

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 948 OF 2003
Cuttack, this the 2nd day of April, 2005.

Harish Chandra Sahoo. Applicant.

VERSUS

Union of India & Ors. 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 CAT, or not? *Yes*

(M.R.MOHANTY)
MEMBER (JUDICIAL)

21/04/05

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO.948 of 2003
Cuttack, this the 21st day of April, 2005.

C O R A M:-

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

Shri Harish Chandra Sahoo,
Aged about 36 years,
Son of Kanduri Sahoo,
EDBPM/GDSBPM
Titira Branch Post Office,
DIST. JAGATSINGHPUR.

Applicant.

BY legal practitioner: **Mr.D.P.Dhalsamant, Advocate.**

-VERSUS-

1. Union of India, represented through its
Director General of Posts, Govt. of India
Ministry of Communications, Deptt. of Posts,
NEW DELHI- 110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar.
3. Superintendent of Post Offices,
Cuttack South Division,
Cantonment Road,
CUTTACK.

By legal practitioner **Mr.U.B.Mohapatra, SSC(Central).**

O R D E R

MR.MANORANJAN MOHANTY, MEMBER(JUDICIAL):-

Applicant HARISH CHANDRA SAHOOA(who was engaged in Gramin Dak Seva at Kotian Branch Post Office) represented under Annexure-1 dated 03-03-2003, Annexure-2 dated 10-07-2003 and Annexure-3 dated 11-07-2003 seeking his transfer to the Titira Branch Post Office to work as a Branch Post Master (GDSBPM) and it is the case of the Applicant that in consideration of his said representations, he was directed (under Annexure-4 dated 02-09-2003) to take over the charge of GDSBPM of Titira Branch Post Office. While posting the Applicant (on transfer) as GDSBPM of Titira Branch Post Office, the Applicant was asked to manage the work of GDSMD of the said Titira Branch Post Office and the person, who was the GDSMD of Kotian BPO, was asked to manage the work of GDSBPM of Kotian BPO in addition to his own duty of GDSMD. This arrangement was expressly stated to be a pure temporary arrangement made on ad-hoc basis till arrangements are made on regular basis. Instead of taking steps to fill-up the post of GDSBPM of Kotian Branch Post Office, the Respondent Department took steps to fill up the vacancy of GDSBPM of Titira Branch

Post Office (under Annexure-5 dated 24.10.2003) and posted one Shri Sadhu Ch. Mohanty (GDSMD of Jankadeipur) to remain incharge of the post of GDSBPM of Titira BPO purely on temporary basis. By the said order under Annexure-6 dated 12.11.2003 (by which Shri Sadhu Ch. Mohanty has been asked to remain in-charge of GDSBPM of Titira BPO), the Applicant has, virtually been asked to go back to his former post of GDSBPM of Kotian BPO and being aggrieved by the said action of the Respondents, the Applicant filed this Original Application under section 19 of the Administrative Tribunals, Act, 1985; with the following prayers:-

“(a) to quash the notification dated 24.10.2003(Annexure-5) and order dated 12.11.2003 (Under Annexure-6);

AND

(b) to direct the Respondents to allow the Applicant to continue as GDSBPM of Titira Branch Post Office on transfer basis”.

2. Respondents, by placing a counter on record, have disclosed that the Titira BPO have the approved establishment of one GDSBPM and one GDSMD. As the said posts (of GDSMD and GDSBPM) fell vacant with effect from 04-07-2003 and 11-07-1003 respectively, temporary arrangements were made to manage the work of the said BPO by engaging one Shri Durga Prasad Patra, (the GDSMD/MC of S.Benahar Branch Post

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Office, which is nearer to Titira BPO) in Titira BPO. The GDSBPM (Applicant) of Kotian BPO in the meantime, represented for his posting on transfer in Titira BPO; which prayer was not acceded to; due to withdrawal of transfer facility of GDS employees vide Directorate's Letter No. 17-103/2002-GDS dated 27.6.2003 (Annexure-R/3). The Applicant, again, represented under Annexure-R/3 dated 04.08.2003 with prayer to allow him to work at Titira BPO on deputation basis (at least till regular arrangement is made) and in considering of his said representation, the Department allowed him (under Annexure-R/4 dated 20-08-2003 to work at Titira BPO (purely on temporary/ad-hoc/deputation basis) till making regular arrangements. Subsequently, public notification was issued inviting applications from the ST candidates under Annexure-5 dated 24-20-2003 and orders were issued to relieve the Applicant from Titira BPO. The Respondents, therefore, have prayed that since the notification under Annexure-5 and the order under Annexure-6 were made lawfully, this Original Application need to be dismissed.

3. Heard Mr. Devi Prasad Dhalsamant, learned counsel appearing for the Applicant and Mr. U.B. Mohapatra, learned Senior Standing Counsel

appearing for the Respondents-Department and perused the materials placed on record.

4. In support of the claim of the Applicant, learned counsel for the Applicant submitted that since instructions issued by the Government of India, in the Department of Posts (in letter No.19-10/2004-GDS dated 01-09-2004) do provide that a Gramin Dak Sevak shall not be eligible for being transferred from one post/unit to another post/unit, except in public interest, there are no reason not to allow the Applicant to continue as GDSBPM of Titira Branch Post Office; in which he is continuing since 09-09-2003 pursuant to the order under Annexure-4 dated 2nd September, 2003. In this connection he has also relied on the decision of the Hon'ble Kerala High Court rendered in the case of **SENIOR SUPERINTENDENT OF POST OFFICES, KOTTAYAM AND OTHERS vrs. RAJI MOL AND ANOTHER ETC** (reported in 2004 (3) Administrative Total Judgments 127).

5. Per contra, learned Senior Standing Counsel has submitted that since due to short fall of the percentage of reservation in the ST category, the post has now been notified to be filled up by that (ST) category and since the applicant's continuance in the post in question was purely on ad-hoc

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hoc/temporary/deputation basis(that too on his own request), the Applicant cannot have any legitimate claim to continue indefinitely in the said post. He has also submitted that the Applicant joined in the said post of GDSBPM of Titira BO on 09.09.2003 and the instruction empowering the authority to consider the case of transfer of GDS having come some times in the year 2004, the said instruction is not applicable to the case of the Applicant; having no retrospective implication. Further he has submitted that it is not for this Tribunal to consider who should be transferred and where one should be posted.. It is for the authority to decide the issue, and that the Applicant having not made any representation ventilating his grievances (basing on the instructions issued on 01.09.2004), it has been prayed by the learned Senior Standing Counsel for dismissal of this O.A.

6. Having considered the rival submissions made by the parties, it is to be noted here that law is well settled that Courts/Tribunals have no power to decide who should be posted where and by which category . It is for the executive/authority to decide such matters, basing on the representations and warranted situation. It is further seen that the circular dated 01.09.2004, though empowers the authorities to transfer a GDS employee for transfer from one post to other only in public interest, the same

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having been issued much after the Applicant's transfer to Titira BPO, is no help to the Applicant. It is also seen that the post has been notified to be filled up by ST category and the Applicant belongs to OBC. The decision relied upon by the learned Counsel for the Applicant also provides that "*(1) a provision providing that the employee is not liable to be transferred does not dear an employee from seeking transfer and (2) if an employee seeks transfer to a post equivalent to the one held by him, the rules as at present do not place any bar and his claim has to be considered by the authority. In case an employee seeks appointment by transfer to a higher post than the one on which he is working, the Department can consider his claim subject to his fulfilling the conditions of eligibility along with that of the other eligible persons who may offer their candidature for appointment.*" Being bound by the decision rendered by the Hon'ble Kerala High Court and a view is to be taken that since, in this instant case, the post has been reserved for ST category and applications has already been invited to fill up the post, the question of considering the candidature of the Applicant along with others does not arise; he being not a ST candidate. That apart, the Applicant has not made any representation before his authority seeking transfer basing on the basis of the Departmental the instructions dated 01.09.2004. Another

important feature of the matter is that the Applicant was allowed to work as GDSBPM of Titira BO on his own request on deputation basis; which factor was suppressed by the Applicant in his O.A. Neither the subsequent instruction nor the law propounded by the Hon'ble Kerala High Court are of any help to the Applicant. The Applicant is bound to obey the orders of the authority under Annexure-6 dated 12.11.2003 in order to leave room for an ST candidate at Titira BPO. No public interest having been shown in this case requiring the Department to post the Applicant at Titira BPO, there is no justification for the Tribunal to interfere in this matter.

7. In the above said premise, this O.A. stands dismissed being devoid of any merit. No costs.


(M.R.MOHANTY)
MEMBER(JUDICIAL)

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