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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.207 OF 1999.

Cuttack, this the 14th day of October, 1999.

BRAJA KISHORE PRAHAN.

....

APPLICANT.

VRS.

UNION OF INDIA & OTHERS.

....

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*

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SONNATH SOM)  
VICE-CHIEF JUDGE  
14.10.99.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 207 OF 1999.  
Cuttack, this the 14th day of October, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.)

..

BRAJA KISHORE PRADHAN,  
Aged about 37 years,  
Son of Biswanbar Pradhan,  
AT/PO Jagai, Via. Pratappur,  
Dist. Balasore.

....

APPLICANT.

By legal practitioner : Mr. T. Rath, Advocate.

Vrs.

1. Union of India represented through  
the Chief Post Master General,  
Orissa Circle, Bhubaneswar,  
At/Po Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices,  
Balasore Division, Balasore,  
At/Po/Dist. Balasore. ....

RESPONDENTS.

By legal practitioner : Mr. A.K. Bose, Senior 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 quashing the charges at Annexure-1 and to reinstate  
the applicant with immediate effect. He has also prayed for  
quashing the public advertisement issued by the Respondent  
No. 2 to fill up the post held by the applicant prior to  
he is being put off duty.

2. Facts of this case, according to applicant, are that  
while he was working as EDBPM, Jagai Branch Post Office, he  
was put off duty in order dated 16.4.1997 but the charges

were not issued to him. Applicant has stated that because of village quarrel, one Village leader made some allegation against the applicant. Applicant gave a statement, which he wrote out on the direction of the Inspector of Post Offices and on his direction he also deposited a sum of Rs.910/-, Rs.1,665/- and Rs.205/- on different dates but inspite of this, he was not reinstated. Even though ~~instruction~~ of Director General of Posts dated 14.9.1994 provides that proceeding should be finalised within 45 days and even though two ~~orders~~ <sup>Years</sup> have been passed by the time of filing <sup>13/09/1994</sup> <sup>13/09/1994</sup> of this Application, he has not been reinstated nor charge sheet has been issued against him. His second grievance is that 25% exgratia put off duty allowance, which he is getting has not been considered for increasing after the expiry of the first 90 days even though he is entitled for such consideration in accordance with rules. Because of this, the applicant has come up in this Original Application with the prayers referred to earlier.

3. Respondents in their counter have stated that while the applicant was working as EDBPM Jagai BO, he committed permanent misappropriation of Rs.2500/- and temporary misappropriation of Rs.5112.20p. as many as 14 SB and RD pass Books. The SDIP was asked to conduct preliminary enquiry into the fraud case and was directed to complete the past work verification of applicant, at an early date. Applicant admitted the fraud committed by him and credited the defrauded amount with penal interest in three instalments as indicated by the applicant. It is stated that against the order of put off duty the applicant did not prefer any appeal.

Only after the past verification work was done by the S.D.I.P., charge-sheet was issued on 7.6.1999. The Respondents have stated that the past verification work was completed as early as possible but due to involvement of applicant in so many pass books, there was delay in completion of verification of past work and to the question of increasing of the put off duty allowance, Respondents have stated that the applicant's case was reviewed and his put off duty allowance was increased to 35% of the basic allowance as was required under the Rules. On the above grounds, they have opposed the prayer of applicant.

4. Learned Senior Standing Counsel has filed a Miscellaneous Application with copy to other side in Court today, before hearing the matter in which he had pointed out that in order dated 7.9.1999, after taking note of the fact that put off duty allowance should be increased to 35%, the Court has directed to increase the allowance to 50% and this is not in accordance with the Rules and that his how the Respondents have prayed in this Miscellaneous Application for modification of the order dated 7.9.1999.

5. We have heard Mr. T. Rath, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and have also perused the records.

6. With the consent of the learned counsel for both sides, the Miscellaneous Application filed by the learned Senior Standing Counsel has also been taken into consideration and we have heard learned counsel for both sides on the Misc.

7. First prayer of applicant is that he should be reinstated in service forthwith because of long delay in finalising the Departmental proceeding. It has been strongly urged by the learned counsel for the applicant that according to the Instruction of the Director General of Posts, the Departmental Proceeding has to be finalised within a period of 120 days but in this instant case, chargesheet were issued two years after the applicant was put off duty and that too after getting notice of this Original Application. In view of this, it is submitted by the learned counsel for the applicant that the Respondents as indulging <sup>in</sup> avoidable delay, the applicant is entitled to be reinstated. We have considered the above submission of the learned counsel for the petitioner carefully.

Respondents have pointed out in their counter that after the alleged temporary and permanent mis-appropriation came to the light, the past work relating to applicant had to be got verified by the S.D.I.P. and that took time. It is no doubt that the Instructions issued by the Director General of Posts, provide, that the Departmental proceeding should be completed within a period of 120 days. That order has to be understood in the context that when it was issued in 1994, there was no provision under the ED employees rules for payment of ex-gratia during the put off duty period. It was only with the direction of the Hon'ble Supreme Court in another case, amendment to the relevant rules were carried out with effect from January, 1997 and exgratia payment by way of put off duty allowance became payable. Moreover, the circular of the Director General of Posts does not show that on completion

of 120 days period, an employee would automatically be reinstated. There are, of course, several cases of the Hon'ble Supreme Court wherein it has been held by the Hon'ble Supreme Court that where the departmental proceeding has not been finalised indefinitely, an employee is entitled to get reinstated but no hard and fast rule have been laid down by the Hon'ble Supreme Court. Moreover, each case has to be decided on the facts and circumstances of the case. In the instant case allegations against the applicant are serious in nature and therefore, it is proper that these are to be enquired into and the applicant either to be <sup>res</sup> <sup>AGJM</sup> exonerated or found guilty before the question of reinstatement into service takes place. At the same time it is noted that in this case the applicant has been continued under put off duty from 1997. In consideration of the above, while we rejecting the prayer of applicant for reinstatement, we direct the Respondents that the enquiry in ~~th~~ the Departmental proceeding against the applicant should be completed within a period of 90 days from the date of receipt of a copy of this order provided the applicant fully cooperates in the enquiry. It is made clear to the Respondents that if the applicant does not co-operate in the enquiry without adequate justification then the Departmental Authorities should complete the enquiry within the period as aforesaid, even *ex parte*. First prayer of the applicant is accordingly disposed of.

*S Jm*

8. As regards the second prayer of applicant, in view of our above order, we are not inclined to quash the charges which we have earlier noted are serious in nature. This prayer is also accordingly rejected.

9. So far as our order dated 7.9.1999, the relevant rule provides that for the initial period of 90 days, a person who is put off duty would be entitled to an exgratia amount which is equal to the 25% of his basic allowance with DA thereon. After the period of 90 days, of put off duty a review has to be made and in case the continuation of applicant, under put off duty, is not attributable to the charged official then the put off duty allowance should be increased by 50% of the basic exgratia amount payable to him. Accordingly the Respondents have stated that the put off duty allowance can not be increased to 50% of the basic allowance in absence of rule. Respondents have however, increased the put off duty allowance to 35%. We have gone through the rule carefully. We find that the submission of the learned Senior Standing Counsel with regard to the quantum of increase, is in accordance with rule. In view of this, our order dated 7.9.1999 is modified to the extent that the Respondents are directed to increase the put off duty allowance of the applicant to the tune of another 12½% i.e. to make it 37½% of his basic allowance on the expiry of 90 days from the date he has actually been put off duty. The put off duty order is dated 16.4.1997 but the memo filed by the Respondents it has been mentioned that the applicant has been put off duty w.e.f. 22.4.1997. This is a factual aspect on which there can be no controversy. After the expiry of the period of initial 90 days, the Respondents are directed to increase the put off duty allowance of the applicant to 37½% of his basic allowance. The prayer in the MA is accordingly disposed of.

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10. It is also directed that in case the proceedings are not completed within the period aforesaid, the Respondents are directed to reinstate the applicant in service.

11. The last prayer of applicant is to quash the selection procedure initiated by the Respondents for filling up of the post of EDBPM, Jagai BO against the put off duty vacancy. We make it clear that in case the Respondents decide to fillup the put off duty vacancy, then before the person is appointed to the put off duty vacancy, the Respondents should make it clear to him that his appointment is only during the period of put off duty vacancy and the Respondents should obtain a suitable undertaking from the person appointed before inducting him to the post.

12. With the above observations and directions the Original Application is disposed of. M.A. filed by the Respondents is also accordingly disposed of. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

S. SOMNATH SOM  
(SOMNATH SOM)  
VICE-CHAIRMAN

KNM/CM.