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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 240 OF 2000
Cuttack this the 3rd day of November/2000

Gadadhar Majhi

...

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.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2000

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 240 OF 2000
Cuttack this the 3rd day of November/2000

CORAM;

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

Shri Gadadhar Majhi aged about 43 years
Son of Kalandi Majhi. At/PO - Badaberana
P.S. - Begunia, Dist - Khurda

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Applicant

By the Advocates

M/s. K.C. Kanungo
S. Behera
R.N. Singh

-VERSUS-

1. Union of India represented by Secretary Posts (Department of Posts) Dak Bhawan, New Delhi
 2. The Chief Post Master General, Orissa Circle, Bhubaneswar, New Capital-751001
 3. The Senior Superintendent of Post Offices, Puri, At/PO/Dist - Puri

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Respondents

By the Advocates

Mr. A.K. Bose
Sr. Standing Counsel
(Central)

ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the public notice dated 7.4.2000 at Annexure-6 inviting applications for filling up of the post of Extra Departmental Branch Post Master, Badabarena. The second prayer is for direction to departmental authorities to allow the applicant to continue as E.D.B.P.M. till the conditions in the order of his provisional appointment at Annexure-3 is fulfilled. His third prayer is for direction to respondents to convert his provisional appointment to regular appointment in the event it is decided not to take Shri P.K.Majhi, the original incumbent back in service. Respondents have filed their counter opposing

the prayer of the applicant and applicant has filed rejoinder.

2. By way of interim relief it was prayed that further action in pursuance of public notice at Annexure-6 should be stayed. In order dated 15.5.2000 the departmental authorities were directed that they may go ahead with the process of selection, but they should not appoint the person so selected only with the leave of the Tribunal.

3. For the purpose of considering this Application it is not necessary to go into too many facts of this case. The admitted position is that the applicant, Gadadhara Majhi, was appointed as E.D.D.A. Badaberana Branch Office on 28.1.1979. The original incumbent E.D.B.P.M. one Shri P.K.Majhi was apparently put off duty and the applicant was directed to manage the work of E.D.B.P.M. Thereafter the process of provisional appointment to the post of E.D.B.P.M. was taken up at the conclusion of which vide order at Annexure-3, the applicant was provisionally appointed to the post of E.D.B.P.M. In order dated 12.3.1999 it was also directed that newly selected E.D.B.P.M. will manage the work of E.D.D.A. in addition to his own duties on payment of combined duty allowance. Thus the admitted position is that at present the applicant is working as provisionally appointed E.D.B.P.M. of that Post Office and managing the work of E.D.D.A. on payment of combined duty allowance in addition to his own duties as E.D.B.P.M. In order at Annexure-6 Respondents invited applications for giving protional appointment to the post of E.D.B.P.M. The grievance of the petitioner is that so long as he is working as provisional appointee, he cannot be replaced by another provisional appointee. In the context of this and

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 other grounds urged by the applicant ^{he} has approached the Tribunal with the prayers referred to earlier.

4. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri A.K.Bose, the learned Sr.Standing Counsel for the Respondents and also perused the records.

have stated

5. Respondents in their counter ^{SJM} and this has also been submitted by the learned Sr.Standing Counsel Shri Bose during his submission that while the applicant was working as E.D.B.P.M. provisionally because of certain lapse on his part it has been decided to proceed against him departmentally. Respondents have also stated that as the applicant is working as E.D.B.P.M. and also managing the work of E.D.D.A. in addition to his own duties it was decided to select another person for the post of EDBPM before any action is taken against the applicant in the disciplinary proceedings proposed to be initiated. It has been submitted by the learned counsel for the petitioner that in the appointment order at Annexure-3 it has been mentioned that applicant's provisional appointment as EDBPM will continue till the disciplinary proceedings against the original incumbent Shri P.K.Majhi is finalised and/or any judicial appeals and petitions etc. filed by Shri Majhi are disposed of. In view of this learned counsel for the petitioner has submitted that there is no scope on the part of the departmental authorities to try to select another person for the post of E.D.B.P.M. which is is currently held by the petitioner provisionally. We are not able to accept the above proposition of the learned counsel for the petitioner. Just because in the provisional order of appointment it has been mentioned that applicant's provisional appointment is till ultimate finalisation of the disciplinary proceedings against the

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original incumbent Shri P.K.Majhi this would not mean that the applicant has a right to continue in the post of EDBPM even in case of any alleged lapse of misconduct is brought to the notice. In this case Respondents have alleged in the counter/certain lapse on the part of the applicant had come to the notice. This contention has been strenuously denied by the learned counsel for the petitioner. As the departmental respondents have submitted in their counter that they have decided to initiate disciplinary proceedings against the applicant with regard to such alleged lapse in his conduct, it will not be proper for us in this Application to consider the lapse on the part of the applicant as alleged by the respondents in their counter and as denied by the learned counsel for the petitioner. We only note that the respondents have decided to initiate the disciplinary proceedings against the applicant. The grievance of the petitioner with regard to notice at Annexure-6 inviting applications for filling up of the post of E.D.B.P.M. has to be considered in the context of the above averments of the respondents that they have decided already to initiate disciplinary proceedings against the applicant. In case the applicant is proceeded against departmentally and in the process of such departmental proceedings the post of E.D.B.P.M., Badabrena falls vacant the departmental authorities have to make arrangement for filling up of the said post again on provisional basis. The contention of the learned counsel for the petitioner that a provisional appointee cannot be replaced by another provisional appointee cannot be held to be correct in the context that in case the petitioner is put off duty then naturally another person has to be appointed

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to that post and in view of the pendency of the disciplinary proceedings against the original incumbent, the next appointee has also to be a provisional appointee. It has been submitted by the learned counsel for the petitioner that respondents in their counter repeatedly emphasized on that clause in the appointment order under which the departmental authorities have the right to terminate his provisional appointment at any time without any notice. This clause is not relevant for the present purpose in view of the fact that the departmental authorities have specifically averred that they have decided to initiate disciplinary proceedings against the applicant. In case disciplinary proceedings are initiated against the applicant and in such disciplinary proceedings the applicant has any grievance, then that would give rise to a separate cause of action. But as the disciplinary proceedings are contemplated against him the departmental authorities are perfectly within their right to initiate action for selection of another person for provisional appointment to the post of E.D.B.P.M., Badabarena, but ~~not~~ appointment to such selected person can only be given if the post of Extra Departmental Branch Post Master, Badabarena which is currently held by the applicant becomes vacant either at the conclusion of the disciplinary proceedings or in the meantime the applicant is put off duty. In view of this the prayer of the applicant for quashing notice at Annexure-6 is held to be without any merit and the same is, therefore, rejected.

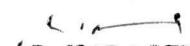
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The second prayer of the applicant which follows from above seeking a direction to allow him to continue in the post of E.D.B.P.M. till the proceedings against the original incumbent Shri P.K.Majhi is finalized is also held to be without any

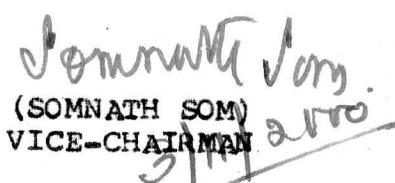
merit, because, during the pendency of provisional appointment and disciplinary proceedings the departmental authorities have the right to order putting the applicant off duty. This prayer is, therefore, rejected.

The third prayer of the applicant is for direction to departmental authorities to convert the applicant's provisional appointment to the regular appointment. Shri Kanungo submitted that he does not press this prayer. In view of this it is not necessary to pass any orders on this.

In view of our discussions held above, Original Application is disposed of in terms of observations above, but without any order as to costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K. SAHOO//


(SOMNATH SOM)
VICE-CHAIRMAN