

4

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 60 OF 1996
Cuttack, this the 23rd day of May, 1997

Bikram Kishore Dora

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes.
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN. 28.5.97

5
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 60 OF 1996
Cuttack, this the 23rd day of May, 1997

CORAM :

HON'BLE SRI SOMNATH SOM, VICE-CHAIRMAN

...

Bikram Kishore Dora,
aged about 26 years,
son of Kailash Chandra Dora,
presently working as Extra-Departmental
Delivery Agent,
Thanual Branch Post Office,
Haridaspur, Cuttack,
a permanent resident of village & Post-Thanual,
Haridaspur, District-Cuttack

....

Applicant

-versus-

1. Union of India,
Director General of Posts,
Sanshad Marg, Dak Tar Bhawan,
New Delhi.
2. Assistant Director, Establishment,
Office of the Chief Post Master General,
Orissa, Bhubaneswar, District-Khurda.
3. Superintendent of Posts,
Cuttack North Division, Cuttack,
Town/District-Cuttack

....

Respondents.

Advocates for applicant -

M/s B. Mohanty & S. Patra.

Advocate for respondents -

Mr. Ashok Mohanty,
Senior Central Govt.
Standing Counsel.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to pay him the monthly allowances from January, 1993, along with interest and also bonus for the years 1993, 1994 and 1995 which has been paid to the similarly placed employees in those years.

SOMNATH SOM
23.5.97

6
2. The applicant in his application has merely stated that he is working as Extra-Departmental Delivery Agent (in short, E.D.D. in Thanual Branch Office from 4.10.1990 and had been getting his monthly allowances regularly. Suddenly, from January, 1993, payment of such allowances has been stopped. He is working till date in the above post and has, therefore, come up with the prayer as aforesaid.

3. The respondents in their counter have provided some more facts which were not disputed at the time of hearing by the learned lawyer for the applicant. According to the counter of the respondents, one Chandraraj Acharya was working as regular E.D.D.A. in Thanual Branch Office. He proceeded on leave with effect from 4.10.1990 providing the applicant as his substitute. Sri Acharya remained on leave for more than 180 days and according to the Rules, his services were terminated and the applicant was provisionally appointed as E.D.D. A. in place of Sri Acharya in order dated 1. 5.1991 (Annexure-A). It has been submitted by the respondents that the appointment of the applicant was purely provisional and had not been made through any process of selection. The applicant had also given an undertaking on 5.4.1991 that he would have no claim to the post in case his services were terminated. One Madhab Sahoo had, earlier to all this, filed a writ application in the Hon'ble High Court of Orissa, which was transferred to the Tribunal and registered as T.A.No.89 of 1987. While disposing of this T.A.No.89 of 1987 in order dated 14.10.1987 the Tribunal directed the departmental authorities to adjust Madhab Sahoo on compassionate ground in any post of similar nature. In pursuance of the above order, Madhab Sahoo was appointed in place of the present applicant as E.D.D.A., Thanual Branch Office, in order dated 21.2.1992 and the present applicant was sought to be relieved from his post.

mmwM Jm
23.5.97

The applicant thereupon came to the Tribunal in O.A.No.46 of 1992 which is still pending. By an interim order dated 4.2.1992 the Tribunal stayed operation of the appointment order of Madhab Sahoo and directed that the applicant should continue as E.D.D.A., Thanual Branch Office, until further orders. Accordingly, the applicant is still continuing in this post. In view of the interim order dated 4.2.92 the applicant was again appointed provisionally in order dated 16.12.1994. The order was sent on that day to the applicant requiring him to return the memo with his signature. The applicant, however, did not return the memo and because of this, the payment of allowances has been held up by Post Master, Jajpur Head Post Office.

4. I have perused the record and heard the learned lawyer for the applicant as also the learned Senior Standing Counsel appearing on behalf of the respondents. From the above recital of facts, it is clear that the claim of the applicant regarding monthly allowances falls into two parts from January 1993 to 15.12.1994 and from 16.12.1994 till date. So far as the first part is concerned, there is no averment in the counter of the respondents as to why payment of allowances for this period has been held up. Non-return of the memo dated 16.12.1994 with his signature by the applicant obviously relates to the period after 16.12.1994. In view of this, it is ordered that the respondents should, within a period of 60 (sixty) days from the date of receipt of copy of this order, pay to the applicant his monthly allowances as due from January, 1993 to 15.12.1994. The claim of the applicant for interest on this amount has no merit because as is evident from the above recital that there has been a spate of litigation regarding appointment to the post of E.D.D.A., Thanual Branch Office. It has not been shown or even alleged that the

Annex 23.5.97

respondents have held back the allowances for this period out of mala fide or with a view to harass the applicant. The prayer for interest on the allowances for this period is, therefore, rejected.

5. As regards the claim for allowances from 16.12.1994 till the date of filing of this application, the respondents have claimed that the allowances have not been paid because the applicant did not return the appointment order dated 16.12.1994 with his signature. For getting one's emoluments, apart from working in the post, one has to undertake the proper documentation and then only emoluments can be paid. For example, one has to sign the Acquittance Roll before receiving payment. In this case, the applicant was required to return the memo dated 16.12.1994 with his signature. He has not deliberately done so possibly because he might be feeling that accepting the memo and signing on it would mean that his appointment as E.D.D.A, Thanual Branch Office, would be from 16.12.1994 and this might affect his prayer in O.A.No.46 of 1992 which, as mentioned earlier, is still pending before the Tribunal. In consideration of that, it is ordered that the applicant should sign and return the memo dated 16.12.1994, if he is so advised, without prejudice to his prayer in O.A.No.46 of 1992 and on receipt of the memo, the amount due to him from 16.12.1994 should be paid by the respondents within a period of 90 (ninety) days from the date of receipt of copy of ^{appointment} the / order. Obviously, under the above circumstances, the applicant will not be entitled to any interest on this amount.

6. The next prayer is about bonus for the years 1993, 1994 and 1995. The respondents should consider this prayer strictly in accordance with Rules and dispose it of and intimate the result to the applicant within a period of 90 (ninety) days from the date of receipt of copy of this order.

23.5.97

7. In the result, therefore, the Original Application is allowed in part in terms of the directions given in paragraphs 4,5 and 6 of this order, but, under the circumstances, without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 23 5-97

ANN/PS