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O.A.NO. 641/2004.

ORDER DATED: 02-05-2005.

Selection and appointment of the Applicant Rajanikanta Gantayat, to the post of GDS BPM of Nandika Branch Post Office in account with Hinjilicut Sub Post Office made under Annexure 8 dated 06.07.2001, having been cancelled under Annexure 20 dated 20<sup>th</sup> May, 2004, the Applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(i) Quash the order of cancellation of Selection and appointment of the applicant under Annexure-20;

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“(ii) Direct the Respondent Nos. 2 and 3 to reinstate the applicant in service with back wages and all consequential service benefit”

2. Respondent-Department have filed a counter stating the reason of passing of the impugned order under Annexure 20 dated 20<sup>th</sup> May, 2004.

3. Heard learned counsel for the parties and perused the materials placed on record.

4. The impugned order under Annexure 20 dated 20<sup>th</sup> May, 2004 speaks as under:-

"Memo No. B/ED-301/Ch-II, dated 20<sup>th</sup> May, 2004.

Shri Rajanikanta Gantayat was selected and appointed as GDS BPM, Nandika BO in account with Hinjilicut SO out of physically handicapped quota on the basis of a Physically Handicapped certificate issued in his favour by the CDMO, GANJAM. On receipt of a complaint that Shri Gantayat is not actually a physically handicapped person and that the physically handicapped certificate produced by him was an arranged one, departmental inquiries were made and the allegation was found correct. Therefore, Shri Gantayat was informed vide this office letter dtd.11.3.2004 that it was proposed to cancel his selection and appointment and he was also asked to submit his representation, if any, against the proposal.

In response to the aforesaid letter Shri Gantayat submitted his representation dated 18.3.2004 which was received in the office of the undersigned on 19.3.2004. In his representation Shri Gantayat has stated that he is actually a handicapped person and that the Director of Health Services, Bhubaneswar has already sent medical report confirming his disability to the PMG, Berhampur. He also submitted photo copies of certain documents in support of his attendance before the medical authority for his medical examination. It has been ascertained from the Office of the PMG, Berhampur that no report from the Director of Health Services has so far been received by them. In view of this, what Shri Gantayat has stated in his representation is proved to be false and the genuineness of the photo copies of the documents enclosed to his representation is very much doubted. As such the undersigned is satisfied that the PH certificate produced by Shri Gantayat at the time of his selection was arranged one. Therefore, the undersigned hereby cancels the selection and appointment of Shri Rajanikanta Gantayat as GDSBPM, NANDIKA BO in account with Hinjilicut SO with immediate effect."

5. In the counter at paragraph 3(vii) the Respondent-

Department have disclosed as under:-

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“.....However, a letter of the Directorate of the Health Services, Orissa dated 10.06.2004 indicates that reports regarding handicap of Shri Gantayat ( the Applicant) has been sent to the Office of the Respondent No.2 on 20.03.2004. Xerox copy of the said letter dated 20.03.2004 has been annexed to the letter dated 10.06.2004. The letter dated 10.06.2004 of the Directorate of Health Services, Orissa has been received at the Office of the Respondent No.2 on 03.08.2004. The copy of the Audiometric Report on the basis of which the Asst. Professor, HOD of ENT, MKCG Medical College, Berhampur has come to the conclusion that the loss in PTA was 43 and 45; and the handicap would be around 50% has also been annexed to the letter dated 10.06.2004 ( Annexure-R/6).

The letter of the Directorate of Health Services dated 20.03.2004 has not been received at the Office of the Respondent No.2. The letter dated 10.06.2004 of the Directorate of Health Services was received at his office on 03.08.2004 where as Sri Gantayat (the applicant) was relieved from the post of GDSBPM, Nandiko Branch Post Office well before, i.e., on 20.05.2004 cancelling his selection and appointment”

6. From the statements made in the counter it is conclusively proved that the Applicant being a handicapped person was rightly selected and appointed under the PH quota. But only owing to an allegation made by one Shri Chitta Ranjan Padhy, (who was unsuccessful in his attempt to get a favourable order from this Tribunal in his O.A. No.127 of 2001 ; wherein he challenged his non selection) the selection and appointment of the applicant was cancelled. The Department though started resorting to the correct procedure to testify the veracity of the allegations about the

*disability* of the Applicant, it failed to act fairly till the end.

Had the Respondents verified from the Directorate of Health Services papers submitted by the Applicant (along with the reply to show cause notice) in support of his further medical examination undertaken at the M.K.C.G. Medical College & Hospital at the behest of the Respondents-Department from the Directorate of Health Services or had they waited till the receipt of the medical report, such a contingency could have been avoided. From the language couched in the impugned order it is crystal clear that the action taken by the Respondents in doing away the services of the applicant was based on mere allegation and suspicion, which is against the settled position of law decided by the Hon'ble Apex Court of India in the case of **UNION OF INDIA vrs. H.C.GOEL ( reported in AIR 1964 SC 364) wherein it was held that mere suspicion should not be allowed to take the place of proof even in domestic enquiries.** When the medical reexamination of the applicant was undertaken (at the instance of the Respondents-Department) by the competent medical authorities, it was incumbent on the part of the referee to act only on receipt of the medical reexamination report in order to meet the ends of justice, equity and fair play. Having not done so, the action of the authorities is unilateral and arbitrary and therefore, the same is not

sustainable in the eye of law. Apart from the above, we would like to note that the manner of presumption drawn by the Respondents in the impugned order (on the document relied upon by the applicant in his show cause) is antithesis to the Evidence Act and the law enunciated by the Hon'ble Supreme Court of India in the case of **SURESH BUDHARMAL KALANI ALIAS PAPPU KALANI VS. STATE OF MAHARASHTRA (REPORTED IN AIR 1998 SC 3258)**. A thorough scrutiny of the entire matter would go to show that the entire episode started at the behest of Shri Padhy and the cancellation of the selection and appointment of the Applicant has been made with some ulterior motive. *Any action done contrary to principles of natural justice with some intention and motive can be termed as mala fide. Rule of law requires that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.*

7. In the above view of the matter, the ends of justice would be met if we quash the impugned order under Annexure 20 dated 20<sup>th</sup> May, 2004 holding that the Applicant is deemed to have been validly continuing in the Post of GDSBPM and is entitled all consequential service and financial benefits from the date of his termination. It is so ordered. The Respondents are hereby directed to reinstate the Applicant

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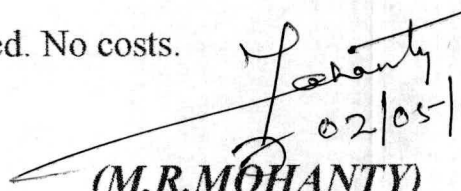
to calculate his arrear dues from the date of his termination and pay the same to the Applicant within a period of 120 days from the date of receipt of a copies of this order.

8. Last but not the least, we would like to say that here is a case where the applicant has been subjected to victimization at the whims and fancies of the Respondents-Department and that he has been made to suffer for no fault of his. Democracy rests upon the constitution founded by our forefathers. The administration in a democracy like ours, should not run in arbitrary exercise of powers by the Officers in rank and file. Rules of law must prevail. Since the Applicant has suffered for no fault of him and due to non application of mind by the Authorities of Postal Department of Government of India, the Respondents are hereby asked to pay Rs.2,000/-(Rupees Two thousand only) as costs of litigation to the Applicant. This amount of Rs. 2,000/- along with the arrears to which the Applicant would be entitled to shall be recovered from the Official(s)/Officer(s) responsible for dragging applicant to this unnecessary litigation.

9. In the result, this OA is allowed. No costs.

  
(B.N.SOM)  
VICE-CHAIRMAN

AFR

  
02/05/05  
(M.R. MOHANTY)  
MEMBER(JUDICIAL)