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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NO. 430 OF 1996
Cuttack, this the 14th day of February, 2003

Amar Singh Majhi Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? ✓
2. Whether it be circulated to all to all the Benches of the Central Administrative Tribunal or not? ✓

14.02.03
(M.R.MOHANTY)
MEMBER(JUDICIAL)

B.N.SOM
(B.N.SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

Sri Amar Singh Majhi, aged 23 years, son of Sri Budha Majhi, village
Sindhi Jaba, Post Gopalpur, Dist. Kalahandi..... Applicant

Advocate for the applicant - Mr.P.K.Padhi

Vrs.

1. Union of India, represented by its Chief Post Master General, Orissa Circle, At/PO Bhubaneswar, District Khurda 751 001.
2. Superintendent of Post Offices, Kalahandi Division, At/PO Bhawanipatna, Dist. Kalahandi, 766001
3. Assistant Superintendent of Post Offices, Kalahandi Sub Division, At/PO Bhawanipatna, Dist. Kalahandi 766 001.
4. Daitari Sahu, son of Chaitanya Sahu, Village/Umer, P.O. Ranmal, Via Charbahal, Dist. Kalahandi.

..... Respondents.

Advocate for respondents - Mr. A.K.Bose, Sr.C.G.S.C.

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O R D E R
HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

The applicant, Shri Amar Singh Majhi has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for

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quashing Annexure 2, the order dated 13.6.1996 issued by Respondent No.3 directing the applicant to hand over the charge of Sindhipadar B.O. to Respondent No.4, Shri Daitari Sahoo, and for a direction to Respondent No.2 to allow the applicant to continue as E.D.B.P.M, Sindhipadar B.O.

2. The applicant's case is that he was appointed as E.D.B.P.M., Sindhipadar B.O. with effect from 28.7.1993. The applicant has averred that by the date of filing of the Original Application, he had completed 2 years 10 months and 23 days in the said post and had discharged his duties to the satisfaction of the public and that of the Department. All of a sudden, Respondent No.2, the Assistant Superintendent of Post Offices, Kalahandi Sub-Division, issued order dated 13.6.1996 (Annexure 2) directing him to hand over the charge of the Branch Office to Respondent No.4. It has been alleged in the O.A. that before issuing the said order at Annexure 2, Respondent No.3 has not issued any notice or chargesheet. No transfer or posting order has also been issued to him. He had made a representation on 6.6.1996 to Respondent No.2 to sanction his salary, but Respondent No.3 issued the order at Annexure 2 with the direction as referred to earlier. The applicant has submitted that the order at Annexure 2, which amounts to his removal from service, having been issued without following the principles of natural justice and without initiating any

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disciplinary proceedings, is illegal and liable to be quashed, being violative of the provisions of the Constitution.

3. The departmental Respondents, in their counter, have refuted the allegations made by the applicant. They have stated that when Sindhipadar Branch Post Office was opened on 13.2.1993, the Overseer of Mails took over the charge as E.D.B.P.M. The Employment Officer, Bhawanipatna, was requested on 1.2.1993 to sponsor names of candidates for the post of E.D.B.P.M. The names of six candidates were sponsored by the Employment Officer on 23.3.1993. Out of the said six names, no candidate belonging to the post village was sponsored. The qualification for the post of E.D.B.P.M. was revised from Class VIII to Matriculation by the letter No.17-366/91/ED & TRG, dated 12.3.1993 (Annexure A). Therefore, a local notification dated 26.3.1993 was issued calling for applications from candidates having the qualification of Matriculation standard. In response thereto, only one application was received and therefore, a fresh notification was issued on 29.4.1993 (Annexure B). In response to the said notification dated 29.4.1993, three candidates, including the applicant, applied for the post. Since none of them belonged to the post village, the Respondent No.3 was directed to visit Sindhipadar village and find out a suitable candidate either belonging to the post village or nearby villages. Pending receipt of the

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Reply from the Respondent No.3, a conditional appointment was given to the applicant on 22.6.1993 and the applicant furnished an undertaking that his service would be terminated in case a suitable candidate of the post village would be available (Annexure D). The applicant did not possess the required qualification of Matriculation. The Post Master General, Berhampur, was moved on 25.6.1993 for relaxing the educational and residential qualifications in favour of the applicant, vide Annexure E. On examination, the Regional Office by letter dated 26.7.1994(Annexure F) cancelled the selection of the applicant and directed for fresh selection by placing requisition with the Employment Exchange, but allowed the applicant to continue till regular candidate was available. When the Employment Officer informed about the non-availability of candidates and when three successive notifications, issued on 6.9.1994, 20.10.1994 and 8.11.1994, evoked no response, the Assistant Superintendent of Post Offices, I/C, Bhawanipatna, was directed on 28.11.1994 to collect applications of local candidates. The said Assistant Superintendent of Post Offices collected two applications, one from Sri Gaganbihari Patnaik and another from Sri Daitari Sahu (Respondent No.4). After collecting necessary documents from them, their applications were forwarded to the Regional Office. Thereafter the Director of Employment, the Gram Panchayat and Block authorities were requested to

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sponsor list of candidates for the selection to the post. After receipt of the information from the District Employment Officer, Kalahandi and the Junior Employment Officer, Mukhiguda, about the non-availability of the candidates, the selection for the post of EDBPM was finalized in favour of Respondent No.4 and the applicant was asked to hand over charge of the Branch Office to Respondent No.4. The applicant was also advised to apply for the post of EDDA/MC, but he did not turn up. The departmental Respondents have submitted that by Annexure 1 provisional appointment was given to the applicant for the period from 28.7.1993 to 30.6.1994, with the clear understanding that his provisional appointment would be terminated when regular appointment was made and he should have no claim for appointment to any post. The applicant was also intimated that his provisional appointment could be terminated at any time without notice and without assigning any reason therefore. It is in this background that the departmental Respondents have justified their action in directing the applicant to hand over the charge of the Branch Office to Respondent No.4, the duly selected candidate.

4. We have heard Shri P.K.Padhi, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel for the Respondents and have perused the records.

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5. We have given our anxious thoughts to the facts of the case and the submissions made by the learned counsels for the parties. Admittedly, pending regular selection to the post, the applicant was given provisional appointment to the post of EDBPM for a specific period and was allowed to continue for more than two years under the circumstances narrated above. It is also the admitted position that the applicant did not have the requisite qualification of Matriculation for regular appointment to the post. At the time of his initial appointment on provisional basis, he also did not have the said requisite qualification. It is the contention of the applicant that before issuing the order at Annexure 2, no showcause notice or chargesheet was issued to him. We find that the applicant was not appointed through a regular process of selection at any point of time. He was provisionally appointed to the post till the final selection of the candidate. The applicant had also given an undertaking (Annexure D) that he would vacate the office as and when a candidate was regularly selected and appointed to the post. In view of this, it cannot be said that there is any illegality in the order at Annexure 2 directing the applicant to hand over charge to Respondent No.4, the candidate duly selected for the post of EDBPM. As per his own undertaking and in terms of the letter of provisional appointment (Annexure 1), the applicant has to make room for the Respondent No.4 to assume the office of E.D.B.P.M.

6. In the above premises, we find no merit in the Original Application which is accordingly rejected. No costs.

~~Yours
14/02/03~~
(M.R.MOHANTY)
MEMBER(JUDICIAL)

~~Yours~~
(B.N.SOM)
VICE-CHAIRMAN

AN/PS