

10

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK**

ORIGINAL APPLICATION NO.562 OF 2004
Cuttack this the 03rd day of April, 2006

P.K.Tripathy...Applicant(s)

-VERSUS-

Union of India & Ors. ...Respondent(s)

FOR INSTRUCTIONS

✓ 1. Whether it be referred to Reporters or not ?
2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not ?


(B.PANIGRAHI)
CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK**

ORIGINAL APPLICATION NO.562 OF 2004

Cuttack this the 03rd day of April 2006

CORAM:

HON'BLE MR.JUSTICE B.PANIGRAHI, THE CHAIRMAN

...

Shri Prasant Kumar Tripathy, aged about 35 years, Son of Dhirendranath Tripathy, At/PO-Bodhpur, Via-Sompur, Dist-Cuttack

By the Advocates :

...Applicant

Mr.T.Rath

-VERSUS-

1. Union of India represented through the Director General (Posts), Dak Bhawan, New Delhi
2. Chief Post Master General, Orissa Circle, Bhubaneswar
3. Supdt.of Post Offices, Cuttack South Division, Cuttack
4. Sub-Divisional Inspector (Postal), Cuttack South Division, Cuttack
5. Jayanta Kumar Dash, at present working as G.D.S.M.C. at Narada Branch Post Office, Dist-Jagatsinghpur

By the Advocates:

...Respondents

Mr.B.N.Udgata, A.S.C.
(Res. 1 to 4)
M/s.S.R.Patnaik
Mrs.P.Patnaik
P.K.Swain
N.K.Senapati
N.K.Biswal
(Res.5)

ORDER

MR.JUSTICE B.PANIGRAHI, THE CHAIRMAN:

Skeletal picture presented by the applicant in this case is as follows.

12

2. The applicant was initially appointed as Extra Departmental Delivery Agent (in short E.D.D.A.) which has been re-designated as Gramin Dak Sevak Mail Deliverer (in short G.D.S.M.D.) in Bodhpur E.D. Sub Office (in short E.D.S.O.) on and from 1.12.1988. The letter of appointment is enclosed as Annexure-1 to the O.A. As per the direction of the Director General of Posts, the Chief Post Master General, Orissa Circle, Bhubaneswar made a review of his establishment in the year 2003 and in the process the Assistant Director (Estt.)'s letter was taken note of wherein it was suggested that Bodhpur G.D.S.S.O. might likely be down graded to G.D.S.B.O. In such eventuality the post of G.D.S.M.C. was very likely to be abolished. He invited a report from the Superintendent of Post Offices on or before 18.8.2003 as to how one such staff working at Bodhpur could be accommodated.

3. Be it noted that Respondent No.5 who was working as G.D.S.M.C., Bodhpur S.O. was called upon to exercise his option to be absorbed in some other post after the steps for down grading the post is taken up. Respondent No.5, however, is said to have given his consent to work in any other post if such post was down graded. The office of E.D.S.O., Bodhpur was converted into E.D.B.O. on 26.3.2004. From out of three categories of posts, viz., GDSSPM, GDSMD and GDSMC, the post of G.D.S.M.D. was

abolished. The applicant who worked previously as E.D.D.A. (GDSMD) was asked to join as GDSMD/MC, Bodhpur on 26.3.2004. Accordingly, he assumed the charge as GDSMD/MC, Bodhpur. While the matter stood thus, Respondent No.3 again issued a direction on 11.8.2004 modifying the order under Annexure-2 whereby he asked the present applicant to join against vacant post of GDSMD at Govindpur B.O., which is 25 kms. away from Bodhpur. It is inter alia stated that Respondent No.5, who was working at Narada was directed to join as GDSMD/MC at Bodhpur B.O. Be it stated that Respondent No.5 was working at Bodhpur as GDSMC, which post had already been abolished. The applicant's claim is that even Respondent No.5 did not possess the minimum qualification for the said post. Even the initial appointment of Res.5 to the post of G.D.S.M.C. was irregular on account of non-possession of the minimum qualification by him. Thus, the action of Respondent No.3 is mala fide, illogical and therefore, the order, transferring the applicant from Bodhpur to Govindpur having been passed with an ulterior motive is not tenable. While the Respondent No.5 has offered unconditional undertaking to join any other post any where, the Respondent No.3, without any rhyme or reason ought not to have asked him to join at Bodhpur leaving behind Narada. Therefore, the direction given to the applicant to join at

Govindpur having been passed without any legal sanctity is liable to be struck off.

4. Respondent Nos. 1 to 4 have filed their counter-reply inter alia stating that Bodhpur GDSO is coming within Jagatsinghpur H.O. Three types of posts, viz., Gramin Dak Sevak Sub Post Master, G.D.S.M.D. and G.D.S.M.C. are available in Bodhpur. As GDSSO was running heavy loss, in order to prevent continuance of such financial loss, the authorities reviewed the establishment of GDSSO, Bodhpur and took a view to abolish the post of GDSMD, as a result of which Respondent No.5 was directed to work as G.D.S.M.C., Narada. The order having been implemented, Res. No.5 joined as GDSMC, Narada. Subsequently on receipt of the complaint, the C.P.M.G., Orissa Circle, called a report from Res. No.3 with regard to implementation of the order dated 29.1.2004 and reviewed the case. At this stage a direction was issued to the applicant to work as G.D.S.M.D., Govindpur and Respondent No.5 was directed to work as GDSMD, Bodhpur. Since this order was passed on account of administrative exigency and in public interest, the applicant could therefore, be incompetent to assail the aforesaid order. Respondent No.5, who was working as G.D.S.M.C. at Narada was asked to join as G.D.S.M.D/M.C., Bodhpur. But the applicant was not willing to be relieved by

15

Respondent No.5. On the contrary, he has filed this case at this stage. Since the aforesaid arrangement was necessary on account of administrative requirement, neither the Court nor the Tribunal should disturb such arrangement made in administrative exigency.

With these submissions, the Respondent Nos.1 to 4 have opposed the prayer of the applicant.

5. Respondent No.5, has, however, refuted the allegations averred by the applicant, by stating inter alia that both the applicant as well as himself are non-Matriculates. Therefore, there was no logic on the part of the applicant to submit that Res. No.5 was ineligible for being appointed even as G.D.S.M.C. He has further reiterated that since the Respondent-authorities are competent to make such administrative arrangement by redeploying one of the staff to other post office, he was therefore, asked to work as GDSMC/MD, Bodhpur and by issuing such a direction, Respondent Nos. 1 to 4 had not violated any statutory rules nor was there any infraction of any administrative instructions, so that the Tribunal could interfere as regards the posting.

6. Shri T.Rath, the learned counsel appearing for the applicant has advanced an inexorable claim by stating that E.D. staff do not have any transfer liability. If, of course, the authorities so decided

for abolition of any E.D.post by way of departmentalization, the person so affected should be posted at a place for which he is suitable and willing. In this case, Respondent No.5 was offered a posting at Narada after down-gradation of the post of GDSMD, Bodhpur. At that juncture he had unconditionally accepted the terms and conditions for being accommodated in any other post at any place. On such condition also he was adjusted at Narada. This being the situation, the Respondent-authorities could not have issued further direction to the Superintendent of Post Office for shifting the applicant from Bodhpur to Govindpur and to bring back the Res. No.5 from Narada to Bodhpur. Therefore, the order suffers from the vice of illogical reasons and is liable to be set aside.

7. Although Shri Rath, the learned counsel appearing for the applicant has made an unsuccessful attempt by stating that even Res. No.5 does not possess the requisite qualification for being appointed as G.D.S.M.C., but it is indisputably true that Res.5 has been working for the last 11 years as such. Non possession of qualification by Res.5 was not an issue at any time before hand. It was for the Respondent-authorities to consider whether he could have been appointed or not on account of having no requisite qualification. The stand taken by the applicant that Res.5 did not

possess the requisite qualification has been strenuously refuted by the Res.5. Reliance has been placed on the judgment in **Madhya Pradesh Electricity Board vs. S.S.Modh** reported in AIR 1997 SC 3464. The facts of the aforesaid case are entirely different from the facts of the present case. In that case the promotion from the post of Assistant Engineer was in question. The academic qualification for the post of Assistant Engineer was prescribed. But in the instant case the qualification being Class-VII and the Res.5 having claimed to be under Matriculate, such matter of qualification recedes back.

8. Shri Udgata, the learned counsel, while supporting the stand taken by the Respondent-authorities, has submitted that the transfer of the applicant from Bodhpur to Govindpur was necessary on account of administrative reasons and therefore, the Tribunal should be very very slow in disturbing the orders passed by the authorities on account of administrative exigency.

9. The post of Res. No.5 was abolished at Bodhpur and accordingly, he was transferred from Bodhpur to Narada, where he had worked for more than 4/5 months. No reason has been assigned by the Respondent-authorities as to what prompted them to review the aforesaid transfer order. It is also not known what impelled the Respondent-authorities to transfer Res. No.5 from

Narada to Bodhpur and send the applicant from Bodhpur to Govindpur. Ordinarily, the orders of transfer should not be passed in so far as G.D. staff are concerned. But once such an order having been passed by transferring Res.5 from Bodhpur to Narada, there appears to have no further necessity to ask Res.5 again to move from Narada to Bodhpur and ask the applicant to move from Bodhpur to Govindpur. It could have been understood had there been any case of departmentalization of posts at Bodhpur. It is not the case of the Respondent-authorities that on account of departmentalization of the post the applicant was transferred from Bodhpur to Govindpur. The applicant also is working at Bodhpur by virtue of an interim order. Therefore, there is no justification in the aforesaid circumstances to transfer the applicant from Bodhpur to join at Govindpur. In this view of the matter, order dated 11.8.2004 vide Annexure-4 is hereby quashed.

Accordingly, the O.A. is allowed. No costs.

B. Panigrahi
(B.PANIGRAHI)
CHAIRMAN