

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 637 of 2006  
Cuttack, this the 28<sup>th</sup> day of September 2007.

Subash Chandra Mishra ... Applicant  
Versus  
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

*Tarsem Lal*  
(TARSEM LAL)  
MEMBER(ADMN.)

*DR.K.B.S.RAJAN*  
(DR.K.B.S.RAJAN)  
MEMBER(JUDL.)

*for circulation p'*  
*(M.J.D)*  
*Hon'ble member (A)*

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 637 of 2006  
Cuttack, this the 28<sup>th</sup> day of September, 2007.

C O R A M:

THE HON'BLE **DR.K.B.S.RAJAN**, MEMBER (J)  
A n d  
THE HON'BLE **SHRI TARSEM LAL**, MEMBER (A)

1. Sri Subash Chandra Mishra, aged about 46 years, son of Shri Ganesh Chandra Mishra, Village/Post-Baradia, Via-Raj Kanika, Dist. Kendrapara-754 220.

..... Applicants.

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

-Versus-

1. Union of India represented by it's Chief Postmaster General (Orissa Circle), At/Po: Bhubaneswar, Dist. Khurda-751 001.
2. Superintendent of Post Offices, Cuttack North Division, At-P.K.Parija Marg, Po: Cuttack, GPO, Dist. Cuttack-753 001.

...Respondents.

By legal practitioner: Mr. U.B.Mohapatra, SSC



ORDERDR.K.B.S.RAJAN, MEMBER(J):

In the wake of the regular incumbent to the post of EDBPM, Baradia BO having been put off duty, pending finalization of the Departmental Proceedings, the Respondents had issued notification for filling the said post on provisional basis and the applicant, one of the aspirants, was selected as early as in 1986. The order provided that the continuance of the applicant in the said post on provisional basis would be till disciplinary proceedings against the regular BPM is finalized and the Respondents reserve their rights to terminate the services of the applicants without assigning any reasons and without notice. Order dated 12-06-1986 (Annexure R-1 refers).

2. In the wake of an order dated 23-09-1999 passed by the CAT in OA No. 225/98 filed by the regular incumbent, the put off duty was revoked and the said Regular BPM was taken back to service vide memo dated 24-12-1999. On reinstatement of the said individual, the services of the applicant were terminated in January,

2000. At the request of the applicant for alternate employment, the Respondents had offered the appointment as GDSBPM, Baluria, vide letter dated 11-12-2001 (Annexure A-3) with a direction to give consent within one week. The applicant on 18-12-2001 submitted his willingness for appointment for the same but failed to furnish certain other requisite information regarding arrangement for accommodation. It was after a long gap of three years that the applicant again surfaced and made a representation for posting him as GDSBPM, Jayantara B.O.

3. Rules provide that in case an EDS refuses to have the offer of alternative appointment outside his native place, his name would be kept in the waiting list for one year and not thereafter.

4. As the applicant has chosen not to avail of the offer and as the time limit of one year was already over, respondents have rejected the request of the applicant and hence, this OA.

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Counsel for the applicant has submitted that the applicant had put in 14 years of service and he was regularly selected candidate in 1986.

5. Counsel for the respondents, while not denying the facts, only argued that vide orders on the subject (R-4), the time limit provided for such alternative appointment being one year only, the applicant has to blame himself for not having come forward at the appropriate time.

6. Arguments were heard and documents perused. The Respondents have rightly considered the applicant as a surplus in view of the fact that he had to give way to the permanent incumbent after 14 years of his appointment on provisional basis as GDSBPM. However, when at a far off place he was offered the post, though he was prepared to accept the same, due to his inability to provide for accommodation, that offer was deemed to have declined. So far so good. Next course of action is to availability of vacancy in certain other places. It is not clear from

the records whether the respondents, after their first offer and within one year offered another employment. Presumably not. Thus, even if the applicant was willing, there was no possibility to accommodate the applicant elsewhere. It cannot be the case of the respondents that from 2001 to 2002 there were no vacancies within the sub division to offer to the applicant. Thus, if for a year the applicant had remained silent, equally the respondents too, without offering any other post within the sub Division, in which the list is maintained. . His request for accommodating him at Katana in 2001 was also not considered.

7. That the applicant had put in 14 years of service cannot be lost sight of. It is now too early for him to sit in the house and too late to search for alternative employment. Taking into account the above facts ends of justice would be met if the respondents are directed to offer the next available vacancy to the applicant within the sub division and if the applicant accepts the same and makes available necessary accommodation and fulfills other attendant conditions, he would be regularly appointed. If he

refuses to accept the offer, then he stands to lose any of the right relating to his name being kept in waiting list. If there by any provision for relaxation of the Rules, the said provisions should be invoked favourably in this case as the department is also at fault in not offering the applicant alternative employment during the period of one year after he was offered at a far off place from his native place. If already any vacancy is available this drill shall be performed within a period of two months from the date of receipt of this order and if not the time limit calendared shall reckon from the date of availability of the vacancy in future. No cost.

*Tarsem Lal*  
(TARSEM LAL)  
MEMBER(ADMN.)

*W.B.S.Rajan*  
(DR.K.B.S.RAJAN)  
MEMBER(JUDL.)

KNM/PS