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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 225 OF 1998
Cuttack this the 23rd day of September, 1999

Basanta Kumar Mishra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.9.99

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.225 OF 1998
Cuttack this the 23rd day of September, 1999

CORAM:

**THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

...

Basanta Kumar Mishra,
aged about 42 years,
S/o. Sri Haladhar Mishra,
At: Mantapada, PO: Baradia,
P.S. Raikanika
Dist: Kendrapara

...

Applicant

**By the Advocates : M/s.B.Pujari
U.K.Mishra**

-Versus-

1. Union of India represented by
Director General of Posts,
Dak Bhawan, New Delhi-110001
2. Chief Post Master General,
Orissa Circle, Bhubaneswar
Dist: Khurda
3. Superintendent of Posts,
Cuttack North Division,
At/Po/Dist: Cuttack
4. Sub-Divisional Inspector(Posts)
At/PO: Pattamundai
Dist: Kendrapara

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Respondents

**By the Advocates : Mr.B.Dash,
Addl.Standing Counsel
(Central)**

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to Superintendent of Post Offices, Cuttack North Division(Res.3) to reinstate him to the post of Branch Post Master, Baradia Branch Post Office and to pay him full salary with allowances and other financial benefits from the date of put off duty till the date of reinstatement.

2. The case of the applicant is that while he was working as Extra Departmental Branch Post Master, Baradia Branch Post Office, he was put off duty on 27.6.1985 on the allegation of misappropriation of savings bank account money. The S.D.I.(P), Pattamundai loged an FIR on 23.4.1987 and after investigation a final report was submitted by the police. The departmental authorities filed a complaint case which was registered as G.R.Case No.331/87 in which trial continued for 10 years and on 25.1.1997, learned Chief Judicial Magistrate, Kendrapara acquitted the applicant ^{of} ~~from~~ the charge of defalcation. A copy of the judgment is at Annexure-2. Even though the applicant in course of his put off duty period prayed for subsistence allowance, the same was not paid to him. After his acquittal he prayed for reinstatement to the post of Branch Post Master, Baradia, but no action was taken in this regard by the departmental authorities, that is how the applicant has approached this Tribunal in this Original Application with the prayers referred to earlier.

3. Respondents in their counter have stated that

while the applicant was working as Extra Departmental Branch Post Master, Baradia, after investigation it was found that he had committed misappropriation of loss to the department in 29 Savings Bank Recurring Deposit and Time Deposit Accounts amounting to Rs.19, 977.40 and Rs.30,

~~No 30~~ 43260 as temporary misappropriation. An FIR was lodged, ~~inform~~ but the Police gave a report that the case was a mistake of fact. A protest petition was filed by the Department before the Criminal Court and ultimately a G.R. case 331/87 was initiated and in the judgment dated 25.1.1997, the applicant was acquitted. The Departmental authorities threupon decided to initiate departmental proceeding against the applicant. The averment made by the respondents in their counter in this regard is quoted below :

"...With reference to judgment and with the relevant records of the case the matter was examined for further course of action and it was considered to initiate suitable disciplinary action against the applicant on the liability of improper maintenance of departmental accounts and records by the applicant. The process of initiation of departmental action against the applicant is in progrss and the Departmental charge sheet under provision of rules has since been issued".

S. Jam.
The respondents have further stated that prior to amendment of the Rules regarding put off duty allowance in January, 1997, there was no provision for payment of put off duty allowance and after such amendment, the applicant is being paid the put off duty allowance. It is further stated by the respondents that as the applicant has been proceeded against deparmentally in respect of grave charges of misappropriation, his prayer for reinstatement should be rejected. On the above grounds the respondents have opposed the prayer of the

of the applicant.

4. We have heard Shri U.K.Mishra, learned counsel for the applicant and Shri B.Das, learned Addl. Standing Counsel appearing for the respondents and also perused the records.

We find that in this case the applicant has remained under put off duty for long 15 years from 1985 and during this period for the first 12 years, according to rule then in force, no put off duty allowance was payable to him. In this case the applicant was criminally proceeded against for temporary and permanent misappropriation of savings bank account, but he has been acquitted by the Criminal Court. Thereafter, as noted by us above, he has been proceeded departmentally for misappropriation of Govt. funds. In another Original Application No.440/98, filed by the same applicant, which has been heard to-day along with this case, we find that have been the charges in the departmental proceedings/ issued against the applicant on the ground of lack of absolute integrity and devotion to duty in the matter of certain amounts of money received by him on different dates from the depositors. In any case, when the respondents in their counter in this case have indicated that the charges made against him are due to irregular maintenance of accounts and in consideration of the fact that the applicant has remained under put off duty for 15 years we feel that ends of justice would be met in this case if the respondents are directed to reinstate the applicant to his post within a period of 30 days from the date of receipt of this order. It is accordingly so ordered.

SSM.

5. Learned counsel for the petitioner has filed a Misc.Application with copy to other side seeking enhancement of the put off duty allowance from 25% to 50%. The respondents have filed counter opposing this prayer. In view of our above direction, we do not intend to pass any order on this Misc.Application, because once the applicant is reinstated, he would be entitled to his regular allowance and the decision as to how the put off duty period will be treated will depend upon the finality of the departmental proceeding. In view of this no order is necessary to be passed on Misc.Application 490/99.

6. The Application is disposed of in terms of observations and directions made above, but without any order as to costs.


(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO


(SOMNATH SOM)
VICE-CHAIRMAN
Q3/9.99