

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.361 OF 2004
CUTTACK THIS THE 10th DAY OF August 2005

Jayadev Sahoo *Applicant(s)*

-VERSUS-

Union of India & Ors. *Respondents*

FOR INSTRUCTIONS

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

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(B.N.SOM)
VICE-CHAIRMAN

10/08/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.361 OF 2004

Cuttack, this the 10th day of August, 2005

CORAM:

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

Sri Jayadev Saho, aged about 33 years, son of Sri Natabar Saho, At/PO-Khunta Samalai, PS/Via-Patnagarh, Dist: Bolangir, Es.G.D.S.MAIL packer (E.D.PACKER), Belpara SO, Dist-Bolangir

By the Advocates:

Applicant
M/s.S.P.Mohanty
P.K.Lenka

-VERSUS-

1. Union of India represented through Chief Post Master General, Orissa Circle, Bhubaneswar
2. Superintendent of Post Offices, Bolangir Division, At/Po/Dist-Bolangir
3. Director of Postal Services-cum-Post Master General, Regional Office, At/Po/Dist-Bolangir
4. Sub-Divisional Inspector (Postal), Patnagarh Sub-Division, At/PO-Patnagarh-767025, Dist-Bolangir
5. Jagabandhu Rana, Son of Babaji Rana, At/Po-Belpara, Dist-Bolangir

By the Advocates

Respondents
Miss S.Mohapatra, ASC

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O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL):

Applicant, Jayadev Sahu has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 with prayer for issuance of direction to the Respondent-Department to consider his case for appointment in any other vacant E.D.post keeping in view his previous experience and departmental circulars governing the field.

2. The sum and substance of the facts leading to filing of this case are that earlier, in the year 1997, Shri Jagabandhu Rana (Res.No.5) was selected and appointed as E.D.Packer of Belpara in Balangir Postal Division. His said appointment, on a complaint received by the Department, was reviewed and it was found that Res.No.5's selection to the post in question was irregular. It is in this background the selection and appointment of Res.5 to the post of ED Pakcer was cancelled by the Respondents in the year 1999, and at the same time the applicant herein (Shri Jayadev Sahu) was appointed to the said post of E.D. Packer. Being aggrieved, Jagabandhu Rana (Res.5) had approached this Tribunal in O.A.No.550/99 seeking justice. This Tribunal, by its order dated 14.10.1999(while directing issuance of notices to the Respondents therein) disposed of the prayer for interim relief by directing the

Respondents that the appointment to the post of ED Packer of Belpara Sub Post Office should be subject to the result of the said O.A.NO.550/99 and in case Res. No.5 (the present applicant, Jayadev Sahu) was appointed to the said post, that condition should be specifically mentioned in his appointment order. In this view of the matter, applicant, (Jayadev Sahu) was allowed to continue as E.D.Packer of Belpara Sub-Post Office. The said O.A.No.550/99 was disposed of by this Tribunal, on 28.11.2003, with the following observations and directions:

“...As per the recruitment rules, only preference is to be given to matriculate candidates. That being the position, the Respondents-Department made irregular selection by considering the case of the applicant as well as Res. No.5, when admittedly they were plucked matriculates and the candidates with essential qualification of 8th standard are to be considered.

In view of the above facts and circumstances, we are of the considered view that the selection of the applicant as well as private Res. No.5 has been done in an irregular manner and therefore, the same is liable to be quashed/set aside. Ordered accordingly.

In view of our observations as made above, we direct the Respondents-Department to consider all applications received by them at the relevant point of time including applicant and Respondent No.5 and consider the candidature of all the candidates afresh on the

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basis of marks secured by each of them in Class VIII Examination and select the most suitable candidate as per rules and procedures laid down and pass appropriate orders within a period of two months from the date of receipt of copy of this order. Till such time (the direction as given above is complied with by the Respondents-Department) the Respondents may continue with temporary arrangement in carrying out the work of E.D.Packer".

Being aggrieved by the above order of this Tribunal, Res. No.5 of that O.A.(who is applicant of the present O.A.) had carried the matter to the Hon'ble High Court of Orissa in (W.P.© No.3559 of 2004) and the said Hon'ble Court, by order dated 6.4.2004, while dismissing the said Writ Petition, on the basis of submission made by the learned counsel for the petitioner therein (that the Department had served one month' notice for termination of service contrary to the direction of this Tribunal rendered in O.A.No.550/99) granted liberty to the Applicant to challenge the notice of termination in the appropriate forum and this is how the present O.A. filed by the above said Jayadev Sahu, with the prayer as referred to earlier. These facts are not in dispute. But, however, the Respondent-Department have filed a counter contesting the prayer that has been made in this O.A.

3. We have heard the learned counsel for the parties and perused the materials placed on record. The order/notice, based on which

the Hon'ble High Court granted liberty to the Applicant in the aforementioned Writ Petition to move the appropriate forum is not the subject matter of challenge in the instant O.A. Had it been so, the Applicant herein would have challenged the notice of termination issued to him on the ground that the same was contrary to the direction of this Tribunal rendered in O.A.NO.550/99. Nowhere he has also assailed the said impugned notice of termination issued as a consequence to the disposal of O.A.No.550/99.

4. The Applicant has only prayed, as referred to above, to consider his case against any other vacant E.D.Post, keeping in view his previous experience and departmental circulars governing the field. In course of hearing, the learned counsel for the applicant drew our attention to the relevant provisions as enshrined in G.D.S.(Conduct & Service) Rules under the Heading "Method of Recruitment". It has been laid down therein as under:

"Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G., P & T letter No.43-4/77 Pen., dated 23.2.1979".

This provisions of the Rules is not applicable to the case in hand, inasmuch as the selection and appointment to the post of ED Packer of Belpara either of the applicant or of Res. No.5 were declared irregular by this Tribunal in O.A.NO.550/99 and this decision of the Tribunal was upheld by the Hon'ble High Court in the above mentioned Writ Petition. This being the situation, the termination of service of the applicant can, by no stretch of imagination to be said due to administrative reasons. That apart, if at all the applicant could continue beyond three years as E.D.Packer, it was only by virtue of interim direction issued by this Tribunal in O.A.No.550/99. As regards his prayer to provide him an alternative ED post, based on his past experience, we would say that the applicant having been appointed in an irregular manner (to state, in other words, the entire gamut of his appointment being de hors the rules) no relief in that behalf can be granted.

5. Having regard to what has been discussed above, we are of the opinion that the applicant has not been able to make out a case for any of the relief prayed for and, resultantly, this O.A. is dismissed. No costs.

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(B.N.SOM)
VICE-CHAIRMAN

10/08/03
(M.R.MOHANTY)
MEMBER(JUDICIAL)