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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 659 OF 1998.
Cuttack, this the 17th day of May, 2000.

RABINDRA BEHERA.

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APPLICANT.

VERSUS

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*

J. S. Dhaliwal
(J. S. DHALI WAL)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17.5.2000

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 659 OF 1998.
Cuttack, this the 17th day of May, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR. J. S. DHALIWAL, MEMBER (JUDICIAL).

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RABINDRA BEHERA,
Son of Sikhuli Behera,
Aged about 40 years,
At/present working as Postal Assistant,
Head Post Office, Chhatrapur, Dist. Ganjam,
residing at Village Gajapatinagar,
Ps: Ramoha Dist: Ganjam.

: Applicant.

By legal practitioner: Mr. P. K. Mishra, Advocate.

-VERSUS -

1. Union of India represented through Secretary,
Department of Posts and Telegraph, New Delhi.
2. Postmaster General, Department of Posts and
Telegraph, Bhubaneswar.
3. Senior Supdt. of Post Offices,
Berhampur, Dist. Ganjam.
4. Postmaster, Head Post Office,
Chhatrapur, Dist. Ganjam.

: Respondents.

S. Som
By legal practitioner : Mr. B. Dash,
Additional Standing Counsel
(Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the Respondents to regularise the suspension period of the applicant, to restore the seniority and promote the applicant to the post to which he is entitled to on regular basis and to pay his current salary at the present revised scale of pay.

2. According to the applicant, while he was working as Postal Assistant in the Head Post Office of Paralakhemundi, it was alleged that he had mis-appropriated a sum of Rs. 27,970.10p which was the collection made in the counter. It was also alleged that he had taken a sum of Rs. 5,000/- from the Treasurer under a receipt but did not account for the same. Criminal case was instituted against him and he was taken into custody. On his arrest by the Police, he was placed under suspension w.e.f. 22.1.1987. In the Criminal case, learned Judicial Magistrate, acquitted the applicant from the charge of misappropriation of the money collected for the Savings Bank account deposit but he convicted the applicant u/s. 409 IPC for misappropriating a sum of Rs. 5000/- and sentenced him to undergo R.I. for one month and to pay a fine of Rs. 500/-. Against this order, he went on appeal to the learned Sessions Judge, Paralakhemundi who set aside the conviction and sentenced passed by the lower Court. This order also confirmed by the Hon'ble High Court in order dated 23.4.97 in Criminal Revision No. 15/91. Applicant's grievance is that even though he has been acquitted by the learned Addl. Sessions Judge, and this order has been upheld by the Hon'ble High Court, he was

S. Som

not taken back in service. Subsequently, he joined at Chhatrapur as Postal Assistant on 15.7.1997. Even though he has been claiming since then for his arrears and regularisation the period of service during which he was placed under suspension, no action has been taken by the Respondents and that is why he has come up in this Original Application with the prayer referred to earlier.

3. Respondents in their counter have repeated the fact of starting of the Criminal cases against the applicant, judgment of the learned Judicial Magistrate and the appellate order and the order of the Hon'ble High Court. They have further stated that they are proposing to file SLP before the Hon'ble Supreme Court against the order of the Hon'ble High Court and for this they have moved the Director General of Posts for appropriate orders which are awaited. It has also been stated that the Departmental proceedings are to be initiated against the applicant and the same will shortly be issued. They have further stated that the period of suspension and other benefits of the applicant can be regularised only after SLP is disposed of and the Departmental Proceedings are finalised. On the above grounds, they have opposed the prayer of applicant.

4. In this case, learned counsel for the applicant is absent. No request has also been made on his behalf. We have, therefore, heard Mr. B. Dash, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

5. We note from the pleadings of the parties that in the counter filed on May 4, 1999 it has been stated that the Deptt. is proposing to file SLP before the Hon'ble Supreme Court and for that purpose they have moved the DG of Posts. Learned Addl. Standing Counsel is not in a position to indicate if a SLP has actually been filed in the meantime, and if so if any stay of

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the order of the Hon'ble High Court has been given by the Hon'ble Supreme Court. Further in the counter it has been stated that the Departmental proceedings are shortly going to be initiated against the applicant. Learned Addl. Standing Counsel is not also in a position to indicate if Departmental proceedings have in fact been initiated in the meantime against the applicant. We note that the applicant has been under suspension for long years from 11.1.1987 till he joined his duties on 15.7.1997. In view of the fact that the applicant has been under suspension for long ten years and even after his joining the service in July, 1997 till May, 1999 no chargesheet has been issued against him, it is not possible to deny the applicant his legitimate claims merely to allow the Departmental Authorities to make up their mind either to file SLP or to issue chargesheet in the Departmental proceedings against the applicant. In view of the above, we direct the Respondents that in case by today, the chargesheet has not been issued to the applicant then his period of suspension should be treated as duty and regularised as such. In case the chargesheet has already been issued to the applicant sometime after filing of the counter in May, 1999 then this period of suspension will be decided on the basis of the final result in the Departmental proceedings against the applicant.

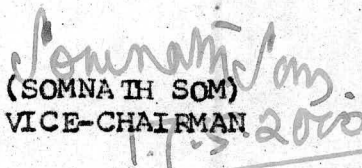
6. AS regards the claim of applicant for his further promotion after treating the period of suspension as duty we hold that this is a separate cause of action and the applicant if he has any grievance in this regard, he is free to approach the Tribunal in a separate O.A.

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7. The above order will obviously be subject to any order which may have been passed by the Hon'ble Supreme Court in case SLP against the order of the Hon'ble High Court has actually been filed before the Hon'ble Supreme Court about which the learned Additional Standing Counsel was not able to give us any indication.

8. In the result, the Original Application is allowed in terms of the observations and directions made above. No costs.


(J. S. DHALI WAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
1.1.3 2000

KNM/CM.