

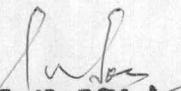
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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

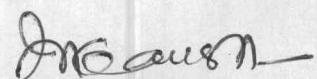
Original Application No. 1086 of 2003
Cuttack, this the 20th day of January, 2005

Niranjan Pati Applicant
VERSUS
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? NO
2. Whether it be circulated to all the Benches of the NO Central Administrative Tribunal or not ? NO


(B.N. SQM)
VICE-CHAIRMAN


(J.K. KAUSHIK)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 1086 of 2003
Cuttack, this the 20th day of January, 2005

CORAM :

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

AND

HON'BLE SHRI J.K.KAUSHIK, JUDICIAL MEMBER

Shri Niranjan Pati, 33 years, S/o. Late Kalandi Pati, Vill.
Santarabali, P.O. Maniabandha, Dist. Cuttack.

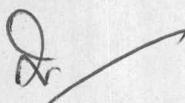
..... Applicant

By the legal Practitioner - M/s. P.K.Padhi, B.S.Tripathy,
M.K.Rath, J.Pati.

VERSUS

1. Union of India, represented by it's Director General(Posts),
Dak Bhawan, New Delhi, Sansad Marg, 110001.
2. Chief Post Master General (Orissa Circle) At/P.O. Bhubaneswar,
Dist. Khurda, 751001.
3. Director of Postal Services (Hqrs) O/O Chief Post Master
General(Orissa) At/P.O. Bhubaneswar, Dist. Khurda, 751001.
4. Superintendent of Post Offices, Cuttack North Division,
At: P.K. Parija Marg, P.O. Cuttack G.P.O., Dist: Cuttack,
753001.
5. Superintendent of Post Offices, Cuttack South Division,
At: P.K.Parija Marg, P.O. Cuttack G.P.O., Dist: Cuttack,
753001.
6. Assistant Superintendent of Post offices 1/C Jajpur Sub-
Division. Jajpur- 755001.

By the legal Practitioner - Mr. U.B.Mohapatra (SSC)



O R D E R

SHRI J.K.KAUSHIK, JUDICIAL MEMBER

Shri Niranjan Pati has questioned the validity of order dated 7.7.03 and order dated 19.11.03 (Annexure-A/7) and has prayed for quashing of the same with the direction to the Respondents to allow the applicant to continue as GDS BPM of Mugagahira.

2. We have heard the Ld. Counsel for both the parties and have earnestly considered the submissions, pleadings and the records of this case.

3. The factual matrix of the case as may be succinctly put in, is that the applicant got an opportunity to submit an application for appointment to the post of Gramin Dak Sevak Branch Post Master (for bravity GDS BPM) of Arjun Brahmachari Patna Branch Post Office, in pursuance with a public notification. The applicant fulfilled the requisite qualification and was selected vide order dated 16.11.99. He submitted the consent letter of one Shri N.C.Nayak to provide the accommodation for functioning of the Post Office. But, due to the protest of the villagers, he could not join there and the averments made by the Respondent No.4 did not yield any fruit. Therefore, his selection had to be cancelled vide memo dated 5.4.2000. The applicant was provisionally appointed to the post of EDMC Brahmanigaon in the temporary vacancy fall vacant due to judicial proceedings against one Shri Jena or till the regular appointment was made, vide order dated 26.4.2000.

[Signature]

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4. The further facts of the case are that the applicant was transferred vide order dated 19.6.01 to work on the newly opened vacant Post of BPM Mugagahira Branch Office. The applicant immediately assumed the charge of the said post and continued to work till an impugned order (Annexure-A/4) came to be issued ordering termination of the applicant from service. The same was followed vide order 15.10.03 and consequential order was issued by the controlling authority. A representation was preferred which has been turned down vide impugned order dated 19.11.03 at Annexure-A/7. He has further filed an appeal to the still higher authority i.e., CPMG.

5. Both Ld. Counsel have reiterated the facts and grounds which have been narrated in the respective pleadings of the parties. As far as the factual facet of the case is concerned, there is no iota of dispute. The Respondents, in support of their contention has placed a reliance on a judgment of the Hon'ble High Court of Orissa dated 16.10.02 passed in Secretary, Department of Posts Vs Shri Bharat Chandra Behera at Annexure-R/6 and has submitted that the said decision squarely covers on all fours the controversy involved in the instant case. It has also been contended that the applicant could not have been appointed by transfer since the employees holding the post of EDs are not transferable. The competent authority can only correct the mistake which was committed by the subordinate authority. However, the Ld. Counsel for the applicant was at pains to persuade us that the grave injustice has been done to the applicant in-as-much as he is

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a duly selected candidate and has been kept under the sword of ^{There} damocles. ^{There} was no fault on his part. He was persuaded to take the alternative job of EDMC, and thereafter, EDBPM, but his service came to be terminated in an unceremonial way.

6. At the very outset, we would point out that there is no challenge of the applicant in respect to the cancellation of his selection for the post of EDBPM which was made in the first instance. It is a fact that the applicant has never passed any selection to the post of EDMC and even his appointment to the post of EDMC is a provisional one with a specific qualification that the same was only to meet the emergent requirement. In this view of the matter, he can not be said to have any indefeasible right even to hold the post of EDMC. As regards his transfer on the post of EDBPM is concerned, firstly, there is no provision in the EDA rules to transfer an ED agent from one post to another rather there is a specific provision that if they are allowed to be sifted from one post to another at their request, they shall be asked to resign their post and a fresh appointment order is required to be issued against the new post. They shall have to submit fresh application and compete with the other candidates who have applied for the post at their place. In case, there is no break in their service, their previous service can be considered. Thus, we find that there are specific instructions on the subject that ED agents can not be transferred from one post to another. If that be so, no fault can be fastened with the action of the Respondents in declaring the transfer of the applicant as not tenable.

7. Looking the matter from yet another angle, in the

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instant case, the applicant has been transferred from the post of EDMC to the post of EDBPM. Both these posts are distinct in every respect, including that of their qualification and other essential conditions including allowances payable. There can be no question of any transfer to a different post even in the normal course. The another hesitation which can not be overcome by the applicant is regarding as to how he can be transferred to work on regular basis once his initial post itself is on provisional basis. In common parlance we can assert that one can not get a better title than he has on the original post in the garb of transfer, especially when the rules are so strict that even in case of a regular post holder as BPM, one can not otherwise, be transferred.

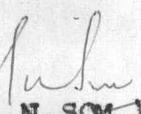
8. We have also a great sympathy with the applicant but simultaneously we also feel pity on his ignorance and for creating unusual situation for himself. However, the entire gamut of the facts and the circumstances of this case amplifies that the applicant has absolutely no vested or indefeasible right to hold the post of EDBPM as such. In this view of the matter none of the impugned order can be termed as illegal or improper. We also find that the judgement at Annexure-R/6 fully supports the defence of the Respondents. Such appointments can be terminated without even resorting to the principle of natural justice since the same are de hors of the rule and for this proposition this Bench of the Tribunal where both of us were party in case of Sankar Prasad Patro Vs U.C.I & others in O.A. No. 3/03, decided on 19.1.05, have held that for administrative reasons

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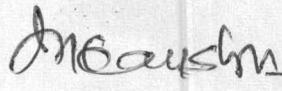
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the termination of the EDA can be made.

9. The result of this case is rather unfortunate, but we are left with no option except to dismiss the O.A. and we do so accordingly but with no order as to costs. It is scarcely necessary to mention here that in case the applicant ^{discharged} falls under the category of EDAs and any right of absorption is admissible to him as per the rules in force, this order shall not be an obstruction.


(B.N. SQM)

VICE-CHAIRMAN


(J.K. KAUSHIK)
JUDICIAL MEMBER

RK/SD