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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.452/2001
Cuttack, this the 23rd day of June , 2004

Gobardhan Mishra

.....

Applicant

Vrs.

Union of India & Others

.....

Respondents

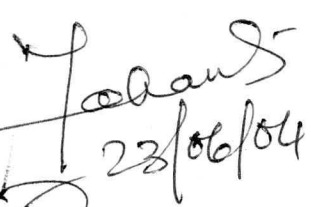
FOR INSTRUCTIONS

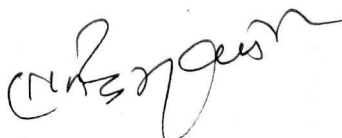
(1) Whether it be referred to the reporters or not ?

NO .

(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not?

NO .


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(R.K. UPADHYAYA)
MEMBER (ADMN.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.452/2001

Cuttack, this the 23rd day of June, 2004

CORAM:

HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)
&
HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Sri Gobardhan Mishra, 47 yrs,
S/o late Nruskinghe Mishra,
At/Po: Kujhala, Via: Sujanpur,
Dist: Jaipur.....Applicant.

By the Advocate(s) Mr. P.K. Padhi.

-Vs-

1. Union of India, represented by it's Chief Post Master General
(Orissa Circle) At/Po: Bhubaneswar, Dist: Khurda, 751001.
2. Superintendent of Post Offices,
Cuttack South Division, At: P.K. Parija Marg,
Po: Cuttack G.P.O, Dist: Cuttack.
3. Superintendent of Post Offices,
Cuttack North Division, At: P.K. Parija Marg,
Po: Cuttack G.P.O., Dist: Cuttack.
4. Sri Khageswar Mohanta, I.O – Cum-S.D.I. (P)
Jaipur Road Sub-Divn, At/Po: Jaipur Road
Dist: Jaipur.Respondent(s)

By the advocate(s) Mr. Anup Kumar Bose.

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ORDER

SHRI R.K. UPADHYAYA:

This application filed by Sri Gobardhan Mishra under Section 19 of the Administrative Tribunals Act, 1985 has been filed claiming the following reliefs:

"It is therefore humbly prayed that the Hon'ble Tribunal may kindly be pleased to quash the proceeding from the stage of issuance/submission of charge sheet and direct the Respondent No.3 to supply the listed documents for submission of defence statement.

And any other order (s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

Any for this act of kindness, the applicant as in duty bound shall ever pray".

2. The applicant has stated that he was appointed as Extra Departmental Branch Post Master ('EDBPM' for short) of Kujhala Branch Post Office w.e.f. 10.2.1977. Subsequently, he was appointed as Secretary, Service Co-operative Society of Rudrapur Gram Panchayat w.e.f. 10.2.1984 as per appointment order dated 1.2.1984. The claim of the applicant is that the post of EDBPM is not a full time post and there is no fixed hours of duty of Secretary of the Society. Therefore, the Board of Directors of the Society had permitted the applicant to work as EDBPM as part-time in addition to his work as Secretary. The applicant has referred to the cases of EDBPM of Ichhapur and Bhatarika, who were school teachers and they have been continuing in both the posts. It is further stated by

Gobardhan Mishra

the applicant that he has been served with a charge-sheet dated 4.1.2000 Annexure-1 after having rendered twenty four years continuous service on the post of EDBPM. The claim of the applicant is that certain listed documents have not been supplied to him and he has been denied reasonable opportunity. Additional documents have also not been supplied to him. Even defence witness as prayed for by the applicant was not allowed to be examined. Therefore, the present application has been filed seeking the reliefs as stated earlier.

3. The respondents at the outset have stated that the final order of removal from service has been passed by the disciplinary authority on 27.9.2002. Therefore, the present application has become infructuous and deserves to be dismissed. Even on merits, the respondents have stated that the claim made by the applicant without non-supply of documents is against the facts of the case. The order-sheet dated 25.4.2001 Annexure R-1 of the Inquiry Officer clearly states "As per the Scheduled Programme the C.O. perused the additional documents with the help of his AGS and also took Zerox copy of all the four additional documents". According to the respondents, the applicant was holding the post of cadre Secretary which has "whole time duty". He is also getting monthly salary of Rs.2117/-. The applicant had not taken prior permission of the Department. There were complaints that the applicant was not available for work as EDBPM. Therefore, the charge-sheet was issued. In this connection, our attention was also invited to the DGP&T letter dated 17.4.1979 Annexure R-4 which states as follows:

Caribon

"It has been brought to the notice of this office that ED Agents who are otherwise employed as teacher, etc., are being removed from service indiscriminately. The following instructions are issued in this regard:-

- (i) ED Agents who are working as teachers, etc., should be removed from service only if the general public and the Gram Panchayat, etc., complain in writing that their working simultaneously as Extra-Departmental Agents and teachers is not satisfactory. They should be removed from service only after proper enquiry and after following the procedure for taking disciplinary action against Extra-Departmental Agents.
- (ii) Where the working hours of the Post Offices and that of the Schools clash, they should be asked to resign from either of the posts and if they fail to do so they should be removed from service, after following the prescribed procedure".

4. According to the respondents' learned counsel, the applicant not only failed to take prior permission but also there were complaints against him. The learned counsel of the respondents further stated that the DGP&T letter dated 17.4.1979 clearly states that even teachers were to be removed from service. It was pointed out that there was no prejudice caused to the applicant in conducting the proceedings of Departmental inquiry by not allowing any additional documents or additional defence witnesses. Therefore, there was no procedural irregularity on the part of the respondents. The entire O.A. is misconceived and deserves to be dismissed.

5. The learned counsel of the applicant invited our attention to the provisions contained in Section 19 of the Administrative Tribunals Act, 1985, the relevant portion of which reads as follows:

C. B. N. Rao

"19. Applications to Tribunals.- (1) to (3) xxxxxxxxxxxx

- (4) Where an application has been admitted by a Tribunal under sub-section 3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules".

According to him, the so called final order has abated in view of the order of this Tribunal dated 25.2.2002 restraining the respondents not to pass final order. He stated that denial of documents and not allowing the defence witnesses has caused serious prejudice to the applicant. Therefore, the present O.A. should be allowed.

6. We have heard the learned counsel of the parties and have perused the material available on record.

7. The factual position which is undisputed is that the applicant was appointed as EDBPM in the year 1977. He took the additional whole time job of a cadre Secretary without taking any prior permission of the respondents. The charge-sheet clearly states as follows:

"That the said Sri Gobardhan Mishra, EDBPM, Kujhala B.O. in account with Sujanpur S.O., who has been working as EDBPM since 10/2/77 subsequently took up appointment as cadre Secretary in Rudrapur service Co-Ope. Society w.e.f. 10/2/84 without any permission of his appointing authority of Dept. of Post, or did not bring the fact to the notice of SPOs, CK(N) dn. Till date on his own.

Since, said Sri Mishra has been unable to discharge both the functions without causing detriment to his function as BPM, and there were several complaints from public clientele against his functioning as BPM, he was asked to tender his resignation to either of the post vide SPOs CK (N) Dn. Letter No. B/ED-268 dtd. 23/10/97.

Curry

Shri Mishra has not submitted his resignation to either of the posts resulting dislocation to smooth functioning of B.O. work of Kujhala B.O. Thereby Sri Mishra by his above action failed to maintain devotion to duty as imposed in Rule-17 of EDA Conduct & Service Rules 1964, as amended from time to time".

8. The basic issue for consideration is that whether the grievance made out by the applicant no longer survives after issue of the final order dated 27.9.2002 which is an order of removal from the post of EDBPM. The learned counsel of the applicant has heavily relied on the provisions contained in Section 19 (4) of the Act reproduced earlier and has stated that the final order passed no longer exists and has abated. A careful reading of the provisions indicates that after the case was admitted for being decided on merits only then the respondents were prohibited of taking further action on disciplinary proceedings. In this case, there was no order of admission. On the other hand, the matter was being posted from time to time for consideration of admission only. Therefore, this ground raised on behalf of the applicant is without any merit. However, passing of the final order in respect of the charge-sheet is apparently against a specific order of this Tribunal dated 25.2.2002 which reads as under:

"Shri A.K. Bose, learned Senior Standing Counsel enters appearance for all the respondents in this case and has also filed show cause to the interim prayer made.

Heard. The disciplinary proceedings may continue, but no final order need be passed without leave of the Tribunal.

Shri Bose undertakes to file a regular counter within four weeks. Put up on 26.3.02.

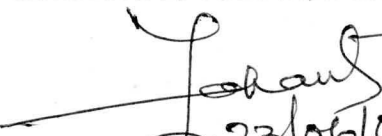
Hand over copies of order to both sides".


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A separate proceedings for contempt of the order of this Tribunal are being directed to be initiated against the Superintendent of Post Offices who has passed the final order in spite of the directions to the contrary by this Tribunal. Registrar of this Tribunal is directed to take up the necessary action in this regard.

9. The comparison of his case made by the applicant with the cases of some teachers is misconceived inasmuch as DG Posts letter dated 29.9.1992 specifically provides that in future school teachers be appointed as ED agents only in exceptional circumstances after recording of reasons and satisfaction of the PMG. The applicant has not given full details of those teachers with whom he seeks parity. In any case, the applicant's case stands on its own facts as brought out in the memo of charge-sheet.

10. In view of the fact that the applicant has not challenged the final order, the grievance made in the present application can be raised at the time of any appropriate proceeding to be filed against the final order in accordance with law. So far as the present application is concerned, the same being premature is dismissed as such without any order as to costs.


23/06/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)


(R.K. UPADHYAYA)
MEMBER (ADMN.)

'SRD'