

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 114 OF 2000.
CUTTACK, this the 26th day of September, 2000.

Subhash Ch. Ray. Applicant.

- Versus -

Union of India & 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.

✓
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
26.9.2000

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

Original Application No. 114 of 2000.

Cuttack, this the 26th day of Sept., 2000..

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

...

Subhash Ch. Ray, Aged about 50 years,
of Village Ratlang, PO: Ratlang, PS:
Binjharpur, Dist: Jajpur. Applicant.
By legal practitioner: M/s. Pradipta Mohanty, S.N. Kanungo,
D.N. Mohapatra, G.S. Satpathy,
Advocates.

- Versus -

1. Union of India represented by the Secretary to Government of India, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Orissa Circle, Bhubaneswar.
3. The Superintendent of Post Offices, Cuttack North Division, Cuttack.
4. The Assistant Superintendent of Post Offices, Jajpur Sub Division, Jajpur.
5. Madan Mohan Samal,
Headmaster, Ratneswar Bidyapitha,
At/PO: Ratlanga, PS: Binjharpur,
Dist. Jajpur. Respondents.

By legal practitioner: Mr. U.B. Mohapatra, Additional Standing Counsel (Central) for Res. 1 to 4.

Mr. B.B. Patnaik, Advocate
for Respondent No. 5.

....

JJM

ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, the applicant has prayed for quashing the order dated 31.1.2000 (Annx. 2) revoking the put off duty of Madan Mohan Samal, Res.No. 5. He has also prayed for a direction to the Departmental Respondents for making an enquiry into the allegation made by the applicant against Respondent No. 5 with regard to the holding of the post of Headmaster of Ratneswar Bidyapith which is a school taken over by the Government and to conclude and finalise the enquiry through a reasoned order. The third prayer is for a direction to the Departmental Authorities to find out the avenue for protection of the service of the applicant in the event of reinstatement of Respondent No. 5 to the post of EDBPM, Ratlang BO. Departmental Respondents and Private Respondent No. 5 have filed separate counter opposing the prayers of the applicant and the applicant has also filed rejoinder to the counter filed by the Departmental Respondents.

2. We have heard Mr. P. Mohanty, learned counsel for the Applicant, Mr. S. K. Dey, learned counsel for Respondent No. 5 and Mr. U. B. Mohapatra, learned Additional Standing Counsel appearing for the Departmental Respondents and have also perused the records.

3. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case. A few undisputed facts of the matter can be briefly stated.

4. Respondent No. 5 was working as EDBPM, Ratlang BO from 1.3.1974 and he was put off duty on 8.9.1983. Departmental

proceedings were initiated against him with regard to the alleged misconduct relating to certain money orders. Crl. case was also started against him. Admitted position is that in the Crl. case, he was acquitted on 12.6.1992 but the Departmental Proceedings continued. Respondent No. 5 approached this Tribunal in OA No. 220/93 which was disposed of in order dated 19.8.1999 at Annexure-3 with a direction to the Departmental Authorities to finalise the proceedings within a period of sixty days. There were certain other directions with regard to payment of exgratia amount to the applicant and in the present Original Application, we are not concerned with those directions regarding payment of exgratia amount to the applicant therein. In the put of duty vacancy of Respondent No. 5, applicant was appointed on 27.2.1984 as EDBPM, Ratlang BO and has been continuing till then. Applicant's grievance is that instead of finalising the Departmental Proceedings against the Respondent No. 5, within the period of sixty days, Departmental Authorities in their order dated 31.1.2000 at Annexure-2, revoked the put off duty order of Respondent No. 5 thereby forced the applicant to make way for Respondent No. 5. Applicant has stated that before issuing the order at Annexure-2, no show cause notice has been issued to him. He has been working in that post of EDBPM, Ratlang Branch Post Office in the put off duty vacancy for the last around 16 years. He has also stated that Respondent No. 5 is working as Headmaster of Ratneswar Bidyapith, a Govt. taken over High School, at Ratlang and according to the Departmental instructions, he can not be appointed as EDBPM and therefore, reinstatement of Res. No. 5 is illegal. He has also

stated that he has continued as EDBPM, Ratlam BO in put off duty vacancy for last sixteen years and has been made to make way for Respondent No.5 for the reasons unconnected with his official conduct and performance and therefore, he should be given the benefit of existing circulars of the Department and he should be provided with alternative engagement. In the context of the above facts, he has come up in this Original Application with the prayers referred to above.

5. It is not necessary to record the averments made by the Departmental Respondents as also Respondent No.5 as these will be referred to while considering the submissions made by learned counsel for both sides which are discussed below.

6. The first prayer of the applicant is for quashing the order of reinstatement of Res. No.5. It has been pointed out by Mr. Mohanty, learned counsel for the applicant that Respondent No.5 had earlier approached this Tribunal in OA No. 220/93 and the Tribunal in their order dated 19.8.99 while disposing of the OA did not order for reinstatement of Res. No.5 but instead of concluding the enquiry within the time limit fixed by this Tribunal, the Departmental Respondents have re-instated him by showing favour to Respondent No.5.

SJM.
Departmental Respondents have pointed out that in connection with the Crl. case filed against the Respondent No.5 certain material documents/records were filed in the court of learned SDJM, Jajpur and these records are necessary for continuing the Departmental proceedings against the Respondent No.5 but the Departmental Respondents found that these documents have been consigned to the District Court Record Room and it would take time for them to get the records from the District Court Record room and proceed further in the enquiry against Respondent No.5.

In consideration of this, the Departmental Authorities have decided to revoke the put off duty order and reinstate the applicant. question regarding placing the Respondent No.5 to put off duty and revocation of put off duty order is a matter between the Departmental Authorities and the Res.No.5 Applicant can not question the order of the Departmental Authorities revoking the put off duty order .It is also noted that the Departmental Authorities have given a reasonable explanation why the enquiry could not be completed during the period fixed by the Tribunal necessitating a decision with regard to revoking the put off duty order.

The second ground urged by learned counsel for the applicant is that as a result of revocation of the put off duty order in order dated 31.1.2000, the applicant has been removed from the post of EDBPM, Ratlang BO but before such removal no show cause notice has been issued to him and therefore, such removal is illegal and the order at Annexure-2 being the reason for such illegal removal is also illegal. Departmental Respondents have rightly pointed out that the appointment of applicant in the put off duty vacancy was a provisional appointment and he was engaged till such time as the regular incumbent i.e. Respondent No.5 returns/duty. It was also provided in the appointment letter of the applicant that his services are terminable at any time without assigning any reason. As the termination of the engagement of applicant as EDBPM has resulted because of reinstatement in service of Res.No.5 this is strictly in accordance with the terms of appointment of the applicant. As regards the question of issuing the show cause notice, we have already noted earlier that this termination

is unconnected with any official and personal misconduct on the part of the applicant and therefore, a show cause notice is not necessary. This contention is therefore, held to be without any merit and is accordingly rejected. In view of the above discussions, we hold that the order at Annexure-2 is not liable to be quashed and this prayer of the applicant is held to be without any merit and is rejected.

7. The second prayer of applicant is that he should be provided ^{with} alternative engagement. Departmental instructions provide that if an ED agent has completed three years of service and his services dispensed with for reasons which are unconnected with his conduct and official performances, then his name should be kept in a waiting list and he should be provided alternative employment. In view of this, this prayer of applicant is disposed of with a direction to the Departmental Authorities that the name of applicant should be kept in the waiting list and he should be offered alternative employment strictly in terms of the Departmental instructions in force.

8. The third prayer of the applicant is for a direction to the Departmental Authorities to conduct an enquiry into his grievance with regard to the applicant's holding the post of Headmaster of Ratneswar Bidyapith. We have heard learned counsel for the applicant and Respondent No. 5 at length on this point. Departmental Respondents have mentioned at page 5, para 7 of their counter that the complaint made by the applicant with regard to the applicant's holding of the two posts of Headmaster and EDBPM is under investigation.

S. Jam

and necessary step will be taken as deemed fit after completion of enquiry. It is submitted by Mr. U. B. Mohapatra, learned Additional Standing Counsel that the enquiry could not be completed because the matter was referred to the Circle Inspector of School and his report was received recently and further enquiry in the matter is under progress and will be completed quickly. As the allegation is with regard to the engagement of Res. No 5 as Headmaster and it has reference to his due discharge of duties as EDBPM we direct the Departmental Authorities to complete this enquiry within a period of sixty days from the date of receipt of a copy of this order and pass appropriate orders in accordance with the result of the enquiry. Learned counsel for the applicant and Respondent No. 5 have made various submissions with regard to applicability of different circulars issued by DG posts regarding engagement of Headmaster as EDBPM but in view of the fact that the matter is under consideration of the Departmental Authorities we do not intend to express any opinion on this matter.

9. In the result, therefore, the OA is disposed of in terms of the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN