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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.53 of 1987.

Date of decision : December 17, 1987.

Ambika Kumar Jena, son of Trilochan
Jena, Branchpostmaster, Sultanpur,
Via-Dehuda, P.O. Sultanpur,
Balasore. ...

Applicant.

Versus

1. Union of India represented through
the Secretary to Government of India,
Ministry of Communication, New Delhi.
2. Postmaster General, Orissa,
Bhubaneswar.
3. Superintendent of Post Offices,
Balasore Division, Balasore.
4. Chittaranjan Das, s/o Brundaban
Das, 30 years, of Sultanpur, P.O.
Sultanpur, via-Dehuda, District-
Balasore. ... Respondents.

For the Applicant ... M/s.A.K.Misra, S.K.Das,
& S.B.Jena, Advocates.

For the Respondents 1 to 3.. Mr.A.B.Mishra, Senior Standing Counsel
(Central)

For the Respondent No.4 ... M/s.Deepak Misra, R.N.Naik,
S.S.Hota, & A.Deo, Advocates.

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN,

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to allow the applicant to continue as Extra-departmental Branch Postmaster, Sultanpur Post Office within the district of Balasore.

2. Shortly stated, the case of the applicant is that after the post of Extra-departmental Branch Postmaster of Sultanpur Post Office fell vacant applications were invited for filling up of the said post and in response thereto, the ^{petitioner} applicant was one of the applicants. The case of the applicant was considered along with others and the case of the applicant was rejected on the ground that he had a relation working in the said Post Office and by virtue of the rejection of the candidature of the present applicant, one Chittaranjan Das was appointed as the Extra-departmental Branch Postmaster of the said Post Office. The said Chittaranjan Das worked for some time and the reviewing authority found that the allegation that there was relationship between the present applicant and some other employee of the Post Office was quite ~~distinct~~ in nature, it was held that the rejection of the candidature of the present applicant was illegal, and therefore, the competent authority ordered termination of services of the said Chittaranjan Das and issued orders appointing the present applicant to the said post. Being aggrieved by the order of termination passed against Shri Chittaranjan Das, he filed an application under article 226 of the Constitution of India before the Hon'ble High Court of Orissa praying therein to quash the orders terminating the services of the said petitioner.

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Chittaranjan Das and to command the opposite parties to reinstate him into service. This case was transferred under section 29 of the Administrative Tribunals Act, 1985 and it was renumbered as Transferred Application No. 217 of 1986. The said case i.e. T.A.217 of 1986 was heard on merits by this Bench and by judgment dated 30th January, 1987, this Bench allowed the said application holding that the termination of services of the petitioner in the said case, Chittaranjan Das was illegal and therefore, direction was given for reinstatement of the said Chittaranjan Das. Because of the judgment passed by this Bench in the aforesaid case, the present applicant felt aggrieved and has filed this application under section 19 of the Administrative Tribunals Act, 1985 making a prayer as mentioned above.

3. In their counter, the respondents maintained the same stand taken in the counter filed in Transferred Application No. 217 of 1986. In a nut-shell, the stand maintained by the respondents is that the relationship between the present applicant and one of his co-employee is ~~too distinct~~ in nature, and therefore he was rightly appointed by the competent authority.

4. We have heard Mr. A. K. Mishra, learned counsel for the applicant and learned Senior Standing Counsel (Central), Mr. A. B. Mishra and Mr. Deepak Misra, learned counsel appearing for Respondent No. 4 namely Shri Chittaranjan Das at some length. Mr. A. K. Mishra, submitted that non-joinder of present applicant in Transferred Application No. 217 of 1986 as a respondent has seriously prejudiced the present applicant as the Bench passed an order without hearing the present applicant and therefore,

the judgment should be held to be inoperative. In support of his contention Mr. Misra also relied upon certain Judge-made-laws pronounced by the Hon'ble Supreme Court and in order to fortify his contention Mr. Misra submitted that these Judge-made-laws apply ~~in~~ mutatis mutandis to the facts of the present case. We have given our anxious consideration to the arguments advanced at the Bar on this question. The judgments relied upon by Mr. Misra are clearly distinguishable on questions of fact. That apart, we are of opinion that the applicant was not a necessary party in Transferred Application No. 217 of 1986 because the dispute was between the employer and the employee. The termination of service was made by the employer for which the employee (Chittaranjan Das) had felt aggrieved. This Bench was required to adjudge the legality or otherwise of the order of termination passed by the competent authority. In such circumstances, we are of definite opinion that the present applicant was not a necessary party and hence the contention raised by Mr. A. K. Misra to the above effect does not stand to reason and hence, not acceptable.

5. So far as the contention of Mr. A. K. Misra, learned counsel for the applicant regarding close relationship between the present applicant and his co-employee is concerned, Mr. Misra submitted that the relationship, if any is of very ~~distinct~~ in nature and cannot come within the purview of the directions issued by the Director General, Posts and Telegraphs. Be that as it may, in the judgment passed in Transferred Application No. 217 of 1986 we had considered this aspect and we had expressed our opinion. At the present moment, we do not feel it justifiable and reasonable

to make a departure from the view taken in the judgment passed in T.A.217 of 1986 and therefore, we find no merit in the contention advanced by Mr.A.K.Misra. Incidentally, it should be noted that after judgment was passed in T.A.217 of 1986 the Postal Department came up with a review application which was numbered as R.A.10 of 1987. We had dismissed that review application and this is not disputed. In view of these facts and circumstances, we are unable to accede to the request of Mr. A.K.Misra, learned counsel for the applicant to grant relief to the present applicant.

6. In the circumstances stated above, we find no merit in this application which stands dismissed leaving the parties to bear their own costs.

7. Before we part with this case, we may observe despite the fact that we have ordered dismissal of this application we feel that a compassionate view should be taken so far as the present applicant is concerned since he has served the department for long 7 years with effect from 16.9.1981. It seems that he has an unblemished career and therefore we presume the applicant has served the department with loyalty, sincerity and faithfully. It is most unfortunate that in the process of law, the applicant is being ousted from the post which he holds and therefore we would strongly recommend the case of the applicant to Postmaster General to take a compassionate view in the matter and if possible, the applicant should be adjusted in some other Post Offices either within the same district or in the vicinity of District of Balasore and we are sure that the Postmaster General would certainly take a sympathetic view in the matter. However, the applicant will be well advised to file an application before the Postmaster General praying for his

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mercy.

Learned Senior Standing Counsel(Central) submitted that in order to enable the Postmaster General to redress the grievance of the present applicant some time should be given to the Postmaster General and in the meanwhile, the applicant Shri Ambika Kumar Jena should be allowed to continue in the said post as he has not yet been ousted because the review application was finally disposed of only on 30th October, 1987. We think there is considerable force in this submission of learned Senior Standing Counsel(Central). We would therefore, direct that the judgment passed in T.A.217 of 1986 be given effect to on 1st May, 1988. We expect that it would certainly be possible on the part of the Postmaster General to direct appointment for the present applicant within this time and the present applicant would continue in his post till 30th April, 1988.

B.R.PATEL, VICE-CHAIRMAN,

I agree.



Agree
.....17.12.87
Member (Judicial)

Agree
.....17.12.87
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack,
December 17, 1987/S.Sarangi.

Sl. No 2993
28/4

Central Admin. Tribunal
High Court Bench, Cuttack
Filed on 21/5/88
C. R. No. 209
Sc. Dy. No.

S. O.C. 13
22nd April 1988

SUPREME COURT OF INDIA

D. No. 207A/88/SC/XI-A.

Dated: 22nd April 1988.

From

The Assistant Registrar,
Supreme Court of India,
New Delhi.

To

The Registrar, The Registrar,
High Court of Central Administrative Tribunal,
Cuttack Bench, Cuttack

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 3468 of 1988
(Petition under Article 136(1) of the Constitution of India for Special Leave to appeal to the Supreme Court from the judgment and order dated the 17th December, 1987 of the High Court of Central Administrative Tribunal, Cuttack Bench in Original Application No 530 of 1987)

Ambika Kumar Jena

.... Petitioner(s)

-versus-

Union of India & ors. Respondent(s)

Sir,

I am to inform you that the Petition(s) above-mentioned for Special Leave to appeal to this Court was/were filed on behalf of the petitioner(s) above-named from the judgment and order of the ~~High Court~~ Central Admin. Tribunal noted above and that the same was/were dismissed by this Court on the 28th day of March 1988.

A certified copy of the record of proceedings dated 28-3-88 in the matter is enclosed herewith for your information and record.

Yours faithfully,

Sachdev

ASSISTANT REGISTRAR

S/sharma*

Diary No. 150
3/5/88

Pl. prepare a
copy of the
entire letter
to supply to
Sri H.M. Mohapatra
Sri S.K. Roy

Certified to be true copy,	
<u>Sachdeva</u>	
Assistant Registrar (Judl.)	
..... 23-4-1988	
Supreme Court of India	

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Item No. 40

Court No. 2

Section XIA

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Civil) No. 3468 of 1988.

(From the judgment and order dated 17.12.87 of the Central R.Dm. Tribunal, Cuttack in O.A. No. 53/87)

Ambika Kumar Jena ... Petitioner

-versus-

Union of India & Ors. ... Respondents

(With appln. for ~~ex~~-parte stay)

Date: 28.3.88: This petition was called on for hearing today.

CORAM:

Hon'ble Mr. Justice E.S. Venkataramiah
Hon'ble Mr. Justice N.D. Ojha

For the Petitioner: Mr. J.R. Das, Advocate.

UPON hearing counsel the Court made the following

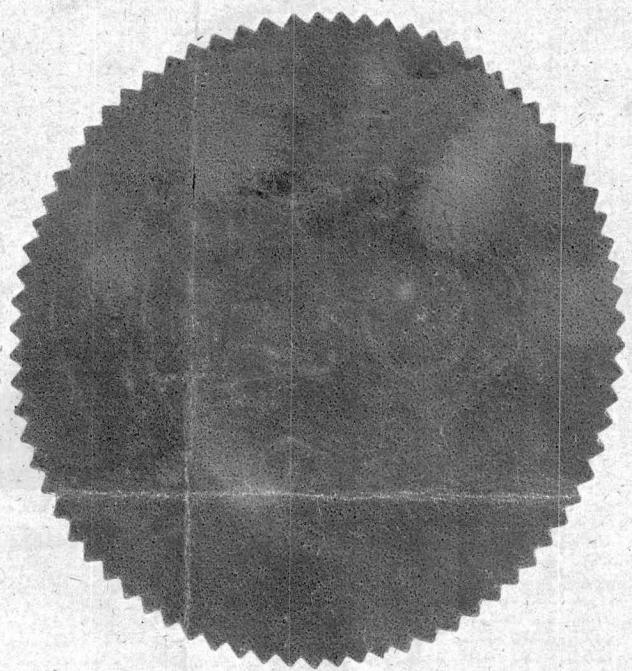
O R D E R

The petition is dismissed. We however re-iterate the observation made by the Tribunal in paragraph 5 of its judgment to accommodate, if possible, the Petitioner in any one of the vacancies in the State of Orissa.

sd/-XXX
(C.Jha)
Court Master.



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SEALED IN MY PRESENCE