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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 314 of 1990

Date of Decision : April, 10, 1991.

Nikunja Behari Samantray ... Applicant

Versus

Union of India & others ... Respondents

For the applicant

M/s.Devanand Mishra,
Deepak Mishra, RN Naik,
A.Deo, B.S.Tripathy,
P.Panda, Advocates

For the Respondents

Mr. A.K. Mishra,
Sr.Standing Counsel (Central)

C O R A M

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

A N D

HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether the reporters of the local news paper are allowed to see the judgment ? Yes
 2. To be referred to the reporters or not ? //0
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes
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N. SENGUPTA, (MEMBER (J)), The applicant was appointed as Extra

Departmental Branch Post Master (EDBPM), Kasanda Branch
Post Office in account with Rajasunakhala Sub-Post Office
of Puri District, provisionally vide the Annexure - I.

Mer Epi

The vacancy in which the applicant was so appointed arose when the previous incumbent of the post Shri Adhikari Jena was removed from Service as a result of a Disciplinary Proceedings. Shri Jena approached the Central Administrative Tribunal, Cuttack Bench, hereinafter called the Tribunal, in Original Application No.175 of 1987. This Bench by their Order dated July, 10, 1990 quashed the order of removal from service and directed reinstatement of Shri Jena in service within a period of one month from the date of receipt of a copy of the judgment. In pursuance of this judgment Respondent No. 3 passed orders dated 10, August, 1990 (Annexure-2) for reinstatement of Shri Jena terminating the service of the applicant. The applicant has moved this Tribunal against this order seeking a direction to quash Annexure-2 and to allow him to continue as the EDBPM, Kasanda on a regular basis.

2. The respondents in their counter have maintained that Shri Adhikari Jena, the earlier incumbent of the post, has been ordered to be reinstated in service by the Tribunal and as such the applicant has no case and the application should be dismissed.

3. We have heard Mr. A.K.Mishra, the learned counsel for the respondents and the learned counsel for the applicant. The counsel for the applicant has averred that since the applicant has been in service from 7.12.1979 and as there is no mention in the appointment order at Annexure-I

See *Expt*

that he would be sent away or retrenched on the reinstatement of the earlier incumbent, it would be unjust to send him away to make room for Shri Adhikari Jena. He has further averred that as the applicant has rendered faithful and satisfactory service for over 11 years he should be retained in the post of EDBPM, Kasanda on a regular basis and Shri Adhikari Jena, the previous incumbent, should be adjusted as EDBPM in some other Post Office. Mr. A.K.Mishra, on the other hand, has pointed out that no relief against Shri Adhikari Jena can be granted by the Tribunal as Shri Jena has not been made a party and reliefs sought ^{for} by the applicant if granted would adversely affect the interest of Shri Jena. The other objection raised by Shri Mishra is that in several similar cases decided by this Bench in the past, some relief has been given to the persons provisionally appointed. Mr. Mishra has drawn our attention to Para-7 of the Counter particularly the following:

" the applicant has put in more than 3 years of service and he will be eligible to be enrolled as a discharged Extra Departmental Agent (removed from service purely on Administrative ground) in waiting list of such official in order of his seniority for his future absorption within one year from the date of termination in the vacancy that would arise and on the option of the applicant for the purpose as per provision laid down

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in DGP&T letter No.43-4/77 dated 18.5.79 ".

4. We agree with Mr. Mishra that no relief can be granted against Shri Adhikari Jena, who will have to be reinstated in service as per the Orders of the Tribunal in OA. 175 of 1987 particularly when Shri Adhikari Jena has not been impleaded. We do appreciate the plea of the Counsel for the applicant that the applicant has rendered long years faithful service. We would therefore direct that as mentioned in Para-7 of the counter quoted above, the name of the applicant should be kept in the register for eventual employment in a near by post office.

The case is accordingly disposed of. The parties to bear their own costs.

B.K. Sahoo
VICE CHAIRMAN



M. S. Sahoo
MEMBER (JUDICIAL)

Central Administrative Tribunal
Cuttack Bench, Cuttack

April, 10, 1991/ B.K. Sahoo