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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

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ORIGINAL APPLICATION NO. 48 OF 1994
Cuttack this the 5th day of January, 2000

PRONOUNCED IN THE OPEN COURT

Udayanath Gouda

Applicant(s)


-Versus-


Union of India & Others

Respondent(s)

(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 Tribunal or not ? No.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO.48 OF 1994
Cuttack this the 5th day of January, 2000

CORAM:

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

Udayanath Gouda
aged about 28 years,
Son of Raghunath Gouda, At/Po: Mudumudia,
Via; Mohana, Dist: Gajapati

...

Applicant

By the Advocates : M/s.A.Deo
B.S.Tripathy
P.Panda,
D.K.Sahu

-Versus-

1. Union of India represented by
its Secretary, Department of Posts
Dak Bhavan, New Delhi
2. Chief Post Master General,
Orissa Circle, At/Po: Bhubaneswar
Dist: Khurda
3. Senior Superintendent of Post Offices
Berhampur (Ganjam) Division,
At/Po: Berhampur, District: Ganjam
4. Judhistir Nayak,
At/Po: Mudumudia, Via: Mohana
District : Gajapati

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Respondents

By the Advocates : Mr.S.Behera,
Addl.Standing Counsel
(Central)
(For Res.1 to 3)

J.Sm.

M/s.S.K.Das,
S.B.Jena, B.B.Acharya
J.Sengupta
(For Res.4)

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ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order of reinstatement of Respondent No.4 and for appropriate direction to respondents to regularise the service of the applicant. The third prayer is for direction to respondents not to terminate the service of the applicant.

2. Facts of this case, according to applicant are that against the put off duty vacancy of Respondent No.4, he was provisionally appointed as Extra Departmental Branch Post Master, Mudumudia. The applicant has stated that his name was sponsored by the Employment Exchange and after proper verification of the documents submitted by him, he was issued with offer of appointment against the put off duty vacancy. In the meantime, Respondent No.3 has passed orders reinstating Respondent No.4 to the post of Extra Departmental Branch Post Master, Mudumudia. It is stated that Res.4 is working as Secretary of Sikulipadar Gram Panchayat and he has not yet joined as F.D.B.P.M., Mudumudia. The applicant has further stated that the Departmental respondents are taking steps to terminate the service of the applicant and that is why he has come up in this petition with the prayers referred to earlier.

S Som

3. Respondent No.4 in his counter has stated that he joined the post of F.D.B.P.M. Mudumudia in the year 1971 through a regular process of selection. In the year 1988 because of some quarrel in the village one villager was murdered and there was serious feeling of enmity amongst the villagers. Apprehending danger he along with his family

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went
came
A.S.M.

left the village and came to a nearby village, viz., Sikulipadar. Charges were framed against him on the ground that he closed the Post Office from 2.5.1988 to 4.5.1988 and pending departmental proceeding he was put off duty. Ultimately on 31.1.1994 the Senior Superintendent of Post Offices imposed punishment of debarring the applicant for promotion for a period of one year. After the prosecution was closed orders were passed to reinstate him in the earlier post, but no such communication has been received by him. In view of this Res.4 has opposed the prayer of the applicant. It has been further submitted by Res.4 that if he is reinstated to the post of F.D.B.P.M., Mudumudia, he would resign from the post of Secretary, Sikulipadar Gram Panchayat.

4. The departmental respondents in their counter havestated that due to unauthorised absence, and closure of office /from 2.5.1988 to 4.5.1988, police arrest from 30.9.1988 to 13.10.1988 and his leaving the post-village for another village Respondent no 4. he was proceeded against departmentally and was put off duty. Against this put off duty vacancy the applicant was appointed as F.D.B.P.M. In his order of appointment it was specifically provided that his appointment was against the put off duty vacancy of Res.4 and that the authorities reserve the right to terminate his services at any time without assigning any reason. The departmental respondents have also stated that reinstatement order of Res.4 has already been passed and Res.4 is to take over the charge. It is further stated that the post of Secretary, Sikulipadar G.P. held by Res.4 is no bar for him to work as F.D.B.P.M. On the above grounds the departmental respondents have opposed the prayer of the applicant.

J.S.M.

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5. We have heard Shri A.Deo, learned counsel for the applicant and Shri S.K.Das, learned counsel for Res.4 and Shri S.Behera, learned Addl.Standing Counsel appearing for the departmental respondents and also perused the records.

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6. The first prayer of the applicant is to quash the order of reinstatement of Res.4. As the Respondent No.4 is the regularly appointed F.D.B.P.M. and he was put off duty pending completion of the departmental proceedings against him and as on the conclusion of the departmental proceeding punishment has been imposed on him and he has been ordered for reinstatement, there is no case for quashing the reinstatement order of Res.4. Learned counsel for the applicant has also not urged any ground ^{why} ~~that~~ _{Adm.} reinstatement order of Res.4 should be quashed. It has been submitted by the learned counsel for the petitioner that Res.4 is working as Secretary, Sikulipadar G.P. On an earlier occasion it was submitted by the learned counsel for Res.4 that if he is taken back to the post of F.D.B.P.M., Mudumudia he would resign from the post of Secretary. This has also been mentioned in his counter. The Departmental respondents have stated that his continuance in the post of Secretary, Sikulipadar G.P. is no bar for continuing as F.D.B.P.M., Mudumudia. In view of this, on this ground reinstatement order of Res.4 cannot be quashed.

Sd/-

The second prayer of the applicant is for direction to departmental respondents to regularise his service. The applicant was specifically appointed against the put off duty vacancy and he joined the post with the specific understanding that on joining of Res.4 he would have to make way for Res.4 and as such he cannot claim

regularisation in the post of F.D.B.P., Mudumudia; more so when the departmental authorities have already passed orders for reinstatement of Res.4. This prayer is therefore, held to be without any merit and the same is rejected.

7. From the pleadings of the parties it appears that Res.4 has not yet joined the post of F.D.B.P.M., Mudumudia. In this case on 10.2.1994, by way of interim relief it was directed that the post of F.D.B.P.M., Mudumudia should not be filled up until further orders. This order was modified in order dated 22.6.1994 on which date on the submissions made by the learned counsel for the applicant as also the learned counsel for Res.4 the Tribunal directed that Res.4 should resign from the post of Secretary, Sikulipdar G.P. by 1st July, 1994 and the applicant should handover the charge of F.D.B.P.M. Mudumudia to Res.4 on 4.7.1994. The Tribunal also directed that in case Res.4 did not resign from the post of Secretary, Sikulipadar G.P. then on 4.7.1994, the applicant should handover the charge to the Overseer Mail. It is submitted by the learned counsel for the petitioner that in obedience to the orders of the Tribunal he has handed over the charge to Overseer Mail and he is presently without any job. It is also submitted by him that Res.4 has not yet joined the post of F.D.B.P.M. and therefore, he should be allowed to continue as F.D.B.P.M., Mudumudia till Res.4 joins. It is submitted by Shri S.K.Dash, learned counsel for Res.4 that pleadings in this case have been completed long agoon and the present position of the matter is not known to any of the counsel. He therefore, wanted 10 days time

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to obtain instruction whether Res.⁴ has joined as F.D.B.P.M., Mudumudia B.O. As pleadings in this case have been completed long ago and this being a matter of the year 1994, we do not think it proper to adjourn the matter for obtaining report regarding the present position. We note, ^{that} admittedly the applicant was appointed ^{13/11/94} against the put off duty vacancy of Res.⁴. In view of this he was entitled to continue in the post of F.D.B.P.M., Mudumudia till Res.⁴ joins. He has handed over the charge to Overseer Mails in pursuance to order dated 22.6.1994 of this Tribunal. This was also more than five years ago. In case Res.⁴ has not yet joined the post of F.D.B.P.M., Mudumudia then the applicant should be taken back to the post of F.D.B.P.M., Mudumudia and should be allowed to continue till Res.⁴ turns up to join within a period of 15(Fifteen) days from the date of receipt of copy of this order.

With the above observation and direction, the Original Application is disposed of, but there shall be no order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K. SAHOO

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Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
5/11/2000