

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.346 OF 1994
Cuttack this the 24th day of January/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Sri Khageswar Swain,
S/o. Sri Panchanan Swain
At-Arakhapur, Via-Dhanmandal
Dist - Jajpur - Extra Departmental Delivery Agent,
Dhanmandal Sub Post Office,
C/o. Alekh Mohanty, Advocate,
Ramgarh, Cuttack-8

Applicant

Mr.A.C.Mohanty

By the Advocates

-VERSUS-

1. Union of India represented through the Superintendent of Post Office, Cuttack, South Division, Cuttack
2. Sub Divisional Inspector (Postal), Cuttack, Central Sub Division, Cuttack
3. Sri Ramesh Chandra Jena, At/PO-Dhanmandal Dist - Jajpur

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Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Res. 1 and 2)

M/s.R.N.Naik, A.Deo
B.S.Tripathy,
M.P.J.Ray
D.K.Sahoo(Res.3)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Cause of action for this Application filed on 10.6.1994 in ^{the} order dated 17.5.1995 disposing of Original Application No.286/94 preferred by the present Respondent No.3 on 16.5.1994 impleading the present applicant as Respondent No.5. Prayer in the present application is for non implementation of the final order dated 16.5.1994 in the earlier Original Application. Respondent Nos. 3 and 4 of that O.A. are Respondent nos. 1 and 2 of this application.

2. Applicant, Khageswar Swain, while serving as E.D.M.C., Arakhpur was prosecuted in G.E. Case No. 361/90. During his absence S.D.I.(P), Central Division, Cuttack (Respondent No.2) appointed one Krushna Chandra Singh as that E.D.M.C. The Criminal Case ultimately ended in acquittal on 4.9.1992. Thereafter Respondent No.2 appointed the applicant as E.D.D.A., Kalakala B.O. When Shri Harihar Misra, E.D.D.A., Dhanmandal was to retire on superannuation on 12.5.1994, Respondent No.2 requested the Employment Exchange to sponsor names for that post in response to which in letter dated 25.4.1994 five names including Res. 3 were sponsored. Yet Respondent No.2 appointed the applicant in this post because of a representation of the applicant for such posting on the ground that applicant's village Arakhpur is within 20 kms. from Dhanmandal and more than 22 kms. from Kalakala. In that appointment order there was direction to the applicant to join at Dhanmandal on 13.5.1994 forenoon (Vide Annexure-2). Respondent No.3 then preferred O.A.186/94 on 16.5.1994 stating that Respondent No.2 transferred the applicant from Kalakala to Dhanmandal and such transfer was contrary to rules. Without enclosing a copy of this order which was described as an order of transfer, he prayed for a declaration that such order of transfer as illegal/^{and}for a direction to complete the process of selection from among the sponsored candidates from the Employment Exchange. On the very next day, i.e. on 17.5.1994 the O.A. was listed and on that day itself the then Members of this Bench without issuing notice to the Respondents, ~~and~~ specifically to Respondent No.5 (the present applicant), the party to be affected, finally heard and disposed of the case in presence of the then Standing Counsel for the Department holding that the

orders of transfer of the applicant to Dhanmandal as illegal and directed that applicant should continue at Kalakala B.O. There was further direction that selection process for filling up of the post of E.D.D.A., Dhanmandal should be completed within sixty days from the date of receipt of copy of the order. These facts are not in dispute.

3. The present application has been filed on 30th day after the disposal of the earlier O.A. On 7.5.1994 it was ordered that the selection shall not be finalised and appointment order should not be issued in favour of anyone till final disposal of this case. There was further order that "during the interim period, Khageswar Swain, who, I understand joined Dhanmandal Sub Post Office before the said orders in O.A.286/94 were passed and received, and, as such has continued in the post, he is permitted to continue until further orders".

4. Respondent No.3 though entered appearance and filed M.A.458/94 for vacation of the interim order dated 5.7.1994, has not filed any counter. On 9.12.1994, when this O.A. was adjourned to 12.12.1994, Respondent No.3's counsel prayed for hearing of this M.A. on the date of adjournment. But neither on 12.12.1994 nor on subsequent dates Respondent No.3 had taken any step so much so this M.A. remained undisposed of.

5. Respondents 1 and 2 filed counter. Thereafter the applicant amended the O.A. by ^{adding} indicating additional prayer to the effect his service condition should not be pursuant to the judgment of O.A.286/94. Respondents 1 and 2 then filed additional counter.

In Para No.2 of Original counter filed in September, 1994 and also in Para No.2 of the additional counter filed in

September, 2000, the Department at first used the expression 'posting' with reference to the order in favour of the applicant to join as E.D.D.A. at Dhanmandal. But in subsequent paras described that order to be an order of transfer.

6. No rejoinder has been filed. This O.A. was posted to 17.1.2001 for peremptory hearing. On that day Advocates abstained from attending Court. Parties also did not attend. Bearing in mind that this is a case of 1994 with the operation of interim stay since July/94, we closed the case with the following orders

" Advocates have abstained from attending Court work since 7.12.2000. There is no indication when they will be returning to Court work. Hon'ble Supreme Court in the case of Raymon Services (P) Ltd. vs. Subhash Kappor reported in 2000 AIRSCW 4093 have deprecated the action of the Courts in adjourning cases on the ground of abstention from Courts by the Advocates. Even their Lordships have observed adjourning cases under such circumstances the defaulting Courts would be contributory to contempt of the Hon'ble Supreme Court. In view of this it is not possible to adjourn this 1994 matter. Petitioner is absent when called. There is also no representation from the side of the respondents. Since Advocates have abstained from attending Court work, we did not have the benefit of hearing learned counsel for both sides. Perused the records. Case is closed. Posted to 24.1.2001 for delivery of orders. Let the records of O.A. 286/94 be tagged to this case for reference".

7. Neither in the counter of the Department nor in the M.A.458/94 of Respondent No.3 there is denial to the truth of the submission of the applicant made before this Bench on 5.7.1994 that the applicant had joined at Dhanmandal before order dated 17.5.1994 was passed in O.A.286/94. The Department also in the counter did not deny the truth of contents of Annexure-2, orders passed by the Respondent No.2 in favour of the applicant in response to the latter's representation. Expression, 'posting' or 'transfer' do not find place therein. On the other hand expression used is 'appointed'. However, it is not necessary for

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us to determine whether the order of Respondent No.2 to enable the applicant to join at Dhanmandal is an order of appointment or orders of transfer. What is necessary for determination is whether the order dated 17.5.1994 in O.A. 286/94 questioning the orders of Respondent No.2 in favour of the applicant to enable him to join at Dhanmandal as EDDA even if it can be treated as an order of transfer is binding on the applicant in the instant case.

8. Perusal of the record of O.A.286/94 would reveal that on 17.5.1994 it was listed for the first time and the then Members constituting the Division Bench, without issuing notice to the present applicant impleaded as Respondent No.5, allowed the O.A. as against him after hearing the counsels of that applicant and departmental respondents 1 to 4. Provisions of Section 22 of the A.T.Act, 1985 read with Rule 11 of C.A.T. (Procedure) Rules, 1987 make it clear that a respondent likely to be affected has to be noticed to have his say in the matter. Earlier O.A. was primarily targeted against the present applicant impleaded as Respondent No.5. Yet he was not afforded any opportunity to defend himself. Not only the aforesaid statutory provisions of the Act and Rules have been violated, but also principles of natural justice have been grossly violated and that too on the misleading averment in the application that the present applicant has been transferred to Dhanmandal, though the expression actually used is 'appointed' and even without the so called impugned order of transfer having been annexed to the application.

9. We have, therefore, no hesitation to hold that the applicant is not bound by the order dated 17.5.1994 passed in

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O.A.286/94. Accordingly we direct Respondents 1 and 2 not to implement that order against the applicant and not to change his status of service as it was on the date this application was filed.

10. Application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.1.2001

24.1.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//