

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO. 1279 OF 2003
Cuttack this the 20th day of April 2005**

Rabindra Gouda ... Applicant(s)

- VERSUS -

Union of India & Ors. Respondent(s)

FOR INSTRUCTIONS

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

20/04/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

20/04/05
(B.N. SOM)
VICE-CHAIRMAN

D

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1279 OF 2003
Cuttack this the 26th day of April 2005

CORAM:

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

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

...

Rabindra Gouda, aged about 35 years,
S/o. Harisankar Gouda, Vill-Rampur,
PO-Patrapali, Via-Rengali, Dist-Jharsuguda
working as E.D. Mailman/GES Mailman in the
Office of the Head Record Officer, RMS(K)
Division, Jharsuguda

...

Applicant

By the Advocates

Mr. D.P. Dhalasamant

- VERSUS -

1. Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110 001
2. Chief Postmaster General, Orissa Circle, Bhubaneswar
3. Head Record Officer, RMS(K) Division, Jharsuguda, Dist-Jharsuguda
4. Director of Postal Services (K) Division, Sambalpur, Dist-Sambalpur

...

Respondents

By the Advocates

Mr. B. Dash, A.S.C.

- - - -
O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Shri Rabindra Gouda (applicant) has filed this Original Application challenging the termination notice dated 17.9.2003 (Annexure-2) and the notice dated 15.12.2003 (Annexure-4) issued to him by Respondent No. 3.

2. The facts of the case in brief are that the applicant was appointed to the post of Gramin Dak Sevak

Mail Man (in short GDS MM) on 2.8.2001. He was served with a termination notice on 8.9.2001. Being aggrieved, he moved this Tribunal in O.A.No.487/01. The Tribunal, vide its order dated 1.2.2003, while quashing the impugned notice dated 8.9.2001, also observed as under :

" 7. Now coming to judge the foundation of the impugned notice of termination, it is seen that due to some irregularities committed by the Appointing Authority, the services of the applicant were directed to be terminated. Nowhere in the counter it has been urged by the Respondents that the applicant got the employment by misrepresenting or playing a foul game. The Department/Respondents have candidly stated that because of error committed by the concerned authority the applicant was selected/appointed. The aforesaid being the admitted position and the applicant being in no way responsible for it, he cannot be allowed to suffer particularly when he has already rendered service for years. The Hon'ble High Court of Orissa in the case of Mahendra Tanty vs. Union of India & Ors. (in OJC No.5254 of 1998 (disposed of on 15.11.1999) have also taken the same view, while deciding a similar issue.

8. Further, on perusal of the impugned notice under Annexure-4 it shows that such notice has been issued at the behest of the higher authority on review of the Selection and appointment. Various Benches of this Tribunal, in very many cases, have already held that the higher authority has no power to review the selection and appointment of an ED Agent; as the same is not available in the Rules".

3. The case of the applicant is that after passing of the said order by the Tribunal, it was not legally permissible on the part of the Respondents to have served on him the notice of termination dated 17.9.2003 (Annexure-4) nor could they have passed an

10

order dated 15.12.2004 (Annexure-4) terminating his service. The applicant has assailed both the orders being without legal force.

4. The Respondents, on the other hand, have contested the O.A. by filing a counter. They have taken the stand that serious irregularities having been detected in the process of selection/recruitment with regard to filling up of two vacancies of GDS MM, more meritorious candidates were thereby ignored and other formalities were not taken care of. Therefore, it was within the domain of the higher administrative authorities to intervene in the matter in public interest. The Respondents have further submitted that the earlier O.A. 487/01 filed by the applicant was disposed of with the observation to comply with the principles of natural justice before issuing the order of termination and that keeping the said observation of the Hon'ble Tribunal in view, by issuing the notice dated 17.9.2003, they had provided reasonable opportunity to the applicant before taking a decision to terminate his service. They have further submitted that the final order was passed by the ~~competent~~^{superior} authority in pursuance of Rule-8(1) and (2) of G.D.S. (Conduct & Employment) Rules, 2001. They have further submitted that Res. No. 4 being the ~~appointing~~ authority had examined the recruitment files and had detected irregularities in the matter of selection to the post in question, and therefore, the said authority remanded the matter

to the appointing authority to proceed as per law.

5. We have heard the learned counsel for the rival parties and have perused the records placed before us. The learned counsel for the applicant stoutly urged before us that the validity of appointment of the applicant to the post in question had already undergone judicial scrutiny before this Tribunal in earlier round of litigation in O.A.No.487/01. The Tribunal in that round of litigation had, after going through the procedure of selection and relying on the catena of case laws as referred to therein, come to the finding that the applicant was not given the benefit of natural justice. The Tribunal also made a categorical observation that 'it is the appointing authority, who had committed some irregularities, but the applicant was in no way responsible for commission of any of these irregularities nor did he secure employment either by misrepresentation or by playing foul game (Para-7 of the order as referred to above). In Para-8, the Tribunal had held that the higher authority had no power to revise the selection and appointment of the ED Agents as the same was not available in the Rules. The Tribunal had, therefore, found that the action of the higher authority in reviewing the selection was bad in law. This decision of the Tribunal having not been challenged before any higher judicial forum and the said decision having not been set aside or quashed in so far as the applicant is concerned, the unalterable position of

law is that the higher authority has no authority to interfere in the matter of selection. That being the point in issue decided in O.A.487/01, the notice of termination and the order of termination of service can by no stretch of imagination be called to have any legal force.

6. We have carefully considered the submissions made by the learned counsel for the applicant. The learned Addl. Standing Counsel, on the other hand, by drawing our notice to the order issued by the Ministry of Communications, Department of Posts dated 9.5.2003 by virtue of which the G.D.S. (Conduct & Employment) Rules, 2001 was amended and any authority superior to the appointing authority as shown in the Schedule was made competent either on its own motion or otherwise to review any case of selection and to make such order as it thinks fit after giving an opportunity of being heard by that superior authority, stated that the action of the superior authority to direct the appointing authority in September, 2001 to review the selection made in the matter of filling up of two vacancies of G.D.S. Mail Men could not be faulted legally. There is no doubt that with the amendment to the GDS (Conduct and Employment) Rules, 2001 from September, 2001, any authority superior to the appointing authority has been vested with the powers to reopen/review any case relating to recruitment/selection and/or appointment. But, such an amendment having no retrospective effect cannot be applied in the instant case. Further, we

13

agree with the learned counsel for the applicant that the Tribunal in O.A.No.487/01, relying on the decision of the Hon'ble High Court of Orissa in Mahendra Tanti Case (supra) having observed that "the applicant cannot be allowed to suffer particularly when he has already rendered service for years", and the said observation and/or decision of the Tribunal in that O.A. having not been unsettled by the higher judicial forum, there is hardly any scope left for the superior authority as per G.D.S. (Conduct & Employment) Rules, 2001 to take recourse to review of the appointment of the applicant.

7. This Tribunal in the case of Debendra Kumar Mallick & Ors. vs. Union of India & Ors. (O.A.Nos.51,52 and 53 of 2004 - disposed of on 1.4.2005) in similar situation held that "where the applicants are in no way responsible in the matter of selection and appointments the notice of termination issued to them after long lapse of time does not stand to reason". Needless to say we are bound by our earlier order in that case.

8. Having regard to what has been discussed above, the notice of termination dated 17.9.2003 and the order of termination dated 15.12.2003 under Annexures-2 and 4, respectively are accordingly set aside/quashed. In the result, the O.A. is allowed. No costs.

(M.R. MOHANTY)
MEMBER (JUDICIAL)

BJY

20/04/05

Sub
(B.N. SONI)
VICE-CHAIRMAN