

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

20. 30. 07. 01

For Admissio  
n  
8/10  
Branch  
Division bench matter.  
Adjourned to 09. 08. 01.

Member (T)

21. 9.8.2001

Learned counsel for the petitioner Shri A.K.Choudhury and Associates are absent without any request for adjournment. In this case pleadings have been completed long ago and learned A.S.C. Shri A.Routray had filed a Memo praying for early adjudication of the matter. In view of this the matter has come up to-day for final disposal at the stage of admission. In view of the above, it is not possible to drag on the matter indefinitely, moreso when the learned counsel for the petitioner is absent without any request for adjournment.

We have, therefore, heard Shri A.Routray, learned A.S.C. for the respondents and perused the records.

In this O.A. the petitioner has prayed for quashing the decision of the departmental authorities terminating his service as E.D.B.P.M., Tankapani Branch Office and also for a direction to departmental authorities to reinstate him or in alternative to give him any other appointment. Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed.

Applicant's case is that on being sponsored by the Employment Exchange his name was considered by the Superintendent of Post Offices, Bolangir for the post of EDBPM, Tankapani B.O. and after considering his application and various documents submitted by him, vide order dated 5.8.1997 the applicant was appointed provisionally to that post, in which post he joined on 18.8.1997 by taking over the charge from one Jadumani Podh, Overseer Mails, (Annexure-3). Formal appointment order was issued on 5.8.1997 appointing the applicant to that post for a period of six months from 18.8.1997 to 19.2.1998 or till the regular appointment whichever is earlier, vide Annexure-4. Again <sup>in</sup> order dated 12.6.1998

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vide Annexure-5, he was given appointment w.e.f. 20.2.1998 to 15.8.1998. In this order also it was mentioned that his appointment would be terminated when regular appointment is made to the post. In order dated 16.3.1999 (Annexure-6) further provisional appointment was given to him with a stipulation that provisional appointment was till the disciplinary proceedings against Shri B.Sahar, the regular incumbent was finalized. Ultimately the petitioner was made to handover the charge on 1.9.1999 to Shri J.Podh, Overseer Mail vide charge report (Annexure-7). In the context of the above facts the applicant has come up in this petition with the prayers referred to earlier.

For the purpose of considering this petition it is not necessary to record all the averments made by the respondents in their counter, because these will be taken note of while considering the submissions made by the learned A.S.C. Shri A.Routray, on behalf of the respondents.

Respondents in their counter have stated and this has not been denied by the applicant by filing any rejoinder that the vacancy in the post of EDBPM, Tankapani arose because the regular incumbent Shri B.Sabar was put under off duty. The applicant was provisionally appointed to that post on six monthly basis. Respondents have stated that applicant's appointment on provisional basis was till the finalization of the disciplinary proceedings pending against Shri B.Sabar. But unfortunately in the orders of provisional appointment on six monthly basis wrong forms were used. Respondents have stated that in order dated 16.3.1999 (Annexure-6) condition that the applicant's appointment was still finalisation of the disciplinary proceedings pending against Shri B.Sabar was made clear. Respondents have further stated that the departmental proceedings against Shri B.Sabar was ultimately finalized and he was reinstated in service w.e.f. 1.9.1999. From the above pleadings of the parties it is clear that the applicant was given appointment against the put off duty vacancy of the regular incumbent and with the reinstatement of the regular incumbent the applicant was obliged to make way for

the regular incumbent. We therefore, find no illegality in the action of the departmental authorities in terminating the provisional appointment of the applicant in order to accommodate the regular incumbent on his reinstatement in service. The prayers of the applicant to quash the order of termination and to allow him to continue in the post of EDBPM, Tankapani B.O. are held to be without any merit and the same are rejected.

It is also to be noted that as the applicant was only given provisional appointment against the put off duty vacancy and this was intimated to him vide Memo dated 16.3.1999, respondents were not obliged to issue him a show cause notice before terminating his service.

The 2nd prayer of the applicant is for direction to respondents to provide him with alternative appointment. Instructions of D.G.Posts provide that where services of an E.D.Agent are terminated on grounds unconnected with ~~their~~ <sup>their</sup> conduct and behaviour and because of administrative reasons and in case such E.D.Agent ~~has~~ <sup>has</sup> put in three years of service or more, his/her name is to be kept in the waiting list with a view to providing alternative appointment as E.D.Agent in the vicinity. In the instant case the applicant worked as EDBPM from 18.8.1997 to 31.8.1999, i.e., for a period of two years and fifteen days. His case is, therefore, not covered under the instructions of DG Posts as referred above and therefore, it is not possible to direct the departmental authorities to include his name in the waiting list for the purpose of giving him alternative appointment as E.D.Agent. This prayer is also held to be without any merit and the same is, therefore, rejected.

In the result, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for. The O.A. is held to be without any merit and the same is rejected, but without any order as to costs.

MEMBER (JUDICIAL)

Free copies of  
final order  
dt. 9.8.2001 issued  
to counsel for  
both sides.   
R.M. 198  
S.O.C.D

Jenny V  
VICE-CHAIRMAN  
9.8.2001

10/10/01