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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 349/2004 & 350/2004
Cuttack, this the ^{22nd} day of June 05

IN O.A.NO. 349 of 2004

Shri Pramed Kumar Dalai Applicant

- VERSUS -

Union of India & others Respondents

IN O.A.NO. 350 of 2004

Shri Salkhan Murmu Applicant

- VERSUS -

Union of India & others 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*

22/06/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOMI)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NOS. 349/2004 & 350/2004
Cuttack, this the 22nd day of June 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...
IN O.A.NO. 349 of 2004

Shri Pramod Kumar Dalai, aged about 37 years, Son of
Surenendra Kumar Dalai, at Gopalpur, PO-Rahadinga, Via-Naliber,
Dist-Jagatsinghpur, at present in Or.No.M-3/2 (Type-I),
Mancheswar Railway Colony, Bhubaneswar-17, Dist-Khurda.

..... Applicant

Advocates for the applicant

..... M/s. K.C.Kanungo,
S.Behera, C.Padhi & B.D.Das

Versus-

1. Union of India represented through Secretary-cum-DG posts,
Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar-1,
Dist-Khurda.
3. The Senior Superintendent of Post Offices, Bhubaneswar-9,
Dist-Khurda.
4. The Assistant Superintendent of Post Offices, Bhubaneswar,
North Division, Dist-Khurda.
5. The Sub-Postmaster, Utkal University Sub-Post Office,
Bhubaneswar-4, Dist-Khurda.

..... Respondents

Advocates for the Respondents

..... Mr.R.N.Mishra.

IN O.A.NO. 350 of 2004

Shri Salkhan Murmu, aged about 29 years, Son of Late
Mangat Murmu, At-Pahadpur, PO-Tarana, Via-Banda, Dist-Mayurbhanj
at present MIB-1B/48, Or.No.3, Chandrashekharapur, Bhubaneswar-16,
Dist-Khurda.

..... Applicant

Advocates for the applicant

..... M/s.K.C.Kanungo,
S.Behera & C, Padhi

Versus-

1. Union of India represented through Secretary-cum-D.G.
Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar-1,
Dist-Khurda.
3. The Senior Superintendent of Post offices, Bhubaneswar-9,
Dist-Khurda.
4. The Assistant Superintendent of Post Offices, Bhubaneswar
North Division, Dist-Khurda.
5. The Sub-Postmaster, OSAP-Campus, Sub-Post Office,
Bhubaneswar, Dist-Khurda.
6. Shri Shahzad Khan, GDS-MC, Budheswari Colony Sub-Post
Office, Bhubaneswar, Dist-Khurda.

..... Respondents

Advocates for the Respondents

..... Mr.R.N.Mishra.

.....

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN:

Since both the O.As.349/04 and 350/04 pertain to common question of facts and law, we dispose of both the O.As. through this common order. For the sake of convenience, we will, however, discuss the facts of the case in O.A.No.349/04.

2. The applicant was appointed by Res.No.4 on provisional basis with effect from 1.7.98 against the put off duty vacancy of ED Stamp Vendor, Utkal University S.O. This arrangement continued in different spells of three months upto 31.2.04. His appointment was not renewed thereafter.

3. The grievance of the applicant is that his provisional appointment made by the Res.No.4 was illegal, arbitrary and that the impugned order under Annexure-3 was inconsistent with the condition of his provisional appointment as set out in Annexure-1. His further grievance is that although he was provisionally appointed till the finalisation of the disciplinary proceedings against the regular incumbent of the post and as that departmental proceedings had not yet been finalised, discontinuing his appointment was bad in law. Admittedly being governed by the ED Agents (Conduct and Service Rules) 1964 presently GDS (Conduct and Employment Rules) 2001 and he having rendered more than 3 years of continuous employment, his services could not have been terminated without following the procedure laid down under Rule-6 of GDS (Conduct and

Employment) Rules 2001. Referring to the DG Posts letter No.18/1/65-Disc., dtd.3.9.1965, he has submitted that an ED Agent/GDS can continue to be in service so long as there is a post and in case the post is abolished or upgraded, the ED Agent/GDS concerned so affected to be accommodated in any other suitable post. He has also submitted that the service of an ED Agent/GDS holding a post on provisional appointment basis can only be terminated in the event of abolition/upgradation of that post and after indicating the reason of termination. But in this case his services were not renewed after 31.3.64 without any reason which is contrary to the order of DG Post in letter dtd.3.9.65 referred to earlier. As his appointment has been terminated without giving him an opportunity ^{to represent} is violative of the principles of natural justice and therefore the Respondents are liable to take him back to the service. Referring to the decision of the Res.No.3 while disposing of his representation dtd.2.4.64 (Annexure-A/11) that his recruitment and appointment to the post were irregular and hence his provisional appointment was not continued, he submitted that he was, in the circumstances, entitled to a show-cause before his dismissal from the service. Finally, he has submitted that as he had worked for over 5 years, the Respondents should, at least, keep his name in the waiting list in terms of DG Post letter No.43/77-Pen., dtd.23.2.1979.

4. The Respondents have opposed the application by filing a detailed counter to which the applicant has filed

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a detailed rejoinder. In their counter, the facts of the case have not been disputed by the Respondents. They have, however, pointed out that the applicant was appointed against put off duty vacancy so long as the disciplinary proceeding against the regular incumbent was not completed. However, it took time for the disciplinary proceeding to be finalised but in the mean time, the Respondents while reviewing the establishment of Utkal University Post office found that its work load did not justify retention of the post of Stamp vendor, resultantly the post was abolished. As a result there was no need to renew the contract of the applicant as stamp vendor. It is in these circumstances, that the services of the applicant were dispensed with. They have also submitted that the applicant had submitted representation dtd.2.4.2004 to Res.No.3 who is the next higher authority to Res.No.4 and the same was duly considered by the higher authority and disposed of as per his letter dtd,27.6.04 (Annexure-R/4). In the said letter, the reasons for non-renewal of his contract were also disclosed.

5. We have heard the Ld.Counsel for rival parties and have also perused the records placed before us.

6. The short question for consideration in this application is whether the applicant is entitled to any service benefit for working in the Respondents organisation for over 5 years, notwithstanding the fact that he was working against a put off duty vacancy. We see

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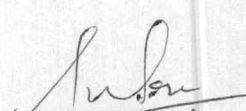
lot of force in the arguments of the Ld.Counsel for the applicant that the most important part of the contract was that his service would last till the disciplinary proceedings against the regular incumbent of the post were finalised. It is admitted by the Respondents that on 31.3.04 the disciplinary case against the regular incumbent had not come to an end. He had, in the circumstances, a vested right to continue in the post of GDS Stamp vender. Normally, he was entitled to ^{the} relief prayed for on this ground itself. However, the Res.No.3 by his letter dtd.2.6.04 had informed the applicant that his provisional/contractual appointment with the department had to be terminated with effect from 31.3.04 on the ground that the post which he was holding against the put off duty was itself abolished. Therefore, there was no position to be manned by him as GDS Stamp Vender. As the very basis of the contract was not available from 1.4.04, the question of enforcing the contract on the ground that the disciplinary proceedings against the regular incumbent had not been finalised does not arise.

7. In the circumstances, we have no hesitation to hold that the very basis of the contractual appointment having been eroded, the question of enforcing the contract has become infructuous. However, the fact remains that the applicant was continued for long over 5 years and after such a long stay with the organisation, he should be eligible for the benefit of retrenchment as postulated in DG Post letter dtd.23.2.79 at Annexure-A/7. It would,

therefore, suffice for us to close the discussion with a direction to the Respondents to give the applicant the benefit of provisional appointment for over 5 years in terms of D.G., P.&T., Letter No.43-4/77-Pen., dtd. 18.5.1979 and Circular No.19-34/99-ED & Trg., dtd.30.12.99 and include his name in the waiting list for one year and renewable thereafter as per rules laid down in this purpose.

8. With this direction, the O.A. is disposed of.
No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

SAN/