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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO. 456 OF 2003
Cuttack, this the 6th day of August, 2004

Hasyaranjan Sahoo.

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Applicant.

-Versus-

Union of India & Ors.

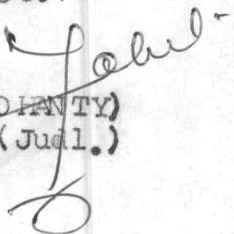
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Respondents.

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


(B.N. SOM)
Vice-Chairman


(M.R. MOHANTY)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 456 of 2003
Cuttack, this the 6th day of August, 2004.

C O R A M:

THE HONOURABLE MR. B.N.SOM, VICE-CHAIRMAN

A N D

THE HON'BLE MR.M.R.MOHANTY, MEMBER (JUDL.)

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HASYARAN JAN SAHOO, Aged about 20 years,
Son of Sridhar Sahoo, At: Alisha Bazar (Keutasahi,)
Antaryami Lane, Po: Cuttack-2, Ps: Lalbag, Dist. Cuttack,
Working as G.D.S. Packer-Cum-Mail Carrier,
At: Pattapolla, Sub Post Office,
PO: GPO, Cuttack, Dist. Cuttack. ... Applicant.

By legal practitioner: M/s. M.R. Mohapatra,
K.C. Satpathy,
Advocates.

-Vrs.-

1. Union of India represented by Chief
Postmaster General (Orissa Circle),
At/Po: Bhubaneswar, Dist. Khurda.
2. Senior Superintendent of Post Offices,
Cuttack City Division,
At-P.K. Parija Marg, PO: GPO, Cuttack,
Cuttack-753 001.
3. Assistant Superintendent of Post Offices,
I/C Cuttack East Sub Division,
Cuttack City Division,
At/Po: GPO, Cuttack,
Cuttack- 753 001.
4. Senior Postmaster GPO, Cuttack,
At/Po: GPO, Cuttack-753 001. Respondents.

By legal practitioner: Mr. B. Dash,
Addl. Standing Counsel (Central).

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O R D E R

MR. MANORAN JAN MOHANTY, MEMBER (JUDICIAL):-

Applicant (Hasyaranjan Sahoo, who was regularly recruited as GDSMO/PKr of Patapol Sub Post Office of Cuttack Town under Annexure-3 dated 23-04-2002) having faced the order of termination under Annexure-1 dated 31.07-2003, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayers to quash the said termination order dated 31-07-2003 and for a direction to the Respondents to allow him to continue as GDS Packer-Cum-Mail Carrier of said Patapola Sub Post Office with all service benefits retrospectively.

2. Respondents have filed their counter opposing the prayers of the Applicant. In support of the stand of the Respondents (in terminating the services of the Applicant) it has been disclosed in their counter that the selection and appointment of the present applicant was challenged by one Tapan Kumar Nayak (an unsuccessful candidate) before this Tribunal in O.A.No.331/2002. It is the case of the Respondents that the next higher Authority (of the Appointing Authority) found that the selection of the Applicant was made erroneously in contravention of the Departmental Rules and in the said premises, the services of the Applicant were terminated w.e.f. 01-08-2003 ; by giving him one month's pay (in lieu

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of one month's notice) as required under the Rules. It has also been disclosed in the counter that Res.No.2 instructed the Res.No.3 (vide Memo No.A/R-2/Ch.IV, dated 81.11.2001) to appoint two physically handicapped candidates in GDS vacancies ;since there were 100% shortfall in that category and that in the said circumstances,notification dated 4.3.2002 ought to have disclosed that the post was required to be filled up by giving preference to the P.H. candidate and that, though a PH candidate was available,ignoring his case, the present Applicant was selected (and appointed to the post in question under Annexure-3 dated 23.4.2002) and,since there was irregularity in the matter of selection/recruitment/appointment,the services of the Applicant was rightly terminated in exercise of the power conferred under proviso to Rule 8(2) and the note below Rule 8(2) of GDS(Conduct and Employment) Rules,2001.

3. Applicant,by filing a rejoinder,submitted that in the advertisement,under Annexure-2,the post was thrown open ~~for~~ un-reserved candidates and since there was no mention to give preference to any category of candidates and since the Applicant secured highest marks (from among the candidates) in the matriculation examination;he was rightly selected and appointed to the post in question.It has been further pointed out by him that it is not a

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case of non-consideration of PH candidates and, rather, it was a case where the PH candidate was considered and found not suitable; which can be seen from the vivid discussions made in the note sheet of the selecting authority.

4. Having heard the learned counsel appearing for the parties, we perused the materials placed on record. Learned Counsel for the Applicant submitted about the allegation of harassment and demand of bribe but without any unimpeachable materials to substantiate the said allegations. Law as stands today, the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Since no materials have been placed in support of the allegation of mala fides, we are not inclined to take note of them. He has submitted that no notice, as per the Rules, has been issued to the Applicant before terminating his services and as such, the same is not sustainable in the touch stone of judicial scrutiny and constitutional mandate enshrined under Art. 14 of the Constitution of India. He has further submitted that since in the advertisement the post was not reserved for PH candidates, nor was there any stipulation that preference will be given to

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PH candidates, the Applicant was rightly selected. Further he has submitted that the Applicant has secured highest marks in the Matriculation Exam. (amongst the candidates, who were in the fray of selection before the selecting authority) and since the Rules prescribed in this regard envisage that Mark in the educational qualification is the sole criteria, the Applicant ought not to have been thrown out. In the said premises, prayer has been made for quashing of the order of termination and for grant of consequential benefits. On the other hand, learned counsel appearing for the Respondents placed reliance on the rules and submitted that it has been clearly mentioned under the rules that either one month's pay (or one month's notice in lieu thereof) is mandatory to be given to an ED employee whose services are required to be terminated under Rule-8. It has been submitted by the learned counsel for the Respondents that since the Applicant had not put in 3 years of regular service in the Deptt., there was nothing wrong in terminating the services of the Applicant for the same having been found irregular;

5. We have carefully considered the rival submissions of the parties on the basis of the Rules/ materials placed on record. Prima-facie, we see no ground given by the Reviewing Authority while asking for terminate the services of the Applicant. On perusal of the advertisement, it is seen that the post was

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unreserved which means whoever is found eligible as per Rules, can be appointed. Further more, it is seen that in the advertisement, there were no mention for granting any preference to PH candidate. Law is well settled that the Respondents/Selecting Authorities cannot go beyond what has been stated/disclosed in the advertisement. Further, on perusal of Annexure-R/1 dated 08.11.2001, it is seen that the Superintendent of Post Offices of Cuttack City Division had intimated all the subordinate authorities about the shortfall of the PH candidates only. There was no direction to fill-up the first vacancy from among the PH candidates. No materials have been placed on record to show that the post, in question, was earmarked to be filled up by PH candidate; neither in Annexure-R/1 to the counter; nor in the advertisement under Annexure-2 to the O.A. Therefore, the grounds, basing on which the selection was found to be irregular is not sustainable in the touch stone of the judicial scrutiny.

6. In the above view of the matter, we find lot of force in the submissions made on behalf of the Applicant and, accordingly, we hereby quash the order of termination of the Applicant (that was made

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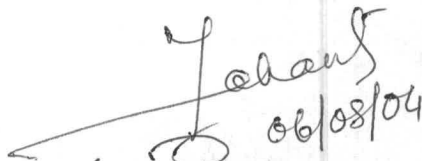
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under Annexure-1 dated 31.07.2003) with a direction to the Respondents to grant all consequential benefits to the Applicant.

7. In the result, this Original Application is allowed.No costs.


(B.N. SOM)
VICE-CHAIRMAN


06/08/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)