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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 485 of 2003
Cuttack, this the 4th day of May 2005

Shri Ashok Kumar Behera

..... Applicant

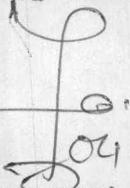
- VERSUS -

Union of India & others

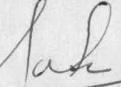
..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? 75
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 75



104.05.05
(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 485 of 2003
Cuttack, this the 4th day of May 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

...

Shri Ashok Kumar Behera, S/o. Shri Bhagabata Chandra Behera
At:Arjunabariya, Post:Bhimda, Dist:Mayurbhanj, PIN-757083.

..... Applicant

Advocates for the applicant

..... Mr.P.K.Padhi.

Versus-

1. Union of India represented by it's Chief Post Master General (Orissa Circle) At/PO:Bhubaneswar, Dist:Khurda, PIN-751 001.
2. Superintendent of Post Offices, Mayurbhanj Division, At/PO:Baripada, Dist:Mayurbhanj,-757001.
3. Sub-Divisional Inspector(Pestal) Barsahi Sub-division, At/PO :Barsahi, Dist:Mayurbhanj.
4. Sub Post Master, At/PO :Bhimda, Dist.Mayurbhanj.

..... Respondents

Advocates for the Respondents

..... M/S. S.B.Jena, & S.K.Patra.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN: The subject matter under challenge in this Original Application is the termination order of the Applicant, namely, Shri Ashok Kumar Behera, GDS Packer, Bhimda Sub-Post Office issued by Res.#No.3 dtd. 10.7.2003 and the order issued by the Res.#No.2 under

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Annexure-5 dated 31.7.93.

2. Heard Mr.P.K.Padhi, Ld.Counsel for the applicant and Mr.S.B.Jena, Ld.Additional Standing Counsel appearing for the Respondents and perused the materials placed on record.

3. The case of the applicant is that he was working as a contingent paid sweeper cum waterman at Bhimda Sub-post office w.e.f. 9th June, 1990. He also asserts that he had served the Department for some time as Substitute (although period not specified) and have gained some experience. While working as such, by the order of Sub-Divisional Inspector (Post), (Res.No.3), he was allowed to work against the vacant post of GDS Packer at Bhimda SO W.E.F. 1st Nov., 2002 (Annexure-2), which was terminated vide its order dated 10.7.93 under Annexure-3. He represented against this order of termination which was turned down by Res.No.2 vide Annexure-5 dated 31.7.93. Being aggrieved, he has approached this Tribunal with the following prayer:

".... to quash Annexure-A/3 and Annexure-A/5 and direct the Respondents to re-instate the Applicant as GDS Packer at Bhimda Sub Post Office alongwith all consequential service benefits."

4. Respondents have contested the matter by stating that the Applicant's initial appointment as contingent sweeper cum waterman was purely on temporary basis with clear stipulation that it could be terminated at any time (Annexure-A/1). It is further clarified that while working as such his further engagement against the post of GDS Packer Bhimda SO was made as a stop gap measure to manage the contingency arisen due to superannuation of a regular incumbent and that

the appointment order issued by the Res. No. 3 under Annexure-A/2 having found to be irregular being not in conformity with the extant procedure/guidelines of the Department, the same, on review, was cancelled as per the direction of the Supdt. of Post Offices, Mayurbhanj Divn, Baripada (Res. No. 2).

5. The issue before us is (a) as to whether the applicant having worked and gained some experience as a contingent paid sweeper-cum-waterman has gained any right in his favour for being appointed to the post of GDS Packer; and (b) as to whether the authority competent can annul an appointment made de-hors the rules and procedures.

5.1 The first issue has been answered in negative in our judgement dated 22.12.2003 in O.A. No. 795 of 2002 and we are bound by that.

5.2 As regards the second issue, it has been held by the Hon'ble Apex Court in the case of B.N. NAGARAJAN AND OTHERS vrs. STATE OF KARNATAKA AND OTHERS (1979) 4 SCC 507 that "the procedures for appointment as contained in the Rules framed under Article 309 of the Constitution of India must be complied with". In the case of STATE OF UP AND OTHERS vrs. UP STATE LAW OFFICERS ASSOCIATIONS AND OTHERS (1994) 2 SCC 204, the Hon'ble Apex Court has gone to the extent of holding that "those who come by back door should go through that door". In view of the above, the applicant cannot claim any equity for his appointment to the post in question being ab initio void.

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6. Having regard to the discussions made above, we find no merit in this Original Application; which stands dismissed leaving the parties to bear their own costs.

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04.05.05

(MR. MOHANTY)
MEMBER (JUDICIAL)

Abu
(B.N.SOM)
VICE-CHAIRMAN