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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.369 OF 2000
CUTTACK THIS THE 23RD DAY OF JULY, 2002

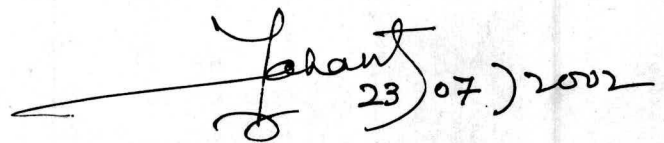
Sunakar Pala Applicant

-Vers-

Union of India & others Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? No
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not ? No


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.369 OF 2000
CUTTACK THIS THE 23RD DAY OF JULY, 2002

CORAM:

THE HON'BLE SHRI MANORANJAN MOHANTY, MEMBER (J)

.....

Shri Sunakar Pala, Aged about 57 years
S/o of Late Mani Pala,
Vill. Era, PO. Purusotampur,
Dist. Kendrapara,
At present working as HSG-II,
S.A., R.M.S.N. Division, Khurda Road,
Jatni.

.....Applicant

By the Advocate(s)

M/s A.K. Misra,
J. Sengupta
P.R.J. Dash
B.B.Acharya
G. Sinha
D.K.Panda

-VERSUS-

1. Union of India represented through
its Director General,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi.
2. Chief Postmaster General,
Orissa Circle,
Bhubaneswar,
Dist. Khurda.
3. Senior Superintendent of
R.M.S. N Division, Cuttack.
4. Director of Postal Services(HQ),
Region, Bhubaneswar,
Dist-Khurda.

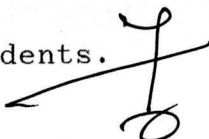
.....Respondents

By the Advocate(s)

.....Mr. A.K. Bose

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) : Heard
Shri A.K. Mishra, the learned counsel for the Applicant
and Shri A. K. Bose, the learned Sr. Standing Counsel
appearing for the Respondents.



2. Applicant, an H.S.G. II(SA) was proceeded departmentally under Rule 16 of CCS(CCA) Rules, 1965, on the following imputations of misconduct:-

"Sri Sunakar Pal, HSG II SA while working as SRO 'N' Division, Khurda Road for a short period during 26.12.1991 to 3.1.1992, issued a direction to four candidates including Sri P.K.Mohapatra, Vill-Majhikhanda, PO-Sinduria, Dist-Puri to attend SRO 'N' Division, Khurda Road on 4.1.92. Sri Pal working on spare duty dt. 4.1.92 in SRO 'N' Division Khurda Road set up question papers for EDMM recruitment examination. He also conducted the examination and evaluated the answer papers of all the four candidates including Sri P.K.Mohapatra. Sri Pal also recommended the name of Sri P.K.Mohapatra for appointment as EDMM for the vacant post lying under SRO 'N' Division, Khurda Road, as he secured the highest mark amongst all the four candidates. Thereby Sri P.K.Mohapatra was given appointment as EDMM with effect from 6.1.92 by the regular SRO 'N' Division, Khurda Road.

Latter on the appointment of Sri P.K.Mohapatra as EDMM was found irregular on scrutiny by the vigilance section of CO which was communicated vide CO Letter No.Vig/11/3/RMS 'N' Division dated 12.3.93 and accordingly the appointment of Sri P.K.Mohapatra as EDMM was terminated with effect from 18.3.93. Sri Pal even though was not the competent authority made the selection of Sri P.K.Mohapatra for the post of EDMM in irregular manner which involved a lot of litigation. Being aggrieved with this cancellation of appointment Sri P.K.Mohapatra EDMM had drawn the Department to the Court of Law, thereby entailing unnecessary departmental expenditure wastage of time and energy. Not only that the Department sustained a loss of Rs 48,480/-(Forty eight thousand four hundred eighty) only towards back wages and proceeding charges by paying to Sri Mohapatra, as per the judgment of Hon'ble CAT, Cuttack Bench dt. 31.7.97.

Sri Pal not being the appointing authority vide Rule 3(1) of EDA Conduct & Service Rules, 1964, processed the ED recruitment and called for four candidates to SRO 'N' Division, Khurda Road. He set up question papers and conducted examination for the said recruitment being on spare duty in SRO Khurda Road on 4.1.92. He evaluated the answer papers and recommended the name of Sri P.K.Mohapatra who had secured highest mark to the regular SRO 'N' Division, Khurda Road for his (P.K.Mohapatra) appointment as EDMM.

By this above acts said Sri Pal failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government Servant and violated the provision of Rule-3(I)(ii)(iii) of CCS9Conduct) Rules, 1964."

By issuance of a corrigendum dated 20.6.1997, the last sentence of the 2nd para of the statement of imputations of misconduct and misbehaviour against the applicant was sought to be read as follows :

"As a result the department sustained a loss of Rs.48,480/-(Rupees Forty eight thousand Four hundred eighty) only towards back wages and cost of the proceedings by paying to Sri P.K.Mohapatra as per the judgment of Hon'ble CAT, Cuttack Bench dt. 31.7.96"

3. Applicant, an H.S.G. II (SA) was kept in charge of the Office of S.R.O., R.M.S. (N) Division, Khurda Road for the period between 26.12.91 to 03.01.92 and while working as such (S.R.O.) he proceeded to select one E.D.M.N. and placed the selection result before the regular S.R.O of R.M.S. (N) Division, who ultimately issued the appointment order being satisfied with the selection. For certain reasons the said appointment was cancelled; but in gross violation of principles of

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natural justice and in the said premises, the cancellation of appointment in question was the subject matter of challenge before this Tribunal in O.A. 309/93, which was allowed, on 31.07.96, both on merits and on the technical ground of non compliance of the principles of natural justice. In that view of the matter, the Department/Respondents initiated disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965 against the Applicant as aforesaid.

4.The applicant replied to the imputation of charges boldly in the following words.

" That I had issued direction to four candidates while working as SRO as per the direction given by previous SRO while going on leave for regularisation of vacant ED post as per the direction of Divisional office to fill it soon so I have committed no wrong as SRO even for a short period while working as SRO an alleged.

That while working on spare duty dtd. 04.01.92 in SRO I set up question papers for EDMN examination as per the records inspected by me from your office on 21.07.97 as found therefore the allegation of setting up of question papers by me for the said recruitment is wrongful.

That I conducted examination and evaluated answer papers of all the four candidates including P.K. Mohapatra as per the direction of the SRO and recommended the name of Shri Mohapatra for appointment as EDMM as he secured highest mark where I have not committed any mistake legally as Sri Mohapatra was given appointment as EDMM by the regular SRO who was senior to me in all respects as every work directed by him was performed by me and after his

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satisfaction he made regular appointment where I have no part and I am no was concerned so allegation regarding his appointment should never be brought against me."

5. The disciplinary authority having imposed the punishment of reduction of pay of the Applicant by three stages from Rs.6950/- to Rs.6500/- in the time scale of Rs.5000-8000/-, for a period of two years with effect from 01.11.99 (with liberty to earn increments during the period of reduction and without postponing his future increments), he preferred an appeal to the Director Postal Services, Bhubaneswar, who also confirmed the punishment with the following words.

"I have gone through the memo of charges, the punishment order, the appeal and all other connected records/documents. As per the method of recruitment for ED employees there is no provision of conducting an interview and to select a candidate on the basis of the marks secured in the said interview. But as per provisions of rules, selection is to be made on the basis of marks secured in the educational certificate and in case of ED mail man, preference is to be given to those who have passed matriculation examination. In this case, amongst the four candidates, there was a candidate passing the matriculation examination and his candidature was ignored. The appellant has mentioned that he has acted as per the orders of the SRO, but he has not cited any reference or any record in which he has been directed to conduct the interview. It is well known that the sensitive issue like conducting the interview cannot be conducted by an authority other than the appointing authority, but the appellant conducted the interview, evaluated the papers and recommended a candidate for selection for the post which was not within his competency. The appellant adopted a procedure for selection of a candidate for the post of ED mail man which is not permitted under rules. The appellant should not have acted beyond

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the rules as he was having sufficient years of service and is therefore expected to know the rules clearly. He should also have refused to carry out the illegal orders of the SRO. The SRO, Khurda Road made appointment as per his recommendation which was ultimately cancelled and involved in a CAT case and the Deptt. had to sustain a huge loss of Rs.48,480.00. Thus the appellant has acted in a manner which is unbecoming of a Govt. servant and also he had failed to maintain absolute devotion to duty."

6. At the aforesaid stage the Applicant preferred this Original Application under Section 19 of the Administrative Tribunals Act, 1985, challenging the punishment imposed on him.

7. The grounds on which punishment has been imposed on the Applicant were also the grounds on which the selected candidate (applicant in O.A. 309/93) was removed from service. Thus the sustainability of those grounds were the subject matter of the examination in the earlier round of litigation (OA 309/93) by this Tribunal. While delivering the judgement/final order in OA 309/93 on 31.07.96, this Tribunal examined each of the points thoroughly. This Tribunal formulated the points in paragraph 3 of the judgement/final order dt.31.07.96 rendered in O.A.309/93 which are as under.

"The selection of the applicant was said to be irregular on three counts; first, he was not a resident within the jurisdiction of Khurda Road (Jatni) while some other candidate was available who fulfilled this residential qualification. Secondly, the applicant though not even a Matriculate was selected in preference to a candidate who had passed the intermediate examination. Thirdly, the SRO had called an interview, prior to selection, though the Recruitment Rules do not envisage any."



8. This Tribunal answered in respect of the
aforementioned three points in that earlier round of
litigation as under:

"Now regarding the supposed lack of residential qualification of the applicant, suffice it to say that such a requirement is on the face of it unconstitutional and has been so held by more than one Bench of this Tribunal and any authority is hardly needed in support of it. Thus the first ground, on which the appointment of applicant is said to be irregular fails.

Regarding the next ground, a reference to the Recruitment rules will reveal that the prescribed educational qualification for the post of EDMM is Class VIII pass while admittedly the applicant had read upto Class X. These rules also provide that no weightage should be given for higher academic qualification. Therefore, any candidate who had passed the intermediate examination cannot be said to be a more suitable candidate than the applicant for the post of EDMM.

Regarding the last ground taken by the respondents, we are of the opinion that simply because the candidates were called at an interview, it cannot vitiate the selection if it can be otherwise sustained. In the case on hand not only the principal grounds urged by the respondents are found to be without any merit but also the applicant appears to have fair experience of working as EDMM as he had previously worked as such for a considerable period either as a substitute or on a casual basis".

After answering those three points on merits as aforesaid, this Tribunal also pointed out that the termination of the selected candidate was bad; because of non-compliance of the principles of natural justice.

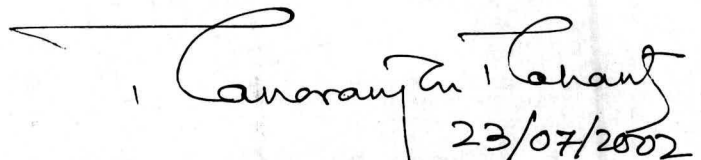
9. The last ground answered by this Tribunal (in the earlier round of litigation i.e (O.A.309/93) has virtually answered the points for which the applicant herein was proceeded against. In absence of any prohibition to conduct an interview of the candidates for the post of EDMM, the Applicant conducted an interview and placed all papers before the regular SRO; who accepted the same. By doing that, the Applicant did not violate any of the conditions imposed by the Department for selection of EDMM.

10. That apart, all the grounds, which were taken by the Department to be bad, having been found to be not bad by this Tribunal in the earlier O.A.No.309/93, there were no reason for the Department to initiate a proceeding under Rule 16 of the CCS(CCA) Rules, 1965 against the Applicant. The very initiation of the proceedings against the Applicant being bad (because the reasons were held to be bad by judicial scrutiny) the imposition of punishment by the Disciplinary Authority, as confirmed by the Appellate Authority, is not sustainable. In the premises, the orders of punishment passed by the Disciplinary Authority, by the Appellate Authority vide Annexure-5 dated 30.9.99 and Annexure-7 dated 30.7.2000, respectively, are hereby set

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aside/quashed. Respondents are therefore directed to grant all consequential service benefits to the Applicant within a period of 90 days from the date of receipt of a copy of this order. In the result, this Original Application is allowed, but however, without any order as to costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

BKS/C.M.