

13

CENTRAL ADMINISTRATATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.110/2003

Cuttack, this the 18th day of May 2004

Shri Abinash Sahoo

Applicant(s)

Vrs.

Union of India & Others

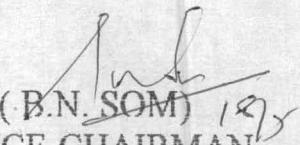
Respondent(s)

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? *yes*


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOMPALLI) 187
VICE-CHAIRMAN

14

CENTRAL ADMINISTRATATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.110/2003

Cuttack, this the 18th day of May 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
&
HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Sri Abinash Sahoo, aged about 28 years, Son of Sri Pranakrishan Sahoo, resident of Village/Post-Mamadula, Via-Dasarathpur, Dist-Bhadrak, at present working as GDS-MD, Mamadula Branch Office in account with Dasaathpur Sub-Post Office Applicant.

By the Advocate(s) Mr. K.C. Kanungo

-Vs-

1. Union of India, represented through it's Secretary, Department of Posts, Dak Bhawan, Parliament Street, New Delhi-1
2. Chief Post Master General, Orissa Circle, Bhubaneshwar-1
3. Superintendent of Post Office, Cuttack North Division, Cuttack
4. Assistant Superintendent of post Offices – in- charge, Jajpur Sub-Division, Jajpur, Dist-Jajpur.
5. Shri Keshob Prasad Nayak, S/o-Ganesh Pol Nayak, Village-Mishrapur, PO-Kantapari, Via-Dasarathpur, Dist-Bhadrak.

By the advocate(s) Respondent(s)
..... M/s U.B. Mohapatra
S.N. Kanungo

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN: Shri Abinash Sahoo, who has faced termination of his provisional appointment as GDS-MD/MC of Mamadula Branch Office by virtue of order dated 15.02.2003 issued by Respondent No.4 has filed this O.A. seeking a direction from the Tribunal to Respondents No.1 to 4 to appoint him as GDS-MD/MC of Mamadula

Branch Office in consideration of his casual service rendered under Annexure-1 to the O.A.

2. It may be briefly stated that the applicant was appointed in the first instance from 19.06.99 to 06.11.2000 by Respondent No.3 as GDS-BPM Mamadula Branch Office. Thereafter, the applicant had been appointed in several spells, like, from 23.01.02 to 16.02.02 (as GDS-MD/MC), from 18.02.02 to 31.02.02 (GDS-MC), from 31.07.02 to 31.10.02.(GDS-MD/MC) and from 03.02.03 to 15.03.03 (GDS-MD/MC). Thereafter, the then GDS-BPM, Mamadula, (who was the brother of the applicant) proceeded on leave without prior approval of the Department handing over charge to the applicant. Soon thereafter he has filed this O.A. ventilating his grievance as stated above.

3. The Respondents opposing the O.A. have pointed out that the claims of the applicant for giving him benefit of past service as 'substitute' and to offer him regular appointment in any GDS post are without merit.

4. We have heard the Ld. Counsel for both the sides and have perused the records placed before us.

5. The applicant has made the following plea in his application that he is holding the charge of GDS-MD/MC on provisional basis Mamadula Branch Office but instead of appreciating his service Respondent No.4 had issued direction on 15.02.03 to terminate his appointment. Secondly, that

✓

his appointment as GDS-MD/MC dated 03.02.03 was given on the condition that his provisional appointment as GDS-MD/MC would be tenable till 31.03.03 or the date of regular appointment to the post whichever was earlier. Finally, that it is a settled principle of law that one ad-hoc appointee cannot be replaced by another ad-hoc appointee.

6. Mr. U.B. Mohapatra, Ld. Additional Standing Counsel referring to the judgment of Karnataka High Court in writ petition No. 21 331 -333/00 against the order of the Full Bench dated 19/20th April, 2000 made in O.A.No.100/99, 112/99 & 101/99 and the consequential order dated 27.04.2000 of the Bangalore Bench of this Tribunal submitted that the persons working as substitutes are not entitled to get any benefit of past service. Nor are they entitled to any weightage for experience gained while working as ED Agent on substitute/provisional basis. He has, however, submitted that the Respondents will give due consideration to the experience gained by the applicant whenever he would file an application in response to any notification for any GDS post.

7. We have carefully considered the contentions of the rival parties. The thrust of the contention of the applicant is that he having been appointed on provisional basis on certain conditions by the Respondent, he could not be replaced by another provisional appointee. This argument cannot be assailed as the settled point of law is that an ad-hoc appointee



cannot be replaced by another ad-hoc appointee. On the other hand, we also agree with the Ld. Addl. Standing Counsel that substitute does not have any right to claim the benefit of past service as GDS. But in this case, as the applicant is working as provisional appointee as GDS-MD/MC as evidenced from Annexure-10 on the condition that his services would be terminated on regular arrangement to the post, it was not apt to deny him the benefit of continuity in service/engagement as GDS by describing him as a substitute.

8. Having regard to the above facts and circumstances of the case we feel that the ends of justice will be met if, we dispose of this O.A. by giving a direction to the Respondents to consider the grievance of the applicant that while he was working as provisional appointee his service was terminated by appointing another temporary hand. In case on enquiry the said allegation is found to be true, the applicant will be entitled to get relief and he may be allowed to continue in the said appointment till the regular appointment to the post takes place. This O.A. is accordingly disposed of with the above direction. No costs.



(M.R. MOHANTY)
MEMBER (JUDICIAL)



(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC/K.B