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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 70 OF 1994

Cuttack, this the 6th day of October, 1999

Sadasib Satpathy

.....

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
6.10.99

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

....

Sadasib Satpathy, aged about 35 years,
son of late Jagannath Satpathy, At/PO-Bindhanima,
Via-Tigiria, District-Cuttack Applicant

Advocates for applicant - M/s Anil Deo
B.S.Tripathy
P.Panda, D.K.Sahoo
P.K.Mishra.

Vrs.

1. Union of India, represented by its Secretary,
Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle,
At/PO-Bhubaneswar, District-Khurda.
3. Superintendent of Post Offices, Cuttack South Division,
At/PO-/District-Cuttack

.... Respondents

Advocate for respondents - Mr.S.Behera,
A.C.G.S.C.

....

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of

Jm. Administrative Tribunals Act, 1985, the petitioner has prayed
for quashing the notice dated 7.1.1994 at Annexure-2.

2. The applicant's case is that he was appointed as Extra-Departmental Branch Post Master in Bindhanima Branch Post Office and after he worked for some time, Superintendent of Post Offices, Cuttack South Division, in his order dated 1.6.1993 terminated his services. The applicant challenged that order of termination in OA No. 305 of 1993, ^{which was} decided on 7.7.1993 quashing the order of termination and giving liberty to respondent no.3 to proceed further in the matter after complying with the principles of natural justice. Thereafter in order dated 29.7.1993 the applicant was reinstated in service. Again respondent no.3 served a notice dated 7.1.1994 on the applicant indicating that his service would stand terminated with effect from the date of expiry of one month from the date of receipt of the notice. This was received by the applicant on 27.1.1994. The applicant has challenged the notice dated 7.1.1994 on the ground that this is in violation of the principles of natural justice.

3. By way of interim relief the applicant had prayed for stay of operation of the notice dated 7.1.1994. On the date of admission of the application on 21.2.1994 the interim injunction was granted. This interim order has continued for last more than five years.

4. Respondents in their counter have stated that Superintendent of Post Offices, Cuttack South Division called for names from Employment Exchange for filling up of the post of EDBPM, Bindhanima B.O. Forty candidates were sponsored by the Employment Exchange out of which only five candidates applied. The applicant was provisionally

selected and was appointed as EDBPM with effect from 11.12.1992. The selection file was examined by the Circle Office who noted that gross irregularities have been committed by the appointing authority in selecting the applicant and the order of selection was cancelled. Accordingly, Superintendent of Post Offices, Cuttack South Division terminated the services of the applicant under Rule 6 of EDA (Conduct & Service) Rules in his order dated 1.6.1993. In this order no reason for termination was mentioned and prior to termination no notice was served on the applicant under Rule 6. The applicant challenged this before the Tribunal in OA No.305 of 1993. The Tribunal in their judgment dated 7.7.1993 quashed the order of termination, directed reinstatement of the applicant in service and held that the appointing authority is at liberty to further proceed in the matter. As per further instruction from the Circle Office, the Superintendent of Post Offices, Cuttack South Division issued showcause notice on 7.1.1994 after complying with the principles of natural justice in order to terminate the services of the applicant. It is stated by the respondents that the selection of the applicant was irregular because another candidate having higher marks in matriculation and also independent income and property was intentionally overlooked by the selecting authority. On the above grounds, the respondents have opposed the prayer of the applicant and has also moved for vacation of stay.

5. We have heard Shri A.Deo, the learned counsel for the petitioner and Shri S.Behera, the learned

Additional Standing Counsel for the respondents. The applicant in paragraph 4(c) of the O.A. has stated that he relies on the judgment of the Tribunal in OA No.305/93. We have accordingly looked into the record of OA No.305/93 in which the present petitioner as the applicant had prayed for quashing the order dated 1.6.1993 terminating the services of the petitioner as EDBPM, Bindhanima B.O. The departmental authorities in their counter took the stand that while selecting the applicant for the post of EDBPM, serious illegalities have been committed by the appointing authority. The applicant who had got 332 marks has been selected ignoring the case of another candidate Smt. Kamali Prusty who had secured 461 marks. Percentage-wise the petitioner got 41.5% marks as against 57.62% of Smt. Kamali Prusty. The Tribunal in OA No.305/93 quashed the order of termination by upholding the plea of the petitioner that before issuing the order of termination no showcause notice had been issued to the applicant ~~the applicant~~ and principles of natural justice had not been followed. While quashing the order of termination, the Tribunal held that the petitioner shall not be entitled to any back wages and liberty was given to the appointing authority to proceed further in the matter if he so desires after complying with the principles of natural justice. It is submitted by the learned Additional Standing Counsel that in pursuance of the order dated 7.7.1993 of the Tribunal in OA No.305/93 the applicant was reinstated in service in order dated 29.7.1993 at Annexure-1 and in order dated 7.1.1994 a showcause notice was issued to him indicating that his services would be terminated on expiry of one month from the date of receipt of the notice by the

applicant, which is 27.1.1994. In this petition the petitioner has prayed for quashing the notice at Annexure-2. As we have already noted, the Tribunal in their earlier order in OA No.305/93 had given liberty to the departmental authorities to proceed further in the matter and in pursuance of that Annexure-2 has been issued. On the top of Annexure-2 it is clearly written that it is a showcause notice. In the showcause notice the action proposed against the applicant was also intimated to him. It has been indicated that his services would be terminated on expiry of one month from the date of receipt of the notice. After getting the showcause notice the applicant has not submitted any showcause to the departmental authorities but has straightaway rushed to the Tribunal. From the pleadings in the earlier case it appears that the stand of the departmental authorities is that the applicant has been illegally selected for the post ignoring the case of another candidate who has got much higher percentage of marks than the applicant. The instructions of Director-General, Posts, make it clear that selection for the post of EDBPM should be decided by selecting from amongst the eligible candidates the person who has got higher percentage of marks in High School Certificate or equivalent examination. From the pleadings of the respondents it appears that there is a prima facie case of illegality in selecting the applicant. In view of this, the applicant cannot be allowed to continue to enjoy the benefit of such illegal action of the departmental authorities of which he is the beneficiary. The applicant has rushed to the Tribunal after getting the notice without submitting any representation to the departmental authorities about whatever he has to say. We also note that in this case the applicant has continued in

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the post to which prima facie he has been illegally appointed for over five years because of the stay order given by the Tribunal. In consideration of the above, as the applicant has not availed of the opportunity of submitting his showcause to the departmental authorities, we hold that he has not been able to make out a case for quashing the notice at Annexure-2.

6. In the result, the Application is held to be without any merit and is rejected but, under the circumstances, without any order as to costs. The stay order is vacated.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
8.10.99

AN/PS