

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 721 of 2015

Present: Hon'ble Mr. Pradeep Kumar, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Mr. Naba Krushna Dash, aged about 48 years, S/o
Gayadhar Dash, At – Naripur (Asthal) PO – Bhadrak
Thana Chhak, Bhadrak, E- Waterman-cum-Faras,
Bhadrak HO. Dist – Bhadrak.

.....Applicant.

VERSUS

1. Union of India, represented through its Director
General of Post, Ministry of Communication, Dept.
Of Post, Dak Bhawan, Sansad Marg, New Delhi - 1
2. Chief Post Master General, Odisha Circle,
Bhubaneswar, Khurda.
3. Superintendent of Post Offices, Bhadrak Division,
Bhadrak.
4. Post Master, HSG – I, Bhadrak H.O., Dist: Bhadrak.

.....Respondents.

For the applicant : Mr. N. R. Routray, Advocate.

For the respondents: Ms. S. L. Patnaik, Advocate.

Heard & reserved on :12.01.2021

Order on :08.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:-

- (i) *To quash the show cause dt. 16.07.2015 under Annexure A/8 & order dt. 24.08.2015 under Annexure A/10.*
- (ii) *To direct the respondents especially Respondent No. 4 to allow the applicant in the post i.e. waterman-cum-faras as he was worked till March, 2013 & give the service and financial benefits retrospectively;*
- (iii) *To pass any other order/orders as deem fit and proper.*

1. The case of the applicants as inter alia averred in the OA is that he was provisionally engaged as part time waterman vide letter dated 26.03.1985 (Annexure A/1)

under Postmaster, Bhadrak HO and while continuing as such was engaged as waterman-cum-faras vide order dated 15.02.1986 (Annexure A/2). The applicant was verbally instructed by the Post Master Bhadrak HO in April 2013 not to work in the said post. The applicant then made a representation dated 13.03.2014 (Annexure A/4) to Respondent No. 4 but no answer was received. Thereafter the applicant submitted his representation dated 05.11.2014 (Annexure A/5 series) to Respondent No. 2 & 3 but no action was taken. The applicant then approached this Tribunal vide OA No. 138/2015 and the said OA was disposed of vide order dated 23.03.2015 (Annexure A/6) directing the respondents to dispose of the representation dated 05.11.2014 within a period of 30 days. Thereafter Respondent No. 2 vide its order dated 26.06.2015 (Annexure A/7) directed Respondent No. 4 to take action against the applicant on the lines of departmental proceeding in which penalty is imposed by giving a show cause notice detailing the irregularities committed by him. Respondent No. 4

then issued show cause notice dated 16.07.2015 (Annexure A/8 series) enclosing copy of explanation dated 24.03.2006, written statement dated 11.07.2011 and enquiry report dated 12.07.2011. The applicant then submitted his reply to show cause on 24.07.2015 (Annexure A/9) enclosing the representation dated 13.03.2014. The applicant further submitted that Respondent No. 4 vide order dated 24.08.2015 (Annexure A/10) rejected the reply filed by the applicant and terminated him with immediate effect and also stated that period from 05.04.2013 onwards during which he has not performed any duty shall be treated as non duty for all purposed and no payment of wages shall be made to him. Hence the OA.

2. Learned counsel for the applicant relied on some citations including the following citations:

- a) K. L. Shepherd and others V/s Union of India & Others AIR 1988 SC 686.
- b) Nazir Ahmed vs. King Emperor AIR 1936 Privy Council 253 (2)

- c) Ramachandra keshav Adke (dead) vs. Govind Joti Charvara & others IAR 1975 SC 915
- d) Smt. Khiralata Mohanta vrs. Collector Keonjhar 2004 (I) OLR 327
- e) Smt. Maneka Gandhi vrs Union of India AIR 1976 SC 597
- f) Canara Bank and others vrs Debasis Das and others (2003) 4 SCC 557
- g) Canara Bank vrs V. K. Awasthy (2005) 2 ATT (SC) 10
- h) UOI & others vrs P. N. Natrajan & others (2010) 12 SCC 405
- i) A.K. Mohapatra vrs State of Odisha 2012 (i) OLR 87
- j) B. Bhattacharya Vrs Union of India & others (2014) 4 SCC 392

3. The respondents in their counter inter alia averred that the applicant was engaged on pick and choose basis and his job does not fall under any organised service cadre. The applicant was engaged till his

unsatisfactory performance came to notice. It is submitted by the respondents that on 24.03.2006 the applicant neglected his duty for which his explanation was called for but he did not reply. Then on 29.04.2011 he acted mischievously by misdirecting four registered letters booked by CJM (JD), Bhadrak in relation to a litigation involving his relatives and thereby got undue personal benefit out of it. For that action the department was put to a very embarrassing situation and was dragged to Central Information Commission unnecessarily vide order dated 04.04.2013 (Annexure R/1). The respondents submitted that the applicant deserted his duty with effect from 05.04.2013 and then reappeared on 13.04.2014 with representation to join back in duty. The respondents submitted that while action was pending against the applicant for his negligence of duty, desertion of duty and mischievous action in misdirection of registered letters, the applicant approached this Tribunal. The respondents submitted that due process was followed before terminating the

services of the applicant and during the inquiry the applicant was examined and his written statement were recorded in which he had admitted to have handled the receipts of the misdirected registered letters. The copy of the enquiry report along with his written statement was supplied to the applicant in the show cause notice to him, before taking the decision to terminate his engagement and no irregularity has been committed by the respondents in this matter.

4. We have heard learned counsels for both the sides and carefully gone through their pleadings, written note of submission as well as citation relied by them.
5. The applicant was working as part time watermen cum farash. The job was purely dependent on the satisfactory performance. It is the stand of the respondents that due to his unsatisfactory performance and as he absconded from duty for a period of more than 1 and half years he was disengaged after giving him due opportunity. The applicant had earlier filed one OA no. 138/2015 in which it was claimed by him that while he was

continuing as such from April 2014 he is not being allowed to work by respondent no. 4. The said order also reveals he has worked till March 2013. It is the stand of the respondents department that the applicant has deserted duty w.e.f. 05.04.2013. Show cause notice vide annexure A/8 dated 16.07.2015 was sent to applicant by Postmaster, Bhadrak Head post office mentioning that the applicant had mischievously misdirected four registered letter dated 29.04.2011 to Balasore, with deliberate intention of getting them delayed in delivery, for getting desired mileage out of it for his personal benefits. The said letters were booked by the Court of Ld. CJM JD in a court case involving the relation of the applicant and those letters were due for delivery at Bhadrak itself. It was also mentioned in the said show cause that explanation was earlier called for vide office order dated 24.03.2006 copy of which was enclosed and supplied to the applicant, for his negligence on duty, but the applicant did not submit any explanation at that time. It was also mentioned in the said show cause that the applicant had deserted

his duty since 05.04.2013 without any authorization from office or without any intimation. The matter was inquired into through the then Asst. Supdt. of post (incharge) Bhadrak. During the inquiry the statement of the applicant was recorded by him on 11.07.2011. The copy of the inquiry report dated 12.07.2011 was also enclosed along with written statement dated 11.07.2011 of the applicant in the said show cause. In the said show cause he was directed to show cause as to why he shall not be disengaged permanently from the post of part time water men cum farash of Bhadrak Head post office. The copy of explanation called from the applicant on 24.03.2006 regarding his negligence from duty was also sent with the said notice. The matter regarding non-delivery of four registered post letters in question, was enquired into by the ASP's Bhadrak and he submitted report to that effect to Supdt. Of Post Office as per his letter dated 12th July 2007. Copies of all those document were sent to the applicant, along with show cause notice in question. In the statement of the applicant he admitted that the

addressee are his relations. He also admitted that there has been some cutting and erasion (over writing) on the address by mentioning Balasore in place of Bhadrak and he could not give any satisfactory answer to that, but gave evasive answers. In the reply to show cause given by the applicant vide annexure A/9 dated 24.07.2015 he has admitted his absence till 01.04.2013 and has alleged that all of a sudden his authority did not allow him to work from 05.04.2013. The applicant did not prefer to approach this Tribunal by mentioning the said aspect that he has received his allowance till 01.04.2013 and his authority did not allow him to work w.e.f. 05.04.2013 by approaching this Tribunal at the earliest.

6. On the other hand it was mentioned in the order passed in previous OA i.e OA No. 138/2015 vide Annexure 6 that he is not being allowed to work since April 2014. In one application given by him on 13.03.2004 to the Postmaster Bhadrak in his own handwriting, he has admitted that he has remained absent from duty w.e.f 05.04.2013 but has mentioned

that the said absence is on the basis of oral order given by the Postmaster Bhadrak. In case the Post master asked him not to work, then non payment of allowance in his favour must have affected him and it was normally expected that he should have approached the higher authorities and thereafter before this Tribunal to redress his said grievance. Besides that, after due inquiry it was found by the departmental authorities that he has deserted his duties w.e.f 05.04.2013 without any authorization and without any intimation. It was also found that he had misdirected the registered letter in question for his personal benefit and about his negligence of duty on 24.03.2006 in the matter of cleaning and opening of windows and explanation was called on in this regard by the office on 24.03.2006 in writing. Although the applicant claimed that he had submitted explanation in this regard, he could not say the date on which he had submitted the explanation. The authorities have found that he has neglected duty on the said day. The detailed finding in this regard has been mentioned in

Annexure A/11 dated 24.08.2015 and by the said order the engagement of the applicant was terminated with immediate effect. Of course the prayer made by the applicant for personal hearing has not been allowed and reason thereof has been assigned.

7. Taking into consideration the procedure followed by the respondent authorities, this Tribunal is satisfied that there has been no violation of principle of natural justice. On the other hand due opportunity has been given to the applicant to explain the matter. No malafide has been proved in this case, against the authorities. The action of the applicant, in taking advantage of his position in misdirecting the letter in question, coupled with his desertion of duty for such a long period and negligence in official work, had ultimately resulted in his disengagement, after following principle of natural justice.

8. This Tribunal accordingly does not find any irregularity or illegality in the procedure adopted for terminating the applicant from his service as part time water man cum farash. The citations relied by learned counsel for

the applicant are not applicable to the facts and circumstances of this case.

9. Accordingly, the OA being devoid of merit is dismissed but in the circumstances without any order to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

(csk)