

NOTES OF THE REGISTRY

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Order No.7 dated 17.7.2000 (at 2.30 P.M.)

This matter has been posted today for passing orders on MA No. 337 of 2000.

2. This OA No. 476 of 1999 was finally disposed of in order dated 13.12.1999. For the purpose of considering MA No. 337 of 2000, a few facts of the OA will have to be referred to. In the OA the petitioner had prayed for a direction to the respondents to finalise the selection process for the post of EDBPM, Sasanipur BO pursuant to the public notification under Annexure-1 within a stipulated period. The two respondents in the OA were Union of India, represented by Chief Post Master General, Orissa Circle, Bhubaneswar and Superintendent of Post Offices, Cuttack North Division. Counter was filed on behalf of both the respondents and in paragraph 7 of the counter the following averment was made:

"7. That the facts stated in para 4.6 of the OA is disputed and denied. In fact the conception of the applicant is baseless and hence not sustainable in the eyes of law, as the selection is going to be finalised amongst the eligible candidates who have applied for the post not from outsiders who has not applied for the post."

Taking note of the above averment of the respondents, in the order dated 13.12.1999 the respondents were directed to finalise the selection process pursuant to the notification issued at Annexure-1 within a period of 30 days from that date. The respondents filed MA No.101 of 2000 on 8.2.2000, long after the period of 30 days was over, in which it was mentioned in paragraph 2 that on receipt of the order the Department is processing the case for

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finalisation of selection immediately and it may take some more time. On that ground one month's time was asked for implementing the order. MA No.101 of 2000 was disposed of in order dated 29.2.2000 after hearing the learned counsel of both sides and time was allowed till 8.3.2000 for implementing the order of the Tribunal. The present MA No.337 of 2000 has been filed on 9.5.2000 longafter the period of extended time was over on 8.3.2000. In the MA prayer has been made that the Tribunal should allow the respondents to renotify the vacancy for early finalisation of the selection process.

2. We have heard Shri A.Routray, the learned Additional Central Government Standing Counsel for the respondents and Shri D.P.Dhalsamant, the learned counsel for the petitioner and have perused the records.

3. It is clear that the prayer in the MA would have the effect of modifying the order dated 13.12.1999 and this is beyond the scope of a Misc.Application. Moreover, once by order dated 13.12.1999 the Tribunal has finally disposed of the OA it is not legally possible for the Tribunal to modify their earlier order. In view of this, it is held that MA No.337 of 2000 is not maintainable and the same is rejected.

4. Before parting with the matter it is necessary to note that in this case the departmental authorities, particularly the Chief Post Master General,Orissa Circle, Bhubaneswar, who was respondent no.1 in the OA, does not seem to have acted in a manner consistent with his responsibility of carrying out lawful orders of the Court. As earlier noted the counter in the OA

J.D.M.

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was filed on behalf of both the respondents and in the counter the respondents have specifically mentioned that the selection is going to be finalised amongst the eligible candidates who had applied for the post and not from the outsiders who have not applied for the post. On this specific averment of the respondents the order dated 13.12.1999 was passed. As the persons who had applied for the post, had applied in pursuance of the public notification dated 28.4.1999 at Annexure-1 of the OA, their cases were to be considered. Along with the present MA the respondents have filed letter dated 20.4.2000 at Annexure-R/3 issued by Shri D.Patra, Assistant Director (Staff), on behalf of the Chief Post Master General, Orissa Circle, Bhubaneswar. This letter is addressed to respondent no.2 in the OA.

From this letter it appears that Director of Postal Services (Headquarters) of the office of Chief Post Master General, Orissa, has directed that the proposal of respondent no.2, the Superintendent of Post Offices, Cuttack North Division to take action as per the order of the Tribunal has been turned down by the competent authority and respondent no.2 has been directed to intimate the position to this Tribunal. Presumably this letter has been issued under the authority of the Chief Post Master General who is respondent no.1 in the OA. We are at a loss to understand or appreciate how a public servant can refuse to implement the order of the Tribunal without carrying the matter to the appellate forum and direct in a cavalier fashion that the fact of his intention not to carry out the order of the Tribunal should be brought to the notice

SJM.

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of the Tribunal. This is all the more inexplicable because the order of the Tribunal dated 13.12.1999 has been passed going by the averment made by the respondents themselves in the counter which has been already quoted by us. In view of this, we cannot but deprecate such irresponsible conduct on the part of high officials of the postal department. We would however like to hope that this is a single aberration and would not be repeated in future and with that hope we do not want to proceed further in the matter.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

17.7.2000
VICE-CHAIRMAN

AN/PS

Free copy
of the order
on 17.7.00 given
to the both counsels.
Xerox copy of the
order received
from the photocopies
on 24.7.00.

✓ received
24.7.2000
S.O.