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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 105 OF 1994.

Cuttack, this the 11th day of October, 1999.

SURENDRA KUMAR ROUT.

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APPLICANT.

- VERSUS -

UNION OF INDIA & 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
11.10.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 105 OF 1994.

Cuttack, this the 11th day of October, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

&

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

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Surendra Kumar Raut,
S/o. late Muralidhar Raut,
EDBPM Votaka Branch Post Office,
Dist. Jajpur, a permanent resident
of Votaka, Po. Votaka, Dist. Jajpur.

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APPLICANT.

By legal practitioner: Mr. Biswajit Mohanty-1, Advocate.

-VERSUS-

1. Union of India represented by
Director General of Posts,
Sansad Marg, Dak Tar Bhawan,
New Delhi.
2. Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Supdt. of Post Offices,
Cuttack North Division,
Cuttack.
4. Postmaster, At/Po/Ps./Dist. Jajpur.
5. Rama Chandra Sahoo,
of Village-Ichhapur,
earlier working as EDBPM,
present address not known,
Votaka Branch Post Office,
C/o. Supdt. of Post Offices,
Cuttack North Division,
CUTTACK.

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RESPONDENTS.

By legal practitioner: Mr. A. K. Bose, Senior 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 a direction to Respondents 1 to 4 to regularise the service of applicant as EDBPM, Votaka in the District of Jajpur. For the purpose of considering this Original Appl. it is not necessary to go into too many facts of this case. It is necessary only to note that the admitted position between the parties is that one Shri Rama Chandra Sahoo was earlier working as EDBPM, Votaka Branch post office. He was put off duty and was also criminally proceeded against because of certain lapses. He was put off duty in 1983 and in the put off duty vacancy, after due process of selection, the present applicant was selected. In the appointment order of applicant, it was specifically mentioned that his appointment is during the put off duty vacancy in that post. Applicant continued as EDBPM from 1983. In 1990, the Departmental Authorities apparently reviewed the old suspension case and came to the conclusion that the Departmental proceeding as also the Crl. case against Res. No. 5 will take some more time to get finalised and therefore, it was decided to reinstate Shri Rama Chandra Sahoo, Respondent No. 5. Accordingly, the impugned order at Annexure-A/4, was issued on 17.9.90 to re-instate Shri R.C. Sahoo terminating the provisional appointment of applicant. It was specifically ordered that the provisional appointment is ordered to be terminated from the date of joining of Shri Sahoo, Res. No. 5. The case of applicant is that even after this order dated September, 1990, R.C. Sahoo,

SJM

Res. No. 5, did not join. He made some move for joining.

Applicant there upon approached this Tribunal in this O.A. and obtained an interim order of stay allowing him to continue. This order dated 11-3-1994 has remained in force for the last five years. In course of hearing, it has been noted that notice to Respondent No. 5 has been issued by Regd. Post but the notice has not been served on him. Applicant has given the address of Res. No. 5 in the same old Branch Post Office at Yotaka where he was working, prior to filing of this OA. Though he has mentioned the name of the village at Ichhapur further details of the village has not been furnished. As the notice has not been served on the Res. no. 5, this petition is dismissed as against Res. No. 5 on the ground of non-service of notice and non-furnishing the correct address of Res. No. 5.

2. We have heard Mr. B. Mohanty-1, learned counsel for Applicant and Mr. A. K. Bose, learned Sr. Standing Counsel (Central) appearing for the Respondents and have also perused the records.

3. It is submitted by learned counsel for the applicant that the applicant was appointed through a regular selection process even though for a period of put off duty vacancy and even though he has continuously worked in that post from 1983 for about 16 years, his services have not been regularised and therefore, a direction be issued to the Respondents to regularise his services more so because by this time, he has become overaged, in any other post except in ED posts.

4. It has been held by the Full Bench in O.A.

315/1990 in the case of R.N.Naik Vrs. Union of India even though and others that ED employees/appointed on provisional basis, can not be treated with casual labourers and the ^{at far} rules for regularisation of casual labourers are not applicable to such ED employees. Therefore, the prayer for regularisation of the services of applicant in the post of ED posts is held to be without any merit and is rejected.

5. It is next submitted by learned counsel for the petitioner that even though the impugned order was issued ^{Respondent No 5} in 1990, applicant was not found in his village or in the post office in that year. It is only in 1994, that he made some attempt to rejoin and that is why ^{The applicant} ^{he has} come to ^{JJM} this Tribunal in 1994 and obtained a stay. It is also submitted by learned counsel for the petitioner that in the impugned order issued in September, 1990, it has been mentioned that the provisional appointment will stand terminated on the joining of Respondent No.5 to the post and therefore, his prayer for quashing the impugned order at Annexure-4 is within the time. We are unable to accept this contention because ex-facie the order is dated ~~27.9.1990~~ and the applicant has approached this Tribunal for quashing the order in 1994 even without filing a petition for condonation of delay. Therefore, the prayer for quashing the order at Annexure-4 is held ^{to be} beyond the period of limitation and is accordingly rejected.

JJM

6. In the result, therefore, we hold that the applicant has not been able to make out a case for getting regularised in the post of EDBPM, Votaka. This prayer is also apparently held to be without any merit and is rejected. ^{J Jom.} The interim stay is also vacated.

7. The other aspect of the matter is that the applicant was duly selected through a process of selection after getting his name sponsored from the employment exchange and he has continuously worked for a period of sixteen years in the post of EDBPM, Votaka. The Departmental Authorities have decided to reinstate the original incumbent in the Post of EDBPM, Votaka ~~to~~ who was put off duty and in case the original incumbent, Respondent No.5 turns up to join, the applicant will be shunted out from the post of EDBPM, Votaka for no fault on his part.

J Jom.
Instruction dated 18th May, 1979 of DG of Posts gist of which has been printed at pages 64 and 65 of Swamy's Compilation of ED Rules (4th edition) provides that where an ED agent is disengaged from service for reasons unconnected with his conduct and in case he has completed more than three years of service, his name should be kept in a waiting list and he should be adjusted in some other nearby post. In consideration of this, we further direct the Respondents that in case Respondent No.5 turns up to join and he is allowed to join the post of EDBPM, Votaka, the case of the applicant should be put in a waiting list and he should be offered a post of EDBPM in some nearby EDBPM Post. As a matter of fact in order to avoid the applicant being thrown out of job, it would be better if the Respondents take up the

case of adjusting the applicant in a nearby post even before joining the Respondent No.5 so that he is not thrown out of the employment.

8. In the result, with the observation and direction the Original Application is disposed of. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.