

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 154 OF 1999
Cuttack this the 7th day of November/2000

Ashok Kumar Behera

...

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
(SOMNATH SOM)
VICE-CHAIRMAN
7/11/2000

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.154 OF 1999
Cuttack this the 7th day of November/2000

CORAM:

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

Shri Ashok Kumar Behera, aged about 28 years
Son of Sri Apariti Charan Behera, Village-Mangadeipur
P.S. Kishennagar, PO - Khentalo, Via-Kishorenagar
PIN 754131, Dist - Cuttack

Applicant

By the Advocates

M/s.S.K.Mohanty
S.P.Mohanty
P.K.Lenka

-VERSUS-

1. Union of India represented by Secretary,
Department of Posts, New Delhi
2. Sub-Divisional Inspector (Postal), Cuttack
Central Division
3. Superintendent of Post Offices, Cuttack South Divn.
4. Chief Postmaster General, Orissa Circle

Respondents

By the Advocates

Mr.A.K.Bose
Sr.Standing Counsel
(Central)

O R D E R

MR.SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has -prayed for quashing the order dated 5.4.1999 (Annexure-9) cancelling his provisional appointment as Extra Departmental *Delivery Agent* / ~~Branch Post Master~~ Kalarabanka B.O. with further prayer to allow him to continue in the said post. The above prayers have been made on the grounds mentioned in the Original Application, which will be referred to while considering the submissions made by the learned counsel for the petitioner and therefore, it is not necessary to record the same at this stage. Respondents have filed their counter opposing the prayer of the applicant and the applicant has filed rejoinder.

*Corrected
vide Order
dt.15.11.2000

Member(J) *

2. We have heard Shri S.P.Mohanty, the learned counsel for the petitioner and Shri A.K.Bose, the learned Sr. Standing and Counsel for the respondents/also perused the records.

3. The admitted position is that the post of E.D.D.A., Kalarabanka B.O. fell vacant on 25.3.1998 due to superannuation of the original incumbent. A requisition was placed on the Employment Exchange for sponsoring the names. Respondents have stated that in this requisition which is at Annexure-R/2 there was no mention that preference would be given to any particular community. As the list of sponsored candidates was not received from the Employment Exchange within the time period fixed, a public notice was issued on 28.1.1998 vide Annexure-R/2 inviting applications from the general public. In this public notice however, it was mentioned against Column No.5 that SC/ST candidates would be given preference. It is also the admitted position that in this selection the present applicant was -selected for the post of E.D.D.A. The applicant has stated that he accordingly joined as E.D.D.A., Kalarabanka B.O. on 26.3.1998. Respondents have stated in Page-2 of their counter that subsequently the selection was reviewed by the higher authority and it was detected that the selection was made in contravention of the executive/administrative instructions, for the reasons indicated by the Respondents. It has been further stated that when the higher authority found that the selection was made in contravention of the executive/administrative instructions, a show cause notice was issued to the applicant. The applicant came up before this Tribunal in O.A.503/98 challenging the show cause notice which is at Annexure-4 to the present Original Application. O.A.503/98 was disposed of in order dated

28.9.1998 and Respondents were directed to intimate the applicant by a fresh notice the grounds on which his appointment as E.D.D.A. are in contravention of executive/administrative instructions. It appears that thereafter another show cause was issued and the applicant filed a representation which was taken into consideration and the impugned order of termination dated 5.4.1999 vide Annexure-9 has been passed. In course of his submission the learned counsel for the petitioner has made alaborate submission as to how the grounds relied upon by the Respondents as violation of executive/administration instructions are not correct and valid. He has also made submission as to how in the process of asking/show cause from the applicant and ultimately passing with the final order at Annexure-9 he was denied reasonable opportunity. Learned Sr.Standing Counsel Shri Bose in course of his submission has indicated the various irregularities/illegalityies which have been committed in the matter of appointment of the applicant to the post of E.D.D.A., Kalarabanka B.O. For the present purpose it is not necessary to refer to these submissions in detail, because we find that in this case Respondents have mentioned in their counter that the process of review of the appointment of the applicant to the post of E.D.D.A. was taken up by the authority superior to the appointing authority and at his instance the show cause notice was issued to the applicant. We have in several cases taken the view that termination of service of ^{an} E.D.Agent from his provisional appointmet can be ordered only by the appointing authority and such order cannot be passed on the basis of external direction. We note that in this case in the impugned order it has not been mentioned that this order has been issued in pursuance of Rule-6 of E.D.Agents(Conduct & Service)

J.M.

Rules, 1964. The Full Bench decision of the Tribunal in the case of Ambujakshi vs. Union of India & Ors. dealt and relied by the Division Bench of C.A.T., Bangalore in O.A.1407/95(R.M. Gurumurthy case) wherein it has been held that it is only the appointing authority who has the power under Rule-6 of the E.D.A.(Conduct & Service) Rules, 1964 to issue order of termination. In the instant case the order of termination/cancellation has been issued by the appointing authority. But it has not been specifically mentioned in the order that the same has been issued under Rule-6 of the E.D.A.(Conduct & Service) Rules, 1964. As in this case from the pleadings of the parties it clear appears that the appointing authority initiated the action in respect of the petitioner at the instance of his superior/higher authority and it further appears that the show cause submitted by the petitioner was disposed of at the instance of the higher authority, we hold that this order dated 5.4.1999 at Annexure-9 is not sustainable on the ground of its having been initiated and issued on the basis of external direction by the higher authority. In view of this we quash the order dated 5.4.1999 at Annexure-9 and direct the respondents to reinstate the applicant to the post of E.D.D. A., Kalarabanka B.O. forthwith.

Jm. With the above direction Original Application is allowed, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

(SOMNATH SOM)
VICE-CHAIRMAN