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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS.39 & 40 OF 1998
Cuttack, this the 21st day of October, 1998

CORAM:

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

.....

In OA No. 39/98

1. Sri Ajit Kumar Das,
aged 24 years, son of P.C.Das, Kalaraput,
Rasulgarh, Bhubaneswar, a permanent resident
of Sarangpur, Jajpur.
2. Sri Pramod Kumar Behera, aged 26 years,
son of K.C.Behera, Balipatna,
PO-Marichpur,
Jajpur.
3. Subrat Kumar Ray, 29 years,
s/o Sudhir Kumar Ray of Alando, P.O-Some,
Jagatsinghpur, at present
Chahatanagar, Tulasipur, Cuttack

In OA 40/98

Kina Pradhan alias Kamalesh Pradhan,
aged 33 years, son of D.Pradhan,
S/2/58, Niladri vihar,
Chandrasekharpur, Bhubaneswar

....Applicants

By the Advocates - M/s A.K.Misra
J.Sengupta,
D.K.Panda
P.R.J.Dash
C.Mohanty
& G.Sinha.

Vrs.

In both the O.As

1. Director General of Posts,
Government of India,
New Delhi.
2. Chief Postmaster General,Orissa,
Bhubaneswar.
3. Manager, Postal Printing Press,
Mancheswar, Industrial Estate,
Rasulgarh, Bhubaneswar-10Respondents

By the Advocate- Mr.B.K.Nayak,
Addl.C.G.S.C.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

These two O.As. have been heard separately. But as the point for consideration is the same and the facts are also very similar, both these cases have been disposed of by one order.

2. In OA No.39/98, the three applicants have prayed for a direction to the respondents to appoint them as Bindery Assistants with effect from the date they were selected, i.e., on 6.3.1997 or within seven days along with arrear service benefits. The petitioners' case is that the Manager, Postal Printing Press (respondent no.3) advertised for six seats of apprenticeship trainees in the trade Book Binder in response to which 5000 persons applied. The minimum qualification was High School Certificate Examination or equivalent examination. The duration of training was for two years with stipend of Rs.290/- for the first year and Rs.330/- for the second year. It was also indicated that the candidates would be selected on the percentage of marks secured in H.S.C.Examination and thereafter there would be an aptitude test. The selected candidates were required to enter into a contract of apprenticeship with the Postal Printing Press. The three applicants successfully completed the training and the result was declared on 23.8.1995. The certificate obtained by applicant no.2 Pramod Kumar Behera from National Council for Vocational Training is at Annexure-1. On 8.5.1996 respondent no.3 published an advertisement in SAMAJ inviting applications for the post of Bindery Assistant and other categories of posts. Four vacancies were notified for Bindery Assistant out of which two were unreserved and one each was reserved for S.C. and S.T.

candidates. The advertisement provided that qualification would be Matriculation or equivalent and the trade certificate on successful completion of the training under the Apprentices Act. It was also indicated that the eligible candidates would be called to appear before a Selection Board by intimating the date, time and place of interview. The petitioners applied for the post of Bindery Assistant. Petitioner Nos. 1 and 2 also filed OA No.359/96 before the Tribunal for a direction to the respondents to absorb the applicants in the post of Bindery Assistant advertised on 8.5.1996. OA No.359 of 1996 was disposed of in order dated 9.12.1996 (Annexure-2). Relying upon the decision of the Hon'ble Supreme Court in the case of U.P.State Road Transport Corporation and another v. U.P.Parivahan Nigam Shishukhs Berozgar Sangh and others, AIR 1995 SC 1115, the Tribunal allowed the petition and directed that the respondents should scrupulously follow the directions of the Hon'ble Supreme Court and consider the applicants subject to their showing training certificates. It was indicated that they would be entitled to preference over other candidates. It was also directed that the respondents shall consider the case of the applicants and fill up the posts of Bindery Assistant as per advertisement dated 8.5.1996 within a period of six weeks from the date of receipt of copy of the said order. Respondent no.3 directed the petitioners to appear before the Selection Committee on 18.2.1997. The letter issued to applicant no.1 is at Annexure-3. Apparently, interviews were held on 18.2.1997 and 19.2.1997 and in letter dated 26.2.1997 (Annexure-4) the result of selection was published and it was indicated that these three applicants have been selected for the posts of Bindery Assistant. Thereafter the applicants

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were directed to furnish the required documents like original certificates, photographs, etc. Copy of a letter dated 6.3.1997 calling for such documents from applicant no.1 is at Annexure-5. Accordingly, the applicants submitted the necessary documents. The letter of applicant no.1 submitting the necessary documents is at Annexure-6. Thereafter, no orders were issued. Applicant no.1 filed a representation on 27.10.1997 (Annexure-7) praying for issuing of appointment order but without any result. Ultimately, in order dated 10.11.1997 the applicants were informed that recruitment to all categories of Press staff is banned and therefore, posting orders could not be issued to them without clearance from Directorate. The applicants filed further representations but without any result and that is why they have come up in this petition with the prayer referred to earlier.

3. In OA No.39/98 respondents in their counter have admitted that the applicants were selected for the post of Bindery Assistant for which recruitment test was held on 18.2.1997 and 19.2.1997. It is further submitted that while the recruitment test was going on the report of Fifth Pay Commission was published. The Commission in their report gave a suggestion for disbandment of the Postal Printing Press. Accordingly, respondent no.1 called for a self-contained note from respondent no.2 for consideration of Postal Services Board. Respondent no.2 also issued an order on 3.6.1997 to stop selection process. As a result, the recruitment process could not be completed. The matter has been referred to Director General of Posts (respondent no.1) and his instructions are awaited. The respondents have further stated that pursuant to the direction dated 9.12.1996 of the Tribunal in OA No.359/96 all steps were taken by

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respondent no.3 to complete the recruitment process. The applicants were selected, but they could not be issued appointment letters due to imposition of ban by the higher authorities. It is stated that as soon as the ban is lifted, respondent no.3 can issue appointment orders to selected candidates. It is further submitted that appointment of the applicants to the posts for which they have been selected has not been denied but only issue of appointment orders has been stopped till the lifting of the ban. As regards the prayer of the applicants for arrear service benefits, the respondents have pointed out that under FR 17 an official will begin to draw the pay and allowances of a post with effect from the date he assumes the duties of the post and therefore, arrear pay and allowances cannot be given to these applicants till they are appointed and they join their posts when they will be entitled to pay and allowances from the date they assume the duties of the posts. On the above grounds, the respondents have opposed the prayers of the applicants.

4. The applicants in their rejoinder have stated that respondent no.1 in his letter dated 10.4.1997 merely called for a note from respondent no.2 on the recommendation of the Fifth Pay Commission for disbandment of the Postal Printing Press. Respondent no.1 has not given any direction to stop recruitment in the Press and therefore, the ban order issued by respondent no.2 is without any justification and premature. It has also been stated that the Fifth Pay Commission's recommendation is only in the nature of a suggestion. Certain recommendations relating to emoluments, allowances, conditions of service, etc., were accepted by the Government and the decision was published in the Gazette dated 30.9.1997. Therefore, before 30.9.1997 respondent no.2 should not have issued

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the ban order dated 29.4.1997. Lastly, it is stated that in August, 1997 in Swamy News it has been pointed out that all vacant posts as on 1.8.1997 would stand abolished as per recommendation of the Pay Commission. But this is subject to the exception that posts in respect of which D.P.C. has already met or where selection has already been made or where appointment orders are under issue, will not be abolished. In view of this, the applicants have reiterated their prayer in the rejoinder.

5. In OA No.40/98 the applicant has prayed for a direction to the respondents to appoint him as Attendant Offset with effect from the date he was selected, i.e., on 6.3.1997 or within seven days, along with arrear service benefits. The applicant's case is that he had passed certificate course of I.T.I. in the trade Airconditioning and he had applied for the post of Attendant Offset in pursuance of an advertisement dated 8.5.1996 issued by respondent no.3. He appeared at the interview and was selected for appointment. In letter dated 26.2.1997 at Annexure-1 result of selection was published and the applicant was selected as an S.T. candidate for the post of Machine Attendant. In letter dated 6.3.1997 at Annexure-2 he was asked to complete the necessary documentation. Accordingly, in his letter dated 11.3.1997 (Annexure-3) he furnished all the necessary documents, but thereafter no appointment order was issued to him. Ultimately, respondent no.3 issued letter dated 10.11.1997 to petitioner nos. 1 and 2 in OA No.39/98 stating that recruitment of all categories of Press staff has been banned and no posting order could be issued without clearance from the Directorate. The applicant has further stated that in response to the

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letter of respondent no.3 asking him to submit necessary documents, he submitted the documents on 11.3.1997 and as the documents were with respondent no.3 he was unable to attend the interview in the Indian Airlines which was scheduled to be held on 12.3.1997. As no appointment order was issued to the applicant, he filed a representation dated 21.11.1997 (Annexure-5) and another representation on 9.12.1997 (Annexure-6) and the third one on 10.12.1997 (Annexure-7) seeking issue of appointment order for the post of Machine Attendant (Offset) but without any result. That is how he has come up with the aforesaid prayers.

6. In OA No.40/98 the respondents in their counter have submitted that in response to an advertisement dated 8.5.1996 for filling up of the post of Machine Attendant, the petitioner made an application and in the recruitment held on 19.2.1997 he was selected for the post. While the recruitment test was going on, the Fifth Pay Commission report was published in which there was a suggestion for disbandment of the Press. Accordingly, respondent no.1 in his note dated 10.4.1997 called for a self-contained note from respondent no. 2 for consideration of Postal Services Board on 17.4.1997. In view of this, respondent no.2 issued an order to respondent no.3 to stop selection process on administrative ground. Because of this, the selection process could not be completed. The respondents have further stated that the assertion of the applicant that he was an apprenticeship trainee in the Postal Printing Press is false. The applicant was never an apprenticeship trainee of the Postal Printing Press. It is further stated that the appointment order to the applicant could not be issued because of the ban order issued by respondent no.2. It is further

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stated that the claim for arrear service benefits is untenable because under FR 17 a person begins to draw the pay and allowances attached to a post with effect from the date he assumes the duties of that post. On the above grounds, the respondents have opposed the prayers of the applicant.

7. The applicant has filed a rejoinder in which he has stated that the Tribunal in their order dated 9.12.1996 directed to consider the case of the petitioners and to fill up the posts as per advertisement dated 8.5.1996 within a period of six weeks from the date of receipt of the said order. Thereafter the applicant was selected, but his appointment order has been withheld because of ban order issued by respondent no.2 basing on the direction of respondent no.1 regarding the suggestion of the Fifth Pay Commission to disband the Press. It is submitted by the applicant in the rejoinder that the recommendation of the Fifth Pay Commission is just a suggestion and it cannot reach finality unless the same is accepted by Government. Before the report of the Commission is accepted, respondent no.2 should not have issued direction to respondent no.3 to stop recruitment/appointment to posts in Postal Printing Press. It is also submitted that respondent no.1 has not issued any ban order and in view of this, respondent no.2 should not have stopped the process of recruitment. It is further submitted that in August 1997 in Swamy News it has been published that all posts vacant as on 1.8.1997 would stand abolished subject to the exception that where the D.P.C. has already met or where selection has already been made and where appointment orders are under issue, those posts will not be abolished. This recommendation having been

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accepted, the posts are in existence and therefore the petitioner has reiterated his prayer.

8. We have heard Shri Aswini Kumar Misra, the learned counsel for the petitioners and Shri B.K.Nayak, the learned Additional Standing Counsel appearing on behalf of the respondents, and have also perused the records. On the date of hearing, it was noted that according to letter dated 10.4.1997 of Director General of Posts addressed to Chief Post Master General which is at Annexure-11 of the rejoinder in OA No.39/98 it has been mentioned that the Pay Commission in their report in para (30,30 VOL.1) recommended that the Postal Printing Press at Bhubaneswar should be disbanded in view of the fact that ample market avenues are available for printing work. In this letter respondent no.1 has called for a self-contained note by 11.4.1997 positively to be considered by the Postal Services Board on 17.4.1997. In view of this, the learned Additional Standing Counsel was directed to intimate the view taken by the Postal Services Board on 17.4.1997 on this subject in case the matter was decided and a view was taken. The learned Additional Standing Counsel was also directed to obtain instructions regarding the approximate time that would be taken by the Government to take a final view in the matter. Thereafter in spite of four adjournments no memo was filed giving the above information and in view of this in order dated 13.10.1998 it was indicated that further time for getting the information would not be allowed and the matter was posted for delivery of orders on 21.10.1998. Thereafter on 14.10.1998 the learned Additional Standing Counsel filed two petitions asking for three months time for giving this information. In consideration of the fact that already four adjournments had been given,

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these two petitions asking for three months time were rejected.

8A. ²⁸ ~~Jfm.~~ Shri Aswini Kumar Misra, the learned counsel for the petitioners has submitted that after having selected the applicants in these two cases and after asking them to complete the necessary documentation, the respondents are estopped from denying the appointment to the applicants on the ground of recommendation of the Fifth Pay Commission which is pending decision as also on the ground of ban order. It is further submitted that the petitioners have legitimate expectation for being appointed to the posts for which they have been selected and denial of such appointment violates the principle of legitimate expectation which is enforceable in law. In support of his contention, the learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Prem Prakash etc. v. Union of India and others, AIR 1984 SC 1831. That case related to appointment to Delhi Judicial Service. The petitioners were two persons belonging to Scheduled Castes who were selected to be appointed to Delhi Judicial Service in respect of vacancies of 1980. They were duly selected, but appointment orders were not issued to them on the ground that by mistake two other S.C. persons who had been selected in 1979 had been left out and those two persons selected in 1979 had to be given appointment first and once they are given appointment, there would be no reserved vacancies against which the petitioners selected for 1980 vacancies could be appointed. The Hon'ble Supreme Court rejected the above stand and directed the petitioners to be appointed in accordance with their position in the merit list against 1980 vacancies. From the above, it would be clear that facts

of that case are widely different from the facts of the present two cases and therefore, that case has no application here.

9. The admitted position of both sides in these two cases is that the petitioners have been duly selected for the posts of Bindery Assistant and Machine Attendant. They have also completed the necessary documentation but their appointment orders have not been issued because of the fact that the Department is considering the recommendation of the Fifth Pay Commission for winding up the Press. As we have already noted, according to the letter dated 10.4.1997 of Director General of Posts (respondent No.1) this matter was due to be considered by the Postal Services Board on 17.4.1997. We have not been informed in spite of several adjournments what view if at all was taken on this recommendation by the Postal Services Board. It has also not been told to us in spite of our direction as to how much time would be taken by respondents to take a final view on this recommendation of the Fifth Pay Commission. The other side of the picture is that while direct recruitment for the posts has been stopped in view of the ban order issued by respondent no.2 in his letter dated 29.4.1997 at Annexure-12 of rejoinder in OA No.39/98, the respondents have given ad hoc promotion to different posts including the post of Bindery Assistant for which the petitioners in OA No.39/98 have been selected in order to manage the day-to-day work. From this ban order dated 29.4.1997 it is seen that respondent no.2 has directed respondent no.3 to stop processing of the case for selection of Labourer/Group D/Choukidar in the Postal Printing Press for the time being in view of the recommendation of the Pay

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Commission on the Postal Printing Press. Respondent no.3 has also been directed not to issue any appointment order now in the categories for which recruitment process has been completed. From this ban order it is seen that the ban order has been imposed for an indefinite period as the words "for the time being" would indicate. The respondents have failed to indicate the approximate time that would be taken for taking a final view on this recommendation of the Pay Commission nor have they indicated the view taken by the Postal Services Board on the point of disbanding of Postal Printing Press in the meeting held on 17.4.1997. In this situation, the applicants cannot be left hanging indefinitely. So far as the applicants in OA No.39/98 are concerned, there is already an order dated 9.12.1996 of the Tribunal in OA No.359/96 to fill up the posts of Bindery Assistant as per advertisement dated 8.5.1996 within a period of six weeks from the date of receipt of the said order. In view of this, it is ordered that in case the Postal Services Board in their meeting held on ^{or in any subsequent meeting} 17.4.1997 have taken a view for continuing the Postal Printing Press, then the petitioners should be given appointment to the posts for which they have been selected within a period of 30 (thirty) days from the date of receipt of copy of this order. We are conscious that the Postal Service Board is not the final authority to take a final decision on this recommendation of the Pay Commission. The matter has ultimately to go to Government. Consultation will also be necessary with other Ministries, particularly the Ministry of Finance. But as the Postal Services Board is a high-powered organisation, it is reasonable to presume

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that its recommendation if any to continue the Postal Printing Press would be given due weightage by the Government. In any case if in spite of such a recommendation of the Postal Services Board to continue the Postal Printing Press at Bhubaneswar the Government decide to disband the Postal Printing Press at Bhubaneswar, the petitioners will face the consequence of disbandment as other employees of the Postal Printing Press. In any case, the petitioners most likely will be on probation for some period and in case the Press is abolished during their period of probation, their services can easily be terminated. The second point is that this period of uncertainty should not continue indefinitely. This is not conducive to good administration even for the regular employees of the Press on whose head this sword of Democles should not be allowed to hang indefinitely. In view of this, we direct that in case a view has been taken by the Postal Services Board on this recommendation of the Fifth Pay Commission in their meeting held on 17.4.1997 or in any subsequent meeting, the Government should take a final view on this within a period of 90 (ninety) days from the date of receipt of ^{copy of} this order. If, however, the Postal Services Board in their meeting 17.4.1997 or in any subsequent meeting have taken a decision to disband the Postal Printing Press, then the petitioners' case must fail. As is well known the selection in a recruitment process by itself does not confer any right to get appointment to the post and it is open for the departmental authorities not to fill up the post moreso if they have taken a *prima facie* view to disband the organisation. The third eventuality to be considered in

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this case is if Postal Services Board in their meeting held on 17.4.1997 or in any subsequent meeting had not taken a view either way in this matter, i.e., either to recommend continuation of the Postal Printing Press or to recommend acceptance of the recommendation of the Pay Commission for disbanding of the Postal Printing Press. Such a situation by itself indicates that the Department had not taken the view either way in this matter even in a period of more than one and half years. In that event, the petitioners cannot be kept away from the posts for which they have been rightly and legally selected. In such a case, the respondents are directed to issue appointment orders to the selected candidates within a period of 30 (thirty) days from the date of receipt of copy of this order.

10. As regards the prayer of the applicants to get arrear financial benefits, obviously the appointment orders will be issued prospectively and the applicants can get pay and allowances of the posts only from the date they assume the duties of the posts. Therefore, this prayer is held to be without any merit and is rejected.

11. In the result, therefore, both the applications are partly allowed in terms of the observation and direction given in paragraphs 9 and 10 of this order, but, under the circumstances, without any order as to costs.

Sd/- C. Narasimham
Member (Jud)

Sd/- Somnath Som
Vice-Chairman