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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

O.A. 376/91

Cuttack this the 10th day of March, 1997.

HON'BLE SHRI SOMNATH SOM, VICE CHAIRMAN (A).

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J).

Pradeep Kumar Sahoo ... Applicant

Versus

Union of India & Ors. ... Respondents.

(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 Tribunals or not? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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HON'BLE SHRI SOMNATH SOM, VICE CHAIRMAN(A).

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J).

Shri Pradeep Kumar Sahoo,
S/o Shri Baidhar Sahoo,
At: Brahman Sasan,
Talcher Town,
PO: Talcher Town,
Distt. Dhenkanal.

... Applicant.

By Advocate Shri Ganeswar Rath.

Versus

1. Union of India, represented by
Chief Post Master General,
Orissa Circle, Bhubaneswar.
2. The Superintendent of Post Offices,
Dhenkanal.
3. Sub-Postmaster (LSG),
Talcher, At PO: Talcher,
Distt. Dhenkanal. ... Respondents.

By Advocate Shri Aswini Kumar Mishra, Sr. Counsel.

O R D E R

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J).

The applicant is aggrieved by the termination order passed by the respondents dated 7.10.1991 whereby he was informed that his services as Extra Departmental Messenger (for short 'E.D. Messenger') were no longer required and, therefore, he was struck off duty as on that date.

2. The brief facts of the case are that the applicant was initially appointed on a provisional basis as E.D. Messenger in the office of Sub-Postmaster (LSG), Talcher by order dated 12.12.1990. According to the applicant, by the terms and conditions of the appointment, his appointment could be terminated only when a regular appointment was made. He submits that his name had been sponsored by the Employment Exchange for appointment to the post of E.D. Messenger. He, therefore, submits that when he was appointed to this post, he had been appointed on a permanent basis and he had worked without any complaints in that post thereafter. In the circumstances, Shri Ganeswar Rath, learned counsel for the applicant, submits that the termination order is illegal. He further submits that the order is also bad as no show cause notice has been issued to the applicant before termination of his services and he relies on the judgement of the Supreme Court in K.I. Shephard Vs. Union of India (AIR 1988 SC 686).

3. We have also perused the counter affidavit filed on behalf of the respondents and also heard Shri A.K. Mishra, learned Sr. Counsel for the respondents. They have submitted that Respondent 3 had ¹⁸ ~~not~~ made ad hoc appointment against the vacancy caused due to transfer of one Sri Balabhadra Behera, E.D. Messenger to E.D.D.A. although Korian B.O. They have further submitted that/there was a ban on recruitment to E.D. posts at that time, Respondent 3 made the selection and appointed the applicant without seeking prior permission from Respondent 2. On receipt of the complaint from one Shri M.P. Sahoo, Public Service Unit, Talcher dated 1.5.1991, Respondent 2 had reviewed the matter of the selection made by Respondent 3. They

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have submitted that although the Employment Exchange had sponsored the names of 20 candidates by their letter dated 19.12.1990 for the post, Respondent 3 had issued intimation to all the candidates to apply for the post in the prescribed form against which six candidates had applied. Out of these six candidates, the applicant was selected provisionally for the post of E.D. Messenger on 23.1.1991 w.e.f. 1.2.1991. They have also submitted that while selecting the applicant, Respondent 3 had erroneously given weightage to the past experience which was not contained in the relevant instructions/rules. Another irregularity committed by Respondent 3 was that contrary to the recruitment rules for all categories of E.D.As, including E.D. Messenger, while it was sufficient that a candidate should have working knowledge of the regional language, English and simple arithmetic, Respondent 3 had wrongly prescribed the educational qualification as Class-VIII standard. Therefore, after considering the particular facts and irregularities in the selection held by Respondent 3, Respondent 2 being the competent authority, directed cancellation of the same and ordered fresh selection so that the same could be held in accordance with the rules/instructions. Accordingly, the impugned order was issued on 7.10.1991 following which, according to the respondents, the applicant had relinquished the charge of the post on the same date, i.e. 7.10.1991. Shri A.K. Mishra, learned counsel, relies on a similar case of the Tribunal (Cuttack Bench) in Brundaban Pradhan Vs. Union of India & Ors. (O.A. 15/91), decided on 25.4.1995.

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4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. From the facts narrated above, it is clear that the selection made by Respondent 3 to the post of E.D. Messenger to which the applicant was initially appointed on a provisional basis, has been done in contravention of the relevant rules/instructions regarding educational qualifications. This fact has not been controverted by the applicant. One of the main grounds of challenge of the impugned order dated 7.10.1991 is that the respondents have violated the principles of natural justice as no show cause notice had been issued to the applicant before termination of his service. In this regard, it is seen that the respondents have correctly decided to cancel the selection, on the grounds that Respondent 3 has failed to comply with the recruitment rules and also due to the other irregularities (and not on account of any misconduct or laches on the part of the applicant which were found later on in the selection process). In similar circumstances, this Tribunal in Brundaban Pradhan's case (supra) has held as follows:

".....In the instant case, however, the Respondents do not say that it was on account of misconduct, laches or lapses on the part of the applicant that the order of termination came to be passed. It was purely on their own lapses, breach of adherence to the Rules governing the recruitment, and failure on the part of the Employment Exchange to send adequate number of candidates for being considered for the post. These in our view are not matters which require answer from the applicant or to be explained by the applicant. It is purely a lapse on the part of the authority who was competent to appoint the applicant and therefore, considering the facts of the peculiar case before

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us, we are of the view that the decision relied upon by the applicant's counsel (K.I. Shephard's case (supra)) cannot be said to have been attracted...."

6. We respectfully agree with the reasoning in the aforesaid case and, therefore, do not find any justification for interference in the matter on the ground that no show cause notice had been issued to the applicant in this case. That argument is, therefore, rejected.

7. Further, the impugned order dated 7.10.1991 is an order simpliciter and does not cast any stigma on the applicant. Apart from this, the appointment order appointing the applicant to the post of E.D. Messenger also clearly shows that he has been appointed on a purely temporary and provisional basis and may be removed from service at any time without assigning any reasons. Therefore, the impugned order of termination dated 7.10.1991 is in terms of condition of appointment and is an order simpliciter. The reasons for their decision to cancel the selection given by the respondents are sufficient and show that it has been done purely on administrative grounds which cannot also be faulted.

8. For the reasons given above, we find no merit in this application. In the result, the application fails and is dismissed. No order as to costs.

Lakshmi

(Smt. Lakshmi Swaminathan)
Member (J)

Somnath
(Somnath Som)
Vice Chairman (P)