

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 285 OF 2000
Cuttack this the 27th day of February/2001

B.C. Behera

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

27.2.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.285 OF 2000
Cuttack this the 27th day of February/2001

CORAM:

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

...

Sri Bharat Chandra Behera, aged about 25 years,
Son of Late Krushna Behera, Village-Lendura Bhagabanpur,
PO: Lendura, Dist - Cuttack

...

Applicant

By the Advocates

M/s.K.C.Kanungo
S. Behera

-VERSUS-

1. Secretary, Department of Posts, Ministry of Communication, Govt. of India, New Delhi
2. Post Master General, Orissa Circle, Orissa, Bhubaneswar, Dist - Khurda
3. Superintendent of Post Offices, Cuttack
At/PO/Dist-Cuttack

...

Respondents

By the Advocates

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

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application filed on 12.6.2000, the applicant, who was selected and appointed as Extra Departmental Branch Post Master, Lendura-Bhagabanpur Branch Office in March, 1998, prays for issue of direction to not respondents/to cancel the order of appointment and to declare cancellation of the selection process as legal.

2. Facts relevant for the purpose of disposal of this application are not in dispute. The applicant and many others were candidates for the selection to the post of E.D.B.P.M. Respondent No.3, viz., Superintendent of Post Offices, Cuttack made the selection and finally selected the candidate and issued order of appointment dated 12.3.1998. When the applicant went to join the post on 13.3.1998 (fore-noon) he was opposed

by the local youths, who physically obstructed him in discharging duties as E.D.B.P.M. This was reported to the authorities. The same situation continued for a number of days and further reports were also submitted to Police.

3. One Dwarikanath Barik, a candidate for the selection preferred O.A. 163/98 impleading the applicant as Respondent No.4 challenging the appointment of the applicant. This was disposed of on 5.5.2000 (Annexure-8) on the ground that the O.A. had become infructuous as the departmental respondents in their counter took the stand that the selection was already cancelled. It was further observed that in case Respondent No.4 (the present applicant) felt that this cancellation was done illegally he would be free to agitate the matter in a separate O.A. In the counter filed in that case (Annexure-9) by the departmental respondents it was pleaded that some irregularities occurred in the process of selection conducted by Respondent No.3, the selection of Respondent No.4 (the present applicant) needed cancellation in order to make fresh selection and that the Department would make selection afresh cancelling the appointment of Respondent No.4, if this Bench so permits. But our order dated 5.5.2000 in that case reveals that as though we were not given to understand that by then that cancellation selection was already made.

4. In order to understand the correct picture, it is profitable to peruse the counter filed by the Department in this case. It is mentioned in Para-3(v) that the selection process was reviewed by the Chief Post Master General and the selection process was considered irregular and it was prayed before this Bench in the other O.A. for cancellation of the appointment

of the applicant. Thus it reveals from the counter that though the selection process was cancelled on a review made by the Chief Post Master General, appointment of the applicant has not yet been cancelled.

5. By order dated 28.6.2000, we ordered that in case Respondents have initiated the process of fresh selection, then appointment order should be issued only with the leave of the Bench. This interim order is still continuing.

6. We have heard Shri K.C.Kanungo, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel. Also perused the records. There is no dispute that the applicant along with others was a candidate for the selection to the post of E.D.B.P.M., Lendura-Bhagabanpur B.O. Respondent No.3 ultimately selected and appointed the applicant. This selection was reviewed by Respondent No.1, viz. Chief Post Master General, Orissa (Respondent No.2), who is the higher authority of Respondent No.3. This higher authority noticed certain irregularities and advised cancellation.

7. Point for determination is whether such cancellation at the instance of the higher authority can be sustained under law.

8. Applicant having been appointed as E.D.B.P.M., his service condition is guided under P & T E.D.A.(Conduct & Service) Rules, 1964 (in short Rules). These rules have been issued under the authority of the Government of India. Though the Rules are not statutory, in the sense, that these have been framed in exercise of powers conferred under statutory provision, yet these have the force of law. The Apex Court in the case of Union of India vs. Kameswar Prasad reported in (1997) 11 SCC

650, as quoted by the Division Bench of Karnataka High Court in the case of C.P.M.G. vs. H.N.Dayanand reported in 2001 Lab.IC 191, held in regard to constitutionality of these Rules as under.

"The Rules lay down a complete code governing the service and conduct of Extra Departmental Agents including the procedures for taking disciplinary action against them for misconduct".

This being the position once a person is appointed as an E.D.Agent, his service can be terminated only under these Rules.

9. In this particular case cancellation was not on account of any misconduct on the part of the applicant, but on account of certain irregularities noticed by the higher reviewing authority and not by the appointing authority. The only Rule relating to termination and not connected with the misconduct is Rule-6. Rule-6 is not connected with any misconduct, because misconduct is dealt in Rules-7, 8, 8(a) and 16. Rule-6 is clear and unambiguous. Under this Rule only the appointing authority can terminate the service of an E.D.Agent, who has not rendered more than three years of continuous service. Termination of such appointment under the orders of higher authority is held to be bad in law by the decisions of various Benches of the Tribunal including this Bench. This Bench held so in Original Application Nos. 1/99, 299/99 and 428/98. This apart, the Full Bench of this Tribunal (C.A.T., Allahabad), in Tilakdhari Yadav case reported in (1997) 36 AT Cases 539 and the Full Bench of the Tribunal in the case of Ambujakshi vs. Union of India (O.A.57/91), as quoted in the judgment dated 19.12.1995 of C.A.T., Bangalore Bench in O.A.1407/95 (R.M. Gurumurty vs. S.P.Os) held the same view.

(J)

We, therefore, see no reason to take a different view.

10. In the result, we hold that cancellation of selection and appointment of the applicant at the behest of the reviewing authority cannot be sustained under law, and consequently his appointment cannot be terminated. If in case the applicant is already served with the termination notice and/or services of the applicant have been terminated, he should be reinstated in the post of E.D.B.P.M., Lendura-Bhagabanpur B.O. forthwith.

11. Original Application is disposed of with the observations and direction made above, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

27.2.2011
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//