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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 553 OF 1994

Cuttack, this the 7th day of August, 2002

Hrudananda Mallick

....Applicant

Vrs.

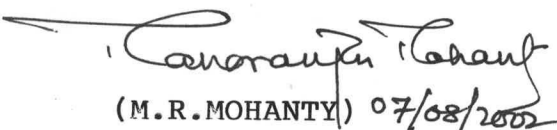
Union of India and others ...

Respondents

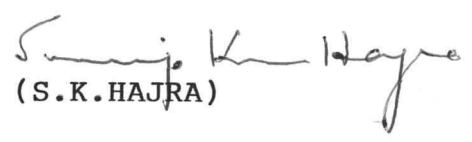
FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? No

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not? No


(M.R. MOHANTY) 07/08/2002

MEMBER (JUDL.)


(S.K. HAJRA)

MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 553 OF 1994

Cuttack, this the 7th day of August, 2002

CORAM:

HON'BLE MR.S.K.HAJRA, MEMBER(ADMN.)
AND
HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)
.....

Sri Hrudananda Mallick, aged about 27 years, son of Sri
Nityananda Mallick,
Vill/PO-Sarichua, District-Cuttack.....
..... Applicant

Advocates for applicant - N/s P.K.Mishra
S.K.Ojha
Mrs.P.Mishra

Vrs.

1. Union of India, represented by its Secretary through
Director General of Posts, Department of Post, Dak
Bhawan, New Delhi-1.
2. Chief Post Master General, Orissa Circle,
At/PO-Bhubaneswar-1, District-Khurda.
3. Senior Superintendent of Post Offices, Cuttack City
Division, Cuttack-1 At/PO/Dist.Cuttack-7530011.
4. Pitabas Choudhury, At/PO-Sarichuan, P.S-Cuttack
Sadar, Dist.Cuttack
..... Respondents

Advocates for respondents - Mr.S.B.Jena, ACGSC for
R 1 to R 3
&
Mr.D.P.Dhalsamant for
ntervenor-R-4.

.....
O R D E R

MR.S.K.HAJRA, MEMBER(ADMN.)

The applcant was provisonally selected as
EDSPM, Sarichua S.P.O. He took up appointment on
26.2.1991. His servces were terminated under Rule 6 of
Extra-Departmental Agents (Conduct & Service) Rules, 1964
(hereinafter referred to as "Rules"), by order dated

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17.2.1992, issued by respondent no.3. Thereafter the applicant filed an Original Application before this Tribunal with a prayer to quash the order of termination. This Tribunal by order, dated 25.8.1993 (Annexure A/3) quashed the order of termination of the applicant and directed his reinstatement in service. Respondent no.3 was allowed to issue a notice to the applicant to show cause as to why his services would not be terminated for the allegations resulting in termination of service and pass appropriate orders on consideration of the applicant's reply to the showcause notice. Respondent no.3 issued a notice on 5.1.1994 (Annexure A/4) calling upon the applicant to show cause why his services would not be terminated for submission of false declaration on income and for non-fulfilment of the condition prescribed for recruitment to the cadre of EDSPM. On receipt of the applicant's reply, respondent no.3 passed order, dated 31.5.1994 (Annexure A/7) terminating the service of the applicant for giving false information for selection to the post of EDSPM, Sarichua and exhibiting doubtful integrity. Aggrieved by this order, the applicant filed this Original Application to regularise his service in the post of EDSPM, Sarichua.

2. Shri P.K.Mishra, learned counsel for the applicant, advanced the following contentions. The applicant was appointed as EDSPM, Sarichua, in 1991 and worked for more than one year. All of a sudden, his service was terminated by respondent no.3 without any showcause notice. His termination order was quashed by this Tribunal. Respondent no.3, without giving an

Sum

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opportunity to the applicant, as required by this Tribunal, passed the order, dated 31.5.1994 (Annexure A/7) again terminating the service of the applicant. Regular disciplinary enquiry was not conducted, as required under Rule 8 of the Rules for specific act of misconduct. The applicant was denied a reasonable opportunity of hearing. Intervenor, Pritabas Choudhury did not press the application for vacation of stay. The Misc.Application for vacation of stay was withdrawn.

3. Shri S.B.Jena, learned Additonal Standing Counsel, appearing for the offical respondents, argued as follows. The applicant gave false information about his employment under M/s Allied Industries, Cuttack, based on which an income certificate was issued. The applicant was never employed by M/s Allied Industries, Cuttack, as demonstrated by the letter, dated 28.1.1992 (Annexure R/3) of M/s Allied Industries. The applicant was called upon to show cause why his service would not be terminated by the notice (Annexure A/4) for submission of false declaration and non-fulfilment of conditions prescribed for recruitment to the cadre of EDSPM. The applicant submitted his reply, which was considered, and a reasoned order was passed by respondent no.3 terminating the service of the applicant for giving false information for selection to the post of EDSPM, Sarichua, and for exhibiting doubtful integrity. The applicant, in this Original Application, has not challenged the order of termination, dated 31.5.1994 (Annexure-A/7) and, therefore, his prayer for regularisation is unsustainable.

Sum

4. Shri D.P.Dhalsamant, learned counsel appearing for intervenor-respondent No.4, argued as follows. The intervenor was appointed as EDSPM, Sarichua. This Tribunal, in judgment, dated 25.8.1993 (Annexure A/3), passed in OA No. 70 of 1992, quashed the order of termination of service of the applicant, directed his reinstatement in service, and asked respondent no.3 to issue a notice to the applicant to show cause why his service would not be terminated for submission of false declaration on income and for non-fulfilment of the condition prescribed for selection to the post of EDSPM, Sarichua. This Original Application is not maintainable and the relief sought by the applicant cannot be granted as he has not prayed for quashing the order of termination, dated 31.5.1994 (Annexure A/7). The intervenor has a right to be appointed in place of the applicant if the order of termination of service of the applicant is upheld.

5. We heard the three sides and perused the records. This Tribunal in its order, dated 25.8.1993 in OA No.70 of 1992 (Annexure A/3), quashed the order of termination of service of the applicant issued by respondent no.3 on 17.2.1992 and gave direction to reinstate the applicant in service with the condition that the Department was at liberty to issue notice to the applicant to show cause why his service would not be terminated because of the allegations for which his services were terminated. Respondent no.3 was asked to consider the representation of the applicant, if any, and

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pass orders according to law. Accordingly, respondent no. 3 issued a showcause notice ^(Annexure A/4) calling upon the applicant to show cause why his service would not be terminated for submission of false declaration about his annual income of Rs.9600/- from service in M/s Allied Industries and for non-fulfilment of the conditions prescribed for recruitment to the cadre of EDSPM. In response to this showcause notice, the applicant gave a comprehensive representation on 20.1.1994 (Annexure A/5) pleading for dropping the charges levelled against him as he had not given false information about income certificate. Respondent no.3, in consideration of the representation, rejected the contentions advanced by the applicant and passed an order (Annexure A/7) terminating the service of the applicant on the ground of his having furnished false information with sole intention to get himself selected to the post of EDSPM, Sarichua, as well as for exhibiting doubtful integrity. The false information relates to the income certificate produced by the applicant from the office of Tahasildar, Sadar, Cuttack (Annexure R/2). In this income certificate, dated 1.11.1990, which was issued for the purpose of the applicant for service, it was shown that the annual income of the applicant from salaries (from private service, i.e., M/s Allied Industries, Cuttack) was Rs.9600/-. M/s Allied Industries, Cuttack, to which respondent no.3 wrote a letter on 28.1.1992, stated in letter dated 28.1.1992 (Annexure R/3) as follows:

"With refer (sic) to the subject ciited above, we are to say that Srii Hrudananda Mallik was neither working in our Industry previously nor he is working at present in our establishment."

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It is seen from the note at Annexure R/4 that the applicant was called upon to furnish the full particulars of M/s Allied Industries. The contention of the applicant that the enquiry on his income certificate was conducted behind his back is not supported by records.

6. The applicant in his representation (Annexure A/5) stated, among other things, that as per Annexure 1 to his representation, he had worked in M/s Allied Industries. He enclosed a certificate purported to have been issued by M/s Allied Industries on 7.9.1990 in which the monthly salary of the applicant, including all sources, was Rs.800/-. Its veracity cannot be accepted.

Furthermore, as mentioned above, M/s Allied Industries, Cuttack, in their letter, dated 28.1.1992 (Annexure R/3), categorically stated that the applicant never worked in their industries. Curiously enough, the applicant produced a certificate No. 32 of 1993 (Annexure D) from the office of Tahasildar, Sadar, Cuttack, according to which his annual income from agricultural land was Rs.6000/- and from any other source was Rs.4000/-. This certificate was not produced by the applicant before appointment on 26.2.1991. Thus, it is clear that the applicant at different times produced different certificates. Obviously, his intention was to produce an income certificate to get the job of EDSPM. Therefore, respondent no.3 rightly rejected the income certificate which was produced with false information.

7. Another contention advanced by the applicant is that an enquiry should have been conducted under Rule 8 of the Rules. This is not required since the applicant had not put in three years of service at the

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time when his service was terminated by the orders dated 17.2.1992 and 31.5.1994. Rule 6 of the Rules states as follows:

"6.Termination of Services

(a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employer.

(b) the period of such notice shall be one month;

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

In this case, pursuant to the order of this Tribunal (Annexure A/3), a notice was issued to the applicant calling upon him to show cause why his service would not be terminated for submission of false declaration and non-fulfilment of conditions prescribed for recruitment to the cadre of EDSPM (Annexure R/4). Thus, the applicant was given an opportunity in accordance with the principles of natural justice to explain his case. The applicant could not vindicate his stand and respondent no.3 passed the order dated 31.5.1994 (Annexure A/7) terminating the services, giving reasons for rejecting the stand taken by the applicant in his representation (Annexure A/5).

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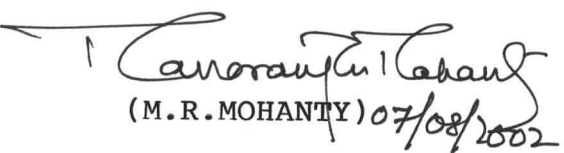
8. The applicant, in his Original Application, has not prayed for quashing the order of termination, dated 31.5.1994 (Annexure A/7). He has prayed for regularising his service in the post of EDSPM, Sarichua, since he is in possession of necessary properties and having income of Rs.10,000/-, as certified by the local revenue authority, i.e., Tahasildar. But this certificate is not valid because this was not issued before appointment of the applicant in 1991. This relief cannot be given since the applicant got the job based on an income certificate obtained on furnishing false information.

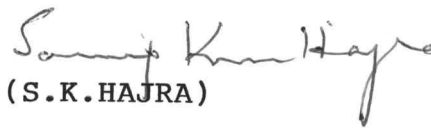
9. To sum up, the applicant got the job of EDSPM, Sarichua, by producing an income certificate which was clearly based on false/wrong information / declaration. Pursuant to the order, dated 25.8.1993 (Annexure A/3) of the Tribunal, the applicant, in accordance with the principles of natural justice, was given an opportunity to reply to the allegations about submission of false declaration and non-fulfilment of condition prescribed for recruitment to the cadre of EDSPM. On consideration of the representation submitted by the applicant, respondent no.3 passed a reasoned order (Annexure A/7) rejecting the contentions advanced by the applicant in his representation and terminated his service for having furnished false information with an intention to get selected to the cadre of EDSPM and exhibiting doubtful integrity. We see no reason to interfere with the order, dated 31.5.1994 (Annexure A/7), terminating the service of the applicant.

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10. It was urged on behalf of the intervenor Sri Pitabas Choudhury (respondent no.4) during hearing that the intervenor should be appointed in place of the applicant, if this O.A. is dismissed. We see no reason for appointing Sri Pitabas Choudhury to the post of EDSPM, Sarichua, after a lapse of more than a decade. It will be valid and proper to go in for fresh recruitment to the post of EDSPM, Sarichua. Since the post was originally held by a candidate belonging to Scheduled Caste community (applicant), the post should be reserved for Scheduled Caste.

11. For the reasons given above, the Original Application is dismissed without any costs. Respondent no.3 will re-notify the vacancy of EDSPM, Sarichua, reserving the post for Scheduled Caste and make fresh recruitment strictly in accordance with rules.


(M.R. MOHANTY) 07/08/2002
MEMBER (JUDL.)


(S.K. HAJRA)
MEMBER (ADMN.)

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