

6
10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 189 of 1992.

Cuttack this the 21st day of August, 1992.

Shri Mahendra Kumar Sahoo. ... Applicant.

-Versus-

Union of India and 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 Central Administrative Tribunal or not?

↑
(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

....

7
11
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :CUTTACK.

ORIGINAL APPLICATION NO.189 OF 1992.

Cuttack this the 21st day of August, 1992.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

....

IN THE MATTER OF:-

Shri Mahendra Kumar Sahoo, 29 years,
S/o. Ramashandra Sahoo, At/Po. Godisahi,
Via-Mundali Colony, Dist.Cuttack.

...

Applicant.

By legal practitioner:- M/s. Devanand Mishra, R.N.Naik, A.Deo,
Advocates.

- Versus -

J.Sm

- 1) Union of India represented through its
Secretary in the Department of Posts,
Dak Bhawan, New Delhi.
- 2) Chief Post Master General, Orissa Circle,
Bhubaneswar, Dist. Khurda.
- 3) Superintendent of Post Offices,
Cuttack City Division, Cuttack.
- 4) Assistant Superintendent of Post Offices,
Cuttack East Sub-Division, Cuttack.

...

Respondents.

By legal practitioner : Mr. Aswini Kumar Mishra, Senior Counsel.

....

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the orders passed at Annexures- 6 & 7 and also for a direction to the Respondents to regularise his services as E.D.Packer in Mundahi Colony Sub Post Office in the District of Cuttack.

2. The facts of this case, according to the Petitioners are that, he was provisionally appointed as Extra Departmental Branch Post Master, Godisahi Branch Post Office on 30-3-1990 in the suspension vacancy of one Shri Banshidhar Sahoo. Shri Sahoo, was later on reinstated in service and the petitioner's appointment as Extra Departmental Branch Post Master, Godisahi Branch Post Office was terminated. He was again appointed as Extra-Departmental Packer on 20-8-1991 and he took over charge on 27-3-1991. The order of his selection as Extra-Departmental Packer is dated 20-3-91 and is at Annexure-3.

S. J. M.

At Annexure-4 is the order of taking over charge, dated 27-3-1991. The applicant has stated that he was regularly selected for the post of Extra-Departmental ^{Packer} and while, he was working as such, on 30-1-1992, an order was issued vide Annexure-5 giving him provisional appointment as Extra-Departmental Packer and indicating that this provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post. This order of appointment, dated 30.1.1992, at Annexure-5, covered the period from 27.3.1991, the day he joined as Extra Departmental Packer till the regular appointment is made. Again on 7-2-1992 i.e. about a week later, another order, at Annexure-6, was issued to him stating that his service as Extra Departmental Packer is in the nature of contract liable to be terminated by him or by the Departmental Authorities by notifying each other in writing. In this order, at Annexure-6, the earlier order dated 30.1.1992, at Annexure-5 was cancelled. Thereafter, in the impugned

order dated 30.4.1992, vide Annexure-7, his services as Extra Departmental Packer were terminated with effect from 30.4.92 i.e. with effect from the same date. The applicant, thereupon came to the Tribunal and the Tribunal, on the date of admission of the petition, on 7.5.1992 ordered by way of interim relief that the services of the applicant, should not be terminated. Thereafter, by virtue of this interim order, the applicant has been continuing as Extra Departmental Packer, Mundali Colony Sub Post Office from 1992 till date. As his appointment was on regular basis, the applicant has challenged his termination order on the ground that before the order of termination was issued, no notice was issued and the same has been issued without any basis and that his how, he has come up with the prayer, referred to earlier.

S. J. M.

3. Respondents, in their counter-affidavit, have taken the preliminary point that against the termination order, the applicant has not filed any appeal to the

Departmental Authorities and this petition is not maintainable as he has not exhausted the Departmental remedy. As regards the factual aspects, the Respondents do not dispute the submissions made by the applicant. In paras 8 & 9 of their counter, the Respondents have submitted that regular appointment order was originally issued to the applicant. As regards the termination of his service, the Respondents have accordingly stated that on receipt of direction from higher authorities, his services have been terminated on administrative grounds. On the above grounds, the Respondents have opposed the prayer of the applicant.

4. In this case, in order dated 30.6.92, learned Senior Counsel appearing for the respondents was directed to produce the relevant file dealing with the applicant for perusal of the Bench. From a file produced at the time of hearing, we see that records do not throw any light on the question as to why the services of the petitioner have been terminated.

5. We have heard Shri A. Deo, learned counsel for the Applicant and learned Senior Counsel Mr. Aswini Kumar Mishra,

12
appearing for the Respondents and have also perused the records.

6. On the question of non-exhaustion of Departmental remedy, it is submitted by the counsel for the petitioner that as the order of termination was issued on 30.4.92 and the applicant's services stood terminated with effect from the same day, he rushed to the Tribunal on 7.5.1992 and obtained the interim order and by virtue of which, he is continuing as ED Packer. As the matter was urgent and his services would have been terminated, he had no opportunity to file an appeal before the Departmental Authorities and to exhaust the departmental remedy. We note that in this case, before issuing the order of termination at Annexure-7 no show cause was issued to him. Provisions of Administrative Tribunal's Act, 1985 also lays down that 'Ordinarily' when departmental remedies are not exhausted, the Tribunal would not entertain an Original Application. In the instant case, we find that there was a genuine apprehension

J. Jom

on the part of the petitioner that he would be thrown out of employment and that his why he has approached the Tribunal without filing any appeal. The Tribunal, having entertained the application, more than six years ago, it will not be appropriate for us to throw out the application on the above ground more so when the legal position does not leave out entertainment of such application in absolute term. This contention of the learned Senior counsel, appearing for the Respondents is therefore rejected.

As regards, reason for termination of the services of the applicant, as we have already noted, the Respondents in paras-8 & 9, have admitted that regular order of appointment was issued to the applicant. As regards the ^{cause} ~~case~~ of termination of the services of the ^{N.J.M.} applicant, they have merely stated that it has been done on the direction from the Higher Authorities on administrative grounds. When the order of termination has been challenged by the applicant, it is not enough for the Respondents to merely urge that it has been done on the basis of administrative reasons. It is incumbent on their

part to indicate what was the reason for which, his services were terminated. As the Respondents have thought it wise to remain silent on this point, we do not find it possible to uphold the impugned order of termination at Annexure-7. Therefore, the order at Annexure-7 terminating the services of the applicant, is hereby quashed. As a result, the petitioner will continue to work as Extra Departmental Packer, Mundali Colony Sub Post Office. We however, make it clear that in case there are reasons and genuine reasons for doing away with the services of the applicant, then the Respondents would be free to do so after giving appropriate notice to the applicant and following due process of law.

7. In the result, therefore, the application is allowed. But in the circumstances without any order as to costs.

3. The stay order issued on 7.5.1992 stands vacated.

(G. NARASIMHAM
MEMBER (JUDICIAL))

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27/3/98

KNM/CM