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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 682 OF 1995

Cuttack this the 22nd day of March, 1996

PREMANANDA MALLIK

...

APPLICANT

VRS.

UNION OF INDIA & OTHERS.

...

RESPONDENTS

FOR INSTRUCTIONS

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


(H. RAJENDRA PRASAD)

MEMBER (ADMINISTRATIVE)

15 FEB 96

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 682 OF 1995

Cuttack this the 22nd day of March, 1996

CORAM:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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Sri Premananda Mallik,
S/o. Brundaban Mallik,
Postal Assistant
now working as N.S.C.-I Cuttack
counter assistant, Cuttack GPO,
At/Po/Dist. Cuttack.

... **Applicant**

By the Applicant : Mr. G. A. R. Dora & V. Narasingham, Advocate.

Versus

1. Union of India through Director General of Posts, Ministry of Posts, At-Lodi Road, New Delhi.
2. Chief Postmaster General, Orissa At/PO. Bhubaneswar, Dist. Khurda.
3. Director of Postal Services, Headquarters Region, At/PO. Bhubaneswar, Dist. Khurda.
4. Sri Govinda Chandra Parida, now working as Postal Assistant Cuttack GPO, At/PO/Dist. Cuttack.

Respondents

By the Respondents 1 to 3 : Mr. Akhaya Kumar Mishra, Additional Standing Counsel (Central).

By the Respondents No.4 : M/s. Pradipta Mohanty, D. N. Mohapatra
G. Sahoo, Advocates.

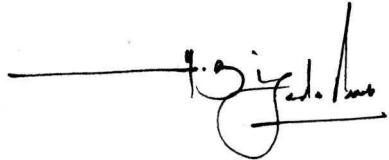
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MR. H. RAJENDRA PRASAD, MEMBER(ADMN.):

The applicant, Sri Premananda Mallik, is a Postal Assistant in Cuttack (City) Division. He passed the Post Office Savings Bank Aptitude Test in August, 1990. On 13. 7. 1995, he was posted to work in N.S.C.-I counter in Cuttack G.P.O. He joined the said post on 30th August, 1995. While he was continuing as N.S.C.-I counter clerk thus, one Shri G.C. Parida, Ledger Clerk in the Savings Bank Branch of the Cuttack G.P.O. was ordered to be posted against the N.S.C.-I Counter on which the applicant, as already stated, was working from 30th August, 1995.

2. The applicant is aggrieved by the decision of the authorities to post Sri G.C. Parida to NSC-I counter on the following grounds:

- a) The said Parida was Junior to the applicant in service;
- b) He had passed the Post Office Savings Bank Aptitude Test after (i.e., later than) the applicant;
- c) He has not completed his tenure of two years as Ledger Clerk in Cuttack GPO, and that his shift from the seat of Ledger Clerk to NSC counter was, therefore, premature and against the rules of the Deptt.



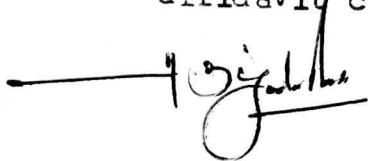
3. The applicant prays, on the above stated grounds, for setting aside the impugned order in Annexure-A/5, and also to declare that Shri Parida (Respondent No.4) is not entitled to be posted against NSC I Counter.

4. In the preliminary counter filed on behalf of Shri G.C. Parida, it is submitted that the applicant had himself duly completed his overall tenure of five years in S. B. Branch and is not entitled by rules to continue in any seat in the Branch beyond his full tenure. It is further mentioned that he (Parida) being the ^{next} senior-most qualified person was entitled to be considered for a posting against the said post. It is stated by this official i.e., Mr. Parida, that he had been waiting for long for a posting in the S. B. Branch in his turn but the same had been denied to him for some reason, owing to which denial he continued to represent to various authorities like the Senior Post Master, Senior Superintendent of Post Offices, and, eventually, to the Director of Postal Services and the Chief Postmaster General. His representation was finally considered and disposed of by the issue of the



impugned order. Next it is mentioned by the said Respondent that the posting of the applicant in the NSC-I counter was a hasty action on the part of the Senior Post Master in view of the fact that the Senior Superintendent of Post Offices had ^{specifically} asked him to await the decision of the Director of Postal Services on the claims of posting of the respondent (Parida) as well as two other officials, to the NSC-I counter. It is revealed for the first time that the applicant had already completed more than two years at the NSC-counter in the College Square Sub-post Office, located in the same city, before he was transferred to Cuttack G.P.O. Furthermore, the applicant had also worked as Ledger Clerk in the Savings Bank Branch of Cuttack GPO for more than three years. In this manner, the applicant had completed more than five years of service in S.B. Branch, i.e., beyond even the maximum tenure in an allowance post. On the basis of the above arguments, OP No. 4 asserts that the original Application filed by the applicant is devoid of merit and is liable to be dismissed.

5. The Departmental Respondents, in their counter-affidavit confirm that the applicant had indeed worked on



the Savings Bank Certificates counter in College Square S.O. from 1.6.1990 to 26.6.1992, and then as Ledger Asst. in Cuttack G.P.O. for more than 3 years from 27.6.1992 to 29.8.1995. Thus, the applicant had worked in an allowance post in the Savings Bank Branch continuously from 1.6.1990 to 29.8.1995, i.e., more than the maximum tenure in an allowance post. It is added that the five-year tenure fixed for the Savings Bank Branch is not limited to any one office but is the cumulative tenure of an official in an allowance post in one, or more than one office, within a Division. Since the applicant had initially duly worked ^{initially} as counter-clerk, next as Ledger Clerk, and then again as Counter-Clerk, in the same city in two different offices, he had thus completed five years allowed to him by the rules, and has no claim, therefore, for continuance in any allowance post any longer. It was mentioned in this connection that Cuttack GPO is not an independent unit, and also that reserve-list of aptitude-test-passed-candidates is maintained on a divisional basis. The Senior Postmaster has no authority to post any one from/to his office to/from any other office. Such movement has to be essentially controlled by the Senior Superintendent of Post Offices who is the Head

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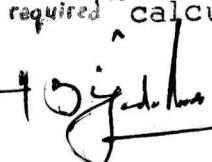
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of the Division whereas the Senior Postmaster is
the head ^{of} only his office. It was further pointed
out that the initial order posting the applicant
to NSC-I counter was passed ^{by} only a Deputy Post
Master in the absence of Senior Postmaster who
happened to be on leave, and it was not a correct
order as per the tenure rules. Finally, it was submitted
by the Respondents that Annexure-5 does not in any
manner concern the applicant, and that the orders
therein were only passed on consideration of the
representation of Shri Parida. Therefore, the question
of the posting of the respondent No. 4 (Parida) to
Cuttack GPO "behind the applicant's back" does not arise
since the applicant was in no way directly concerned
with Parida's own request for posting.

5. In a rejoinder to the preliminary counter
to the Original Application, it is stated on behalf
of the applicant that the two-year spell on the counter
of the College Square Sub Post Office has no connection
with his subsequent posting at the NSC-I counter of
GPO, and, that the earlier spell cannot be taken into
reckoning calculating the overall tenure of an official
in the S. B. Branch. The applicant ^{draws} attention
to certain instances of officials having been retained

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in allowance^d posts beyond five-year tenure. The names of S/Shri Ajaya Kumar Naik, P.C. Murmu and Bimal Prasana Das are mentioned in this connection. In his rejoinder to the counter filed by the Departmental Respondents, the applicant argues that while the Senior Superintendent of Post Offices is competent to transfer Postal Assistant from one unit to other in the Division, the powers to shift them within the same office are not available to him but are exercised by the Senior Post Master, and that is precisely what has happened in this case. His posting to NSC counter from Ledger Clerk's position was a transfer within an office and was duly ordered by a competent authority, viz., Sr. Postmaster. No authority other than the Senior Postmaster can exercise this power. It is argued that each office is an independent unit and the tenure in each of these offices shall be five years in allowance^d posts, independent of each such posting.

6. The entire matter forming the core issue of this case revolves around only one question i.e., whether or not the overall tenure of five years, is required to be calculated for each successive posting in a different

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office within the same Division, separately, or a total arrived at by adding these separate postings. A categorical answer to this would settle the issue.

7. It is seen from the record of the case that the Director-General of Posts has fixed an overall tenure of five years in Head Offices and bigger sub offices having full time SB/SC clerks, out of which three years can be as Counter Clerk, Ledger Clerk or Supervisor, continuously. (It was decided later that the counter Clerks in Head post Offices having instant-counter facilities will be rotated every two years instead of three years). It was forcefully argued on behalf of the applicant that these rules, and all instructions issued thereunder, have the force of law and nothing can, therefore, be added or altered from the rule as it exists. It is his contention that the present rule does not permit any interpretation which combines the tenures in a Head Office and Sub Offices for the purpose of counting the overall maximum tenure in the Savings Bank Branch, and that this Tribunal is not competent to insert any clause which does not exist in the rule.

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8. The rule as it exists has to be necessarily interpreted in terms of facts/realities. These are:(1) All posts, in the Savings Bank Branch carry a special allowance of Rs. 60/- per month (2) The number of such posts available is less than the number of officials who qualify for postings on account of their passing the Aptitude test (3) Consequently, there is a competition among such qualified officials and each of them has to be accommodated in the allowed posts to the maximum extent possible (4) This fact alone makes it necessary for a reserve - list of qualified candidates to be maintained with a view to ensuring that the maximum number of qualified candidates get an opportunity to work against the allowed posts, in order of their seniority in the reserve - list; (5) Such list has to be necessarily maintained at the divisional level because the deployment amongst various offices/ units has to be controlled by the Senior Superintendent of Post Offices.

9. In view of the above, it is unarguable that the deployment of eligible officials among various units/ offices within a Division has to be regulated by the Senior Superintendent of Post Offices alone. From this position



it follows that the authority and responsibility for rotating the officials, not only among the various units in the Division, but also from Savings Bank to other Branches, in keeping the overall tenures fixed by the Director-General of Posts, is vested in the Divisional head alone. In this view of the matter, the contention of the applicant, that the Senior Superintendent of Post Offices has no role to play in ^{the} rotation of officials within the Cuttack G.P.O., is not acceptable. It is not merely the question of rotating officials within Cuttack GPO, but a question of rotating them among various offices, and also in and out of allowed ^{here.} posts, that is involved. This cannot certainly be done by the Head of any one office but by the Head of the Division.

10. As regards the contention that the College square and Cuttack G.P.O. are separate units, the same does not stand scrutiny. It is an inadmissible argument that the GPO is an independent unit. It is a part of the Division for all purposes. The Senior Postmaster has no independent power over and above those of the Divisional Head. To that extent, any spell of work in the Savings Bank Branch of any single office within the Division has necessarily and inescapably to be counted

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for determining the overall tenure. This can be done by the Senior Superintendent of Post Offices and not by the Senior Postmaster. Moreover, pure logic and common-sense would dictate that where the proportion of eligible candidates is in excess of the number of available posts to absorb them, every effort has to be made to afford an opportunity of posting in allowed posts to maximum number of eligible officials. This primary aim cannot be met if long spells in allowed post put-in by one eligible official are ignored, no matter whether such spells are in one or more offices. Thus, keeping others waiting for indefinitely long periods, by retaining others who have already done their maximum period, is incorrect. No Departmental Rule, or Law, can be interpreted to have any implication other than this simple logical explanation. It is not a question of inserting non-existent provisions or interpretations ^{to} existing rules, but one of logical interpretation of a straight-forward proposition of rules consonant with equity, justice and straight and simple logic.

11. In the light of the preceding discussion, it is held and categorically ruled that all spells of service put-in by an eligible official in the Savings Bank Branches of various offices within a Division, regardless of their (local or mofussil) location, have to be counted together, to



determine the overall five-year tenure. This position does not admit of any ambiguity.

12. It was also mentioned by Shri G. A. R. Dora on behalf of the applicant that the work of S.B. Ledger-Clerk is far more "strenuous" and that the duties of the N.S.C. Counter Clerk are lighter of the two. I do not consider it necessary either to make or accept any such distinction. Every post in the Savings Bank Branch carries its own duties and responsibilities and it is not for this Tribunal to determine, if at all, of these post is 'lighter' or 'heavier' or to determine the order in which officials have to be posted or rotated as Ledger Clerks or Counter Clerks. These are to be determined and decided by the authorities concerned and courts have no role to play in this. The argument is, therefore, not to be considered at all in deciding this case.

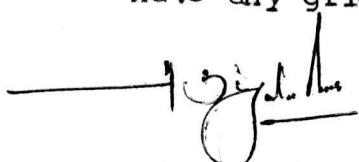
13. Certain allegations and charges against the applicant have been mentioned by the counsels for the Respondents. The applicant on his part sought to explain and refute these charges. It is not considered necessary to deal with any of the charges, or the explanations

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pertaining thereto, since these are not germane to the main issue. The case has to be decided entirely on the question of tenures as fixed by the Department, and any instance of good or bad work by a particular official is not relevant for the purposes of the present case, except to state, generally, that it is, firstly, for the authorities concerned to tackle these matters in the manner they consider best, and, secondly, that it is open to them to decide the suitability of individual officials for specific posts/tasks as long as their overall rights are not jeopardised in a wilful or impermissible way. The charges and every reference or explanation relating to them against ^{or by} Paramananda Mallick are, therefore, ignored in deciding this case. In his rejoinder to the preliminary counter filed on behalf of the Respondent No. 4, the applicant wonders as to why is ^{he, i.e.,} Respondent no. 4 so particular about his posting as Counter Clerk as the post carries the same allowances as of a Ledger Clerk, a post now held by him. At other place he also states that since Respondent No. 4 has been duly posted as Ledger Clerk in SB Branch on an allowed post, he should not have any grievance regarding his non-posting on a counter.



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It is to be observed in this connection that the grievances and expectations of Respondent No.4 are exactly the same as those of the applicant himself!

If the applicant can assert his own claims based on exactly identical grounds, it is not for him to wonder why the other party is doing the same.

14. After a close scrutiny of all related facts of the case, it is held that: (1) the applicant Shri Premananda Mallick, being the senior to Respondent No.4, Shri G.C. Parida, and having passed the incentive test earlier than Opp. Party No.4, was rightly given priority in posting against an allowed post in College Square Sub Post Office; (2) the two-year spell of the applicant on the N.S.C. counter in College Square Post Office has to be duly taken into consideration in determining ^{his} overall S.B. tenure;

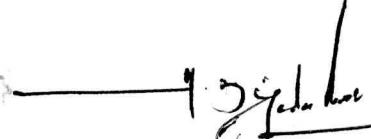
(3) the applicant has no claim to be considered for further continuance in N.S.C. counter of the G.P.O. after completion of his overall tenure when other eligible officials, who have similarly passed the prescribed incentive test and have thereby become eligible, are awaiting their turn for a posting to any of the allowed

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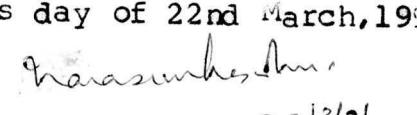
posts in the Branch as per their turn; (4) the impugned order (Annexure -5) cannot be set aside since the same is in no way directed against the applicant; (5) the posting of Shri G.C.Parida against the N.S.C.-I counter of Cuttack G.P.O. is quite in order. The applicant has no claim to continue either at N.S.C. counter or in the S.B. Branch beyond the prescribed tenure.

15. The Original Application is disallowed and disposed of. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

15 FEB 96

As authorised by Hon'ble vice-Chairman
KN Mohanty. order is pronounced in open court
on this day of 22nd March, 1996.


N. SAHU

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(N. SAHU)
MEMBER (ADMINISTRATIVE)