

9
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.274 OF 2000
Cuttack this the 24th day of October/2001

Shri Harish Chandra Sahoo ... 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.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.10.2001

24.10.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 274 OF 2000
Cuttack this the 24th day of October, 2001

CORAM:

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

Shri Harish Chandra Sahoo,
aged about 33 years,
S/o. Kanduri Sahoo, E.D.B.P.M.
in Kotian B.O., Kotian, Via-Kaduapada
Dist-Jagatsinghpur

...

Applicant

By the Advocates

Mr. D. P. Dhalasamant

-VERSUS-

1. Union of India represented through its
Secretary, Government of India, Dept. of Posts
Ministry of Communication, New Delhi-1
2. Chief Post Master General,
Orissa Circle, Bhubaneswar
3. Director of Postal Services,
O/o the Chief Post Master General,
Orissa Circle, Bhubaneswar
4. Supdt. of Post Offices, Cuttack South
Division, Cantonment Road, Cuttack

...

Respondents

By the Advocates

Mr. B. Dash,
Addl. St. Counsel (Central)

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL): In this application filed
on 7.6.2000, the following is the relief sought by the applicant

"... to direct the Opposite Parties, more particularly
Opposite Party No. 4 to allow the petitioner to resume
his duty as EDBPM, Kotian BO:

And further be pleased to direct the OPs to
pay the petitioner all his service and financial
benefits retrospectively".

2. The applicant was selected and appointed as E.D.B.P.M.,
Kotian Branch Office by order dated 7.4.1998 (Annexure-A/1).
By Annexure-2 dated 19.3.1999 he was issued with a notice to
show cause as to why his appointment shall not be treated as

null and void because, on review certain irregularities were noticed in the selection, one of which was that he has no landed property exclusively in his name. After submitting the show cause the applicant immediately preferred Original Application No.126/99 before this Tribunal for quashing the notice ^{of} show cause. This Tribunal by order dated 30.3.1999 directed the Department not to pass any final order pursuant to show cause notice. Though this stay order was not continued by order dated 11.1.2000 the Department was directed not to fill the post till disposal of the O.A. By judgment dated 29.4.2000 this Bench held that there is nothing wrong with the departmental authorities for having issued show cause notice to the applicant and that the applicant having been filed reply to show cause, it is for the Department to take a view in the matter. While giving this direction the Bench also observed in Para-8 that it is well ^{known} that in Mitakshara system a coparcener has a specific identifiable interest in the joint family property and therefore just because the applicant is holding some property jointly it cannot be held that he does not have adequate means of livelihood (Annexures-4 and R/14).

3. The case of the applicant is that due to illness he proceeded on leave providing substitute, as per rule. After recovering from the illness when he wanted to resume the duty (date not mentioned) he was not allowed to perform his duties nor any reply was given to his representations, even though no termination order, as such was issued. On the other hand the Department directed the Overseer Mails to remain in charge. Hence this application.

4. The case of the respondents is that as per the departmental instructions dated 13.11.1997 appointment to the E.D.Posts has to be reviewed by the higher authority and appropriate remedial action has to be taken, if any appointment is found to be made in contravention of administrative/executive instructions (Annexure-R/5). Accordingly on the review made by the higher authority (Res.3), the selection of the applicant was found to have been made in contravention of rules, i.e., applicant does not own any land in his own name as required under D.G.Posts letter dated 16.12.1993 (Annexure-R/6). Hence the applicant was found not eligible for the post and his appointment was rightly cancelled as selection was treated ^{null} ~~unl~~ and void. After the interim stay granted was not continued in order dated 11.1.2000 in O.A.126/99, on the direction of Res.No.4, the A.S.P.O. proceeded to Kotian Branch Office on 3.2.2000 and found one Kailash Chandra Sahoo, an ^{un}approved person working as E.D.B.P.M., who told that the applicant was on leave. According to respondents, an E.D.B.P.M., while proceeding on leave cannot provide a substitute according to his own choice without the knowledge and permission of the appointing authority. Thereafter the charge of the Branch Office was made over from this unapproved person to the E.D.D.A. of the Branch Office Sri Manamohan Sahoo on 3.2.2000 (After-noon). The absence of the applicant was unauthorised and his providing substitute was also irregular. Since the appointment has been cancelled vide order dated 19.1.2000 (Annexure-R/13) pursuant to order of the reviewing authority declaring the appointment null and void (Annexure-R/3 dated

26.11.1999), the question of applicant's rejoining ⁱⁿ to the post in question doesnot arise.

5. Applicant in his rejoinder has pointed out that order dated 26.11.1999 at Annexure-R/3 of the office of C.P.M.G., Orissa Circle, Bhubaneswar treating his selection as null and void was passed during the pendency of the O.A. 126/99 wherein stay order was continuing and no further order was passed pursuant to order dated 24.4.2000 of the Tribunal directing the Departmental authorities to take a view in the matter.

6. We have heard Shri D.P.Dhalasamant, learned counsel for the applicant and Shri B.Das, learned Addl.Standing Counsel for the respondents. Also perused the records of O.A.126/99.

7. In course of hearing Shri Dhalasamant, the learned counsel for the applicant submitted that there are consistent decisions of this Bench that termination of appointment on the basis of a review made by ^athe higher authority ~~other~~ than the appointing authority is contrary to law and void and that there are also decisions of this Bench that a person need not possess a land exclusively in his name to come under the criterion of adequate means of livelihood. But the issue before us is whether the applicant can be ~~prevented~~by the Department from performing his normal duty as E.D.B.P.M., Kotian B.O., which is evident from the prayer made by the applicant in this application.

There is nothing on record that any order of termination of appointment of the applicant has since been passed. There is also nothing on record if any order has been passed by the departmental authorities taking a view in the matter, pursuant

to our final order dated 24.4.2000 in O.A.126/99. Even order dated 26.11.1999 under Annexure-3 indicates that only selection of the applicant is treated null and void. It does not at all specifically indicate that appointment of the applicant has since been terminated.

8. Thus it comes to this that the applicant is still an employee under the respondents as E.D.B.P.M., Kotian B.O. The respondents did not ^{contradict} ~~contract~~ the averment of the applicant that when he wanted to resume his duty after availing leave he was not allowed to join. However, it is not clear from the pleadings on which date the applicant attempted to resume his duty. But the fact remains this O.A. was filed on 7.6.2000. Hence it can be presumed that at least from 7.6.2000 he is not being allowed to resume his duty. Since the applicant is still in employment under the respondents as EDBPM, Kotian, the action of the departmental authorities in not allowing him to resume his normal duty is contrary to law and cannot be sustained. Hence it is a case where an employee although he is willing to work, for no fault of his is prevented by the employer from working. Hence, as has been held by the Apex Court in Janaki Raman's case reported in AIR 1991 SC 2010, he is entitled to consequential financial benefits, at least from 7.6.2000 till his resumption of duty.

9. Respondents are, therefore, directed to allow the applicant to resume his duty forthwith and pay him the normal arrear allowances treating the period from 7.6.2000 onwards as duty.

10. In the result, O.A. is allowed. No costs.

(BOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOOT

(G.NARASIMHAM)
MEMBER (JUDICIAL)