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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 31 of 1992.

Date of decision 13.10.1992.

Rohit Luha ... Applicant.

versus

Union of India and others ... Respondents.

For the applicants ... M/s. Devanand Misra,
Deepak Misra,
R. N. Naik, A. Deo,
B. S. Tripathy, Advocates.

For the respondents ... Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT)

C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. C. S. PANDEY, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays to direct the respondents to regularise the services of the applicant as Extra-Departmental Mail Man in the Head Post Office at Bargarh and to direct the respondents to release the salary of the applicant from April, 1991 onwards and not to terminate the services of the applicant till regularisation.

2. Shortly stated, the case of the applicant is that on the date of filing of the application i.e. 24.1.1992 the applicant was working as an Extra-Departmental Mail Man in the Head Post Office at Bargarh. Considering the eligibility and suitability of the applicant he was appointed

as Extra-Departmental Mail Man and since 8.10.1990 he has been working in the said post of Extra-Departmental Mail Man in the Head Post Office. The charge report is contained in Annexure-1. For unknown reasons, the applicant has not been paid his salary from the month of April, 1991 till the date of filing of the application though previously he was paid at the rate of Rs.637/- per month in the pay scale of Rs.420/- plus usual dearness allowance. The representations filed by the applicant for payment of his remuneration from April, 1991 did not yield any fruitful result and therefore this application has been filed with the aforesaid prayer.

3. Counter on behalf of the respondents was filed on 21.2.1992. Vide order dated 14.2.1992 the Tribunal had called upon the respondents to file a further statement for the purpose of clarifying certain assertions made by the applicant and such clarificatory statement was filed on behalf of the Respondents 3 to 5 styled as 'Reply/counter'. This was filed on 15.3.1992.

4. In their counter dated 18.2.1992 filed on 21.2.1992 the respondents maintained that there was an establishment under S.R.M. (K) Division, Jharsuguda' Bargarh Sorting' which was abolished with effect from 1.3.1986 vide C.P.M.C. (O) Circle, Bhubaneswar Memo No. ML/2-11/84 dated 28.10.1986 as contained in Annexure-R-1). Consequent upon such abolition with effect from 1.3.1986 one post of E.D. Kail Man was found surplus and ordered to be kept as supernumerary post attached to the Bargarh Head Post Office under Sambalpur Postal Division. One Shri Purandar Dip,

the permanent incumbent functioning as E.D. Mail Man was attached to the Bargarh Head Office and Shri Purandar Dip by virtue of passing ~~in~~ the Departmental Examination, he was promoted as Mail Guard (Group 'D') in RMS 'K' Division and got relieved from the post of E.D. Mail Man by giving a substitute to work with effect from 8.10.1990 and the applicant acted as the substitute and the applicant was paid his allowance as was being paid to Shri Purandar Dip till 31.3.1991. The applicant was not paid his salary as his services ceased to operate with effect from 31.3.1991 on completion of 180 days leave.

In their counter filed on 15.3.1992 the respondents maintained that the post in which Purandar Dip was working was abolished by the orders of the Respondent No.2 communicated vide his order dated 28.10.1986. But Purandar Dip was allowed to work ~~in~~ as supernumerary post. In the same counter it is stated that the applicant has been given his duty pay for 1.4.1991 to 26.1.1992 which amounts to Rs.6497/- and has been paid to the applicant on 27.2.1992. Hence it is submitted that the case of the applicant being devoid of merit is liable to be dismissed.

5. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents at a considerable length.

6. From the averments ⁱⁿ and the pleadings of the parties, and after hearing arguments from both sides, we are convinced that the post in question was a supernumerary post created for Purandar Dip. We further ~~more~~ accept

the case of the respondents that by virtue of the promotion of Purandar Dip and he having relinquished the supernumerary post, the said post is deemed to have been abolished with effect from 8.10.1990 i.e. when Shri Dip relinquished the said post. The post being no longer in existence with effect from 8.10.1990, legitimately the applicant had no right to work in such post especially in the absence of the regular appointment letter issued by the competent authority and on this point we shall express our opinion at a later stage. As ~~the~~ the prayer for regularisation of his services against the post of Extra-Departmental Mail Man, in the Head Post Office at Bargarh, we find no justifiable reason to allow such prayer of the applicant because the applicant could not produce any appointment letter appointing ^{him} to the said post ~~by the competent authority~~. We say so because such letter of appointment has not been filed either by the applicant or by the respondents, and secondly the post in question stood automatically abolished with effect from 8.10.1990. The applicant having admittedly discharged the duties of Extra-Departmental Mail Man in a post not sanctioned and the post having automatically ceased to exist, yet the applicant is entitled to his emoluments because he has rendered service to the Postal Department with the full knowledge of the concerned authorities including the Senior Superintendent of Post Offices, Sambalpur Division. However, confining ourselves to the prayer of the applicant, we find no merit in this case because the services of the applicant cannot be regularised against a non-existing post. So far as his emoluments are concerned it was not disputed

before us that the applicant has already been paid the amount of Rs.6497/- on 27.2.1992, though no orders were passed by this Bench to make payment to the applicant. In view of the aforesaid facts and circumstances of the case, we find no merit in this application which stands dismissed leaving the parties to bear their own costs.

8. Before we part with this case we would commend to the Chief Post Master General, Orissa Circle, Bhubaneswar to take serious notice of the illegalities committed by the concerned authorities. Annexure-1 indicates that Rohit Luha (the applicant) took charge from Purandar Dip on 8.10.1990. At the cost of repetition we may say that no letter of appointment has been issued in favour of Rohit Luha. It is not understood as to how in the absence of letter of appointment issued in favour of Rohit Luha he took charge from Purandar Dip and since this charge report would have been received by the Post Master, Baragarh Head Post Office and ^{by} ~~that~~ ^{Senior} ~~of the~~ Superintendent of Post Offices, Sambalpur Division objection was not raised and the applicant was not directed to vacate the post in question immediately as that ^{had} ~~ceased to~~ exist. It is far beyond our comprehension as to how the drawing and disbursing authority could make payment to Rohit Luha in respect of a post which was not sanctioned especially when in paragraph 3 of the counter which was filed on 21.2.1992 it is specifically averred that supernumerary post stands abolished as soon as the incumbent for whom it is created vacates the such post. No officiating arrangement can be made against such post. It is equally far beyond our comprehension as to how a sum of Rs.6497/-

was drained out from the State exchequer. Frivolous plea taken in the said counter is that the post stood terminated with effect from 31.3.1991. This not only runs contrary to the previous statement made that the supernumerary post stands automatically terminated by virtue of the fact that the person holding the supernumerary post vacates the post. These contradictory statements, in our opinion, amount to blowing hot and cold in the same breath. Furthermore, in paragraph 2(ii) of the counter, it has been further stated that the applicant being a substitute had been allowed to work on contingent basis as and when required and the period of service rendered from 8.10.1990 to 31.3.1991 by Shri Rohit Luhu was on the sole responsibility of Purandar Dip, the permanent incumbent of the supernumerary post. This is another instance of blowing hot and cold in the same breath. A substitute can be provided by the permanent incumbent when he goes on leave but we fail to understand as to how Purandar Dip had the locus standi to provide a substitute on his promotion against the post which was not in existence with effect from 8.10.1990. If the applicant was working on contingent basis as stated in paragraph 2(ii) of the counter, then we fail to understand the reasons as to how Rs.6497/- was paid to the applicant on 27.2.1992 especially when this issue was pending determination by this Tribunal. In such circumstances, we feel that there has been a clear wastage of Government money to the tune of Rs.6497/- which should be recovered from the

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Officers at fault. We therefore wish to say that the Chief Post Master General would be well advised to cause a detailed enquiry into the matter and who ever is held to be responsible for the illegal payment of Rs.6497/- to the applicant, Rohit Luha, such officer, or officers should reimburse the same amount to the Government. The Chief Post Master General shall pass necessary orders according to law as deemed fit and proper.

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MEMBER (ADMN.)

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Lal Sarangi
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13/10/92
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VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack,
13.10.92. /Sarangi.