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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 677 OF 1999  
Cuttack, this the 16th day of January, 2001

Sri Binod Behari Sahoo

....Applicant

Vrs.

Union of India and another ...

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*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*16/1/2001*

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CORAM:

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

.....  
Shri Binod Behari Sahoo, Ex-EDBPM, S/o late Padma Charan Sahoo  
of villae & P.O-Pratappur, Dist.Balasore  
..... Applicant

Advocate for applicant - Mr.D.P.Dhal-  
samant

Vrs.

1. Union of India, represented through its Chief Postmaster General, Orissa Circle, Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices, Balasore Division, Balasore

..... Respondents

Advocate for respondents - Mr.B.Dash  
ACGSC

O R D E R  
(ORAL)

SOMNATH SOM, VICE-CHAIRMAN

Wm.

In this O.A. the petitioner has prayed for a direction to the departmental authorities to count the period of service from 2.7.1981 to 7.9.1991 for the purpose of retirement benefits. He has also prayed for payment of the arrear wages and allowances for the period from 2.7.1981 to 7.9.1991. The third prayer is for quashing the order dated 6.1.1999 at Annexure-2. Lastly, he has prayed for all his retirement dues with interest at 18%.

2. The learned counsels have abstained from court work from 7.12.2000 in protest against professional tax imposed on them by the State Government. There is no indication when they will return to court work. Hon'ble

Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, 2000 AIRSCW 4093, have deprecated the action of the courts in adjourning cases because of the abstention from court work by the learned advocates. Their Lordships have observed that by such adjournment the defaulting courts would be contributing to the contempt of the Hon'ble Supreme Court. In view of this, it is not possible to adjourn the matter. We have perused the records.

3. The admitted case is that the applicant was appointed as EDBPM, Pratappur Branch Office in the year 1958 and worked as such till 2.7.1981 when Pratappur ED B.O. was upgraded to a Departmental Sub-Post Office and the service of the applicant was terminated. The applicant was not offered any ED post instantly and being aggrieved with that the applicant filed OA No.428 of 1988 which was disposed of in order dated 22.12.1988. We have gone through this record and we find that the Tribunal in their order in the earlier OA directed the departmental authorities to appoint him as EDBPM, Jagai B.O. The respondents have stated that the applicant could not be appointed as EDBPM, Jagai B.O. because he could not provide accommodation at Jagai village for functioning of the Branch Office. Ultimately, he was appointed as EDBPM, Nikhira BO on 7.9.1991 as per the direction of the Tribunal dated 10.4.1991 in CP No. 18 of 1990, arising out of OA No. 428 of 1988. The applicant accordingly joined as EDBPM, Nikhira B.O. on 7.9.1991 and retired on superannuation on 13.7.1999. <sup>These</sup> facts are not at controversy. The applicant's grievance <sup>is</sup> that after his retirement on superannuation on 13.7.1999 he was not given

the retirement benefit, meaning thereby gratuity as there is no pension for ED employees. The respondents have stated that gratuity could not be given to the applicant because his service on re-appointment as EDBPM till his superannuation was from 7.9.1991 to 13.7.1999 which was less than 10 years and in order to become eligible to get gratuity an ED agent has to render 10 years of service. In the context of the above facts the prayers of the applicant will have to be considered.

4. The second prayer of the applicant is for getting his back wages and allowances for the period from 2.7.1981 when he was retrenched from the post of EDBPM, Pratappur till 7.9.1991 when he was re-appointed as EDBPM, Nikhira B.O. As during this period the applicant had not worked, he obviously is not entitled to the wages and allowance for the above period. The applicant has not shown any circular or instruction of the Department which make him entitled to wages and allowances for the above period when he was not in the engagement under the respondents. Moreover, he admittedly got re-appointment as EDBPM, Nikhira B.O. in 1991. He kept silent about back wages for the break period for about eight years before approaching the Tribunal in  
OA filed  
this / on 31.12.1999. This prayer is, therefore, hopelessly barred by limitation. There is no application for condonation of delay. In view of this, this prayer is held to be without any merit and is rejected.

5. The first prayer of the applicant is for counting the break period for the purpose of calculating his retirement benefit, i.e., gratuity. Again as during this period he had not worked against any ED post, this break


period cannot be taken into account for the purpose<sup>of</sup> payment of gratuity to him. The applicant has not cited any rule or instruction under which he is entitled to calculate this period when he was not in engagement under the respondents, towards gratuity. This prayer is also, therefore, held to be without any merit.


6. We, however, note from the averments of the parties that the applicant did work for long 24 years as EDBPM, Pratappur B.O. The respondents in paragraph 8 of their counter have stated that as this is an old case the matter is under enquiry to establish if the applicant has already been paid or not ex gratia gratuity for the period he worked as EDBPM, Pratappur. We direct the departmental authorities to get this enquiry completed within a period of sixty days from the date of receipt of copy of this order and determine if for the period of service from 1958 to 1981 as EDBPM, Pratappur, the applicant has been paid his gratuity. In case the same has not been paid, then the same should be paid within a period of sixty days from the date of expiry of the above period of sixty days.

7. In case the ex gratia gratuity for the services rendered as EDBPM, Pratappur EDBO, has been paid to the applicant, then the question, which arises for consideration, is whether in continuation of that period from 1958 to 1981, leaving out the break period from 1981 to 1991, the applicant is entitled to get gratuity for the period of service from 1991 to 1999. In case the applicant has received his gratuity for the period from 1958 to 1981, then that period has already been<sup>taken</sup> into account and gratuity has been paid and that period cannot be taken into account for the purpose of entitlement of the applicant for getting

gratuity for the period of service from 1991 to 1999 which is less than the required period of ten years. The respondents in Annexure-R/1 to their counter have mentioned the decision of the P&T Board that past service can be counted only where re-appointment is made within a period of one year. But to our mind nothing turns on this if for his previous service from 1958 to 1981 gratuity has already been paid to him.

8. In the result, therefore, the Original Application is disposed of in terms of observation and direction above, but without any order as to costs.

  
(G.NARASIMHAM)  
MEMBER(JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN

January 16, 2001/AN/PS