bread and butter, because of a technical error committed either by him or by the departmental authorities. Instances are not rare to find that in very many cases,

*an **unlawfully** appointed* **for** **so**

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a person duly appointed in some post under the Government is dislodged when the regular person is ordered to be reinstated. Therefore, the person, who has been, if appointed, must have been appointed on adhoc basis in the post which was held by the present petitioner has to face this unfortunate situation. Even though Mr.Ashok Mishra, learned Standing Counsel and myself have utmost sympathy for the adhoc appointee, but law must take its own course and one cannot help the unfortunate situation. Therefore, Annexures 5,6 and 7 are hereby quashed and it is directed that the petitioner be allowed to join the post which he was holding within seven days from the date of receipt of a copy of this judgment and payment of emoluments etc. in favour of the petitioner will be calculated with effect from the date he joins the post in question and not from 30th September, 1993, as has been prayed for by the petitioner. The period between 30th September, 1993 till the date of joining be treated as dies non. Thus the application is accordingly disposed of. No costs.

*B.K.Sahoo*  
13.1.94.  
VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 13.1.1994/B.K.Sahoo