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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 251 OF 1996.
Cuttack, this the 6th day of September, 2002.

CHITRAREKHA PANDA.

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APPLICANT.

VRS.

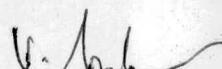
UNION OF INDIA & ORS.

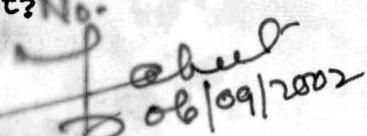
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RESPONDENTS.

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 or not? No.


(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

06/09/2002

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 251 OF 1996
Cuttack this the 6th day of August 2002

CORAM:

THE HON'BLE MR. V. SRIKANTAN, MEMBER(ADMINISTRATIVE)
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER(JUDICIAL)

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Smt. Chitrarekha Panda, aged about 38 years,
wife of Bhagyadhar Panda - at present working
as E.D.B.P.M., Dyke-I, B.O. under Balimela
Sub-Post Office, Koraput Division, Dist-Koraput

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Applicant

By the Advocates

M/s. A. Deo,
B. S. Tripathy
R. Mohapatra
S. K. Mishra
D. K. Sahoo

- VERSUS -

1. Union of India, represented through
Chief Post Master General, Orissa Circle,
At/PO-Bhubaneswar, Dist-Khurda
2. Senior Superintendent of Post Offices,
Koraput Division, At/PO-Jeypore,
Dist-Koraput
3. Sub-Divisional Inspector (Postal),
Malkanagiri, Dist-Koraput

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Respondents

By the Advocates

Mr. S. B. Jena, A.S.C.

ORDER

MR. M. R. MOHANTY, MEMBER(JUDICIAL) : Heard Shri B. S. Tripathy,
the learned counsel for the Applicant and Shri S. B. Jena,
learned Addl. Standing Counsel appearing on behalf of the
Respondents.

2. The Applicant was appointed as Extra Departmental
Branch Post Master (in short EDBPM) Dyke-I Branch Office
under Balimela Sub Post Office since 30.6.1992, on the
strength of appointment order issued under Annexure-1
dated 1.3.1994. It has been claimed in the original

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Application that she was working as a substitute in the said post since 28.12.1991. It has been further claimed in the body of the Original Application that the Applicant prayed to her authorities to be regularised in the said post of EDBPM, but no heed were paid to her grievances and that she received a termination order under Annexure-2 dated 12.3.1996 and in the said premises, after submitting representation under Annexure-3 dated 19.3.1996, the Applicant filed the present Original Application under section 19 of the A.T.Act,1985; because she faced with the order of termination in gross violation of the principles of natural justice/Article 14 of the Constitution of India with the prayer to quash the order of termination under Annexure-2, dated 12.3.1996 and to direct the Respondents to regularise the applicant in the post of EDBPM, Dyke-I BO.

3. In the counter filed by the Respondents it has been disclosed that one Shri Bhagyadhar Panda was the Branch Post Master of the Post office in question had been appointed w.e.f 24-2-1982 and that said Shri Panda went on leave from 28.12.91 to 24-6-1992 and from 1.7.1992 to 31.3.1992, by substituting the present Applicant. Thereafter, said Shri Panda having tendered his resignation the Applicant continued to work as substitute EDBPM and an attempt was made to fillup the said post on regular basis, by requisitioning the names from the Employment Exchange on 17.11.1992; the Employment Exchange having expressed non-availability of candidates, public notices were issued on 28.12.1992, 14.5.1994, 9.8.1994 and 2.6.1995 in order to fillup the post in question and since no candidates were available, the present applicant was allowed to continue as before and that since the applicant is a plucked matriculate, her case should not be considered.

4. Shri B.S.Tripathy, the Learned Counsel for the Applicant submitted, at the hearing, that before terminating the services of the Applicant, no notice was given to her to have her say in the matter; and that when the Department was not able to find out a suitable person to man the post of E.D.B.P.M./G.D.S. B.P.M., of the Post Office, in question, the Applicant having served the Department, for a long time, to the best satisfaction of her authorities (even without finding a suitable person to man the post of EDBPM), the services of the Applicant ought not to have been terminated. As regards, the educational qualification, it has been submitted by the learned counsel for the Applicant that since, according to the Respondents, the post fell vacant permanently sometime in the year 1992, as per the Rules governing the field, at the relevant time, the petitioner being a plucked matriculate, is entitled to be absorbed; because revision of educational qualifications for recruitment of EDAs making matriculation as the qualification for the post of EDBPM has been circulated vide G.I. Dept. of Posts letter No.17-366/91-ED & Trg, dated 12-3-1993 wherein it was specifically pointed out that this order will come into force with effect from 1-4-1993. In support of the above submissions, learned counsel for the Applicant has relied upon the decision of the Hon'ble Supreme Court of India reported in AIR 1983 SC 852 in the case of Y.V.RANGAIAH AND OTHERS vrs. J.SREENIVASA RAO AND OTHERS, wherein it has been held

by the Hon'ble Supreme Court that "Vacancies which occurred prior to amended rules, would be governed by old rules and not by new rules".

5. The main plank of the case canvassed by the learned counsel for the Applicant, at the time of hearing, is that the services of the Applicant were terminated in gross violation of the principles of natural justice/ Article 14 of the Constitution of India, even though she is entitled to continue having eligible for the post, as per the recruitment rules at the relevant time, and therefore, the order of termination under Annexure-2 is not sustainable. In reply thereto it has been stated on behalf of the Respondents that since the Applicant was an Ad-hoc employee, no natural justice was required to be followed; especially when she was a plucked matriculate when the public notice was issued inviting application for the post.

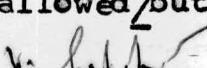
6. "Notable to answer is no answer for denial of natural justice". Since admittedly, the post having been fallen vacant sometime in the year 1992, Rules governing the field with regard to selection and appointment for the post of EDBPM, ought to have been followed by the Department. Further when the Applicant served as EDBPM and the Department was unable to find out a suitable hand to substitute her, she should not have been thrown out of employment (even without finding out a suitable hand to substitute her) without giving a notice. There has

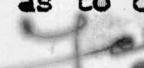
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also been no whisper in the counter about the working of the Applicant as Extra Departmental Branch Postmaster. Therefore, she should have been given an opportunity to have her say in the matter before termination of her services; especially, when she was allowed to continue in service indefinitely/without any definite terminee being fixed.

7. For the reasons discussed above, we hereby quash/set-aside the order of termination under Annexure-2 dated 12-03-1996 (for it was passed against the Applicant in gross violation of the principles of natural justice/Article 14 of the Constitution of India) and since the Applicant has not come to the post in question through any regular process of selection, the Respondents are given liberty to go ahead with the process of selection for filling up of the post, as per the rules prevalent before 1-4-1993 and in that event, the case of the Applicant, may also be considered alongwith others. Till a regularly selected candidate joins the post of EDBPM, Dyke-I BO, the Applicant shall be allowed to continue.

8. In the result, therefore, this Original Application in part is allowed but without imposing any order as to costs.


(V. SRIKANTAN)
MEMBER(ADMINISTRATIVE)


06/09/2002
(MANORANJAN MOHANTY)
MEMBER(JUDICIAL)