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O.A. No. 233 OF 2005.

ORDER DATED – 23-03-2006.

Applicant was initially selected, through a regular process of selection for the post of GDSBPM of AB Patna Branch Post Office vide order dated 16-11-1999. Due to protest of the villagers, he was unable to join his duty. Only after intervention of Police, he could join on 01-04-2000. Thereafter on the ground that he has not able to provide the accommodation for the post office, the selection of the Applicant was cancelled vide order dated 05-04-2000 and the Applicant was relieved his duties on. 07-04-2000. As the regular GDSMC of Brahmanigaon Branch Post Office was kept under off duty with effect from 22-04-2000, the Applicant was deployed to manage the work of GDSMC of Brahmanigaon Branch Post Office. While working in the said Branch post office, the post of GDSBPM of Mugagahira BO was vacant and the Applicant having applied to be transferred and posted was adjusted as GDSBPM/EDBPM of Mugagahira Branch Post Office in account with Barambagarh Sub post Office under Annexure-A/6 dated 19-06-2001. His said engagement having been terminated under Annexure-A/7 dated 7th July, 2003, the Applicant challenged the said order in Original Application No. 701 of 2003 and the said OA having been disposed of on 20th January, 2005, the services of the

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Applicant were terminated under Annexure-A/12 dated 24-03-2005 which is under challenge in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985. After receipt of notice, the Respondents have also filed their counter opposing the prayer of the Applicant and the Applicant has also filed a rejoinder.

2. By filing a Misc. Application (No. 118 of 2006), the Applicant has sought for direction to the Respondents to consider/reconsider his prayer for adjustment against the vacancies of GDSBPM of Mugagahira BO or Ratapat Branch Post Office under Cuttack South Postal Division; as per the circular of the DGP& T, New Delhi dated 30-12-1999. He has also relied on a judgment dated 04-01-2006 of the Bangalore Bench of this Tribunal rendered in OA No. 190 of 2005 .

3. Heard the parties at length and perused the materials placed on record. Learned counsel appearing for the Applicant has submitted that as this Tribunal, while disposing of the earlier Original Application, had given liberty to the Respondent-Department to consider the case of Applicant for adjustment against any vacant ED Post, if his case falls under the category of discharged EDAs; his case ought to have been considered by the Respondents as per the DGP& T instruction/circular dated 30-12-1999; for he completed three years continuous approved service.

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It is the case of the counsel appearing for the Respondents that as the appointment of the Applicant as GDSMD, Brahmanigaon BO and his subsequent transfer and appointment as GDSBPM, Mugagahira BO was not as per the Department rules, such appointee cannot be termed as discharged/retrrenched GDS and as such, the Applicant is not entitled to get the benefit of re trenching/discharged GDS in the Department.

4. Having considered the submissions advanced by both the parties, perused the orders of appointment issued in favour of the Applicant under Annexure-A/1 dated 16-11-1999, under Annexure-A/5 dated 26-04-2000 and the order under Annexure-A/6 dated 19-06-2001. No distinction has been found out between the initial order of appointment issued under Annexure-A/1 and subsequent orders under Annexures-A/5 and A/6. Order under Annexure-A/6 dated 19-06-2001 rather peaks as under:-

“Memo No.H-2/2000-01/PF dated at Cuttack the 19-06-2001.

In pursuant to C.O.Letter No. ST/48-Misc-CK(N)/ 2001-Ch.I dtd.6.6.2001 Shri Niranjan Pati S/O Sri Kalandi Pati, Village-Santrabali, PO-Maniabandha, PS-Barambagarh, Dist. Cuttack whose date of birth is 16-2-1969 and belongs to OBC community now working as EDMC Brahmanigaon BO in a/c with Arei SO under Jajpur HO of Cuttack North Division w.e.f. 22-04-2000 who applied for transfer to the newly opened vacant post of BPM, Mugagahira BO in a/c with Barambagarh SO is hereby transferred and posted as EDBPM, Mugagahira BO in a/c with Barambagarh SO.”



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5. It is not in dispute that the Applicant was a regularly selected candidate for the post of GDSBPM for AB Patna Branch Post Office. At one stage he could not take up the accommodation, due to opposition of the villagers and at a subsequent date, although he joined, he was allowed to function properly. This is not the first time when the villagers opposed the appointment of selected candidate. Earlier also having confronted with such type of contingencies, liberty was given to the Respondent Department to think of shifting of the post office from the said post village to another; as constitutional mandate provides that there shall be equality of opportunity of all citizens in matters relating to employment or appointment to any office under the State and no citizen should, on grounds of religion, race, caste, sex, place of birth, residence or any of them, be made ineligible for, or discriminated against in respect of any employment or office under the State. But in the present case, as is evident, instead of protecting the rights of the Applicant, the selection of Applicant was cancelled without any opportunity to him to have his say in the matter. When Applicant was adjusted, it naturally gave him an impression that such adjustment was made in furtherance to his selection. Order under Annexure-A/6 dated 19-06-2001 also does not show that the appointment/transfer of Applicant was in any way irregular/illegal. If there was any irregularity, the same is attributable to

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the authority who had done so; but certainly not the Applicant. Therefore, the Applicant should not be asked to suffer the vice of the irregularity, if any committed by the Authorities.

6. In the above said premises, it can not be said that the instructions of the DGP&T is of no avail to the Applicant. Undisputed fact of the matter is that the Applicant had rendered continuous service of more than three years and, therefore, the case of the Applicant squarely falls/covers under the circular of the DGP&T dated 30-12-1999 and, as a consequence, he is entitled to the benefits flowing there from. This view is also fortified by the decisions of the Bangalore Bench of this Tribunal rendered in O.A.No. 190 of 2005 dated 4th January, 2006.

7. In view of the discussions made above, the Respondents are hereby directed to make efforts to adjust the Applicant against one of the vacancies under the category of GDS/EDA at an early date..

8. The hyper technical objection of the Respondent-Department (that due to ban, recruitment in ED/GDS Organization has been discontinued) is not to stand before them to give justice to the Applicant; as by the time the Applicant was recruited lawfully in the year 1999, there was no ban and, while examining this case, it is seen that even on the day the Applicant was terminated, during the year 2000, there was no ban. For the

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reason of the law laid down by the Hon'ble Apex Court of India in the case of **Y.V.RANGAIAH AND OTHERS vrs. J. SREENIVASA RAO AND OTHERS** (reported in AIR 1983 SC 852) and (b) in the case of **P.MAHENDRAN AND OTHERS Vrs. STATE OF KARNATAKA AND OTHERS** (reported in AIR 1990 SC 405), the ban order is not to apply to the case of the Applicant.

9. As a necessary consequence, this Original Application is allowed with a direction to the Respondents to give a posting to the Applicant as EDBPM as against one of the vacancies under them within a period of 30 days from the date of receipt of a copy of this order.

(M.R.MOHANTY)
MEMBER(JUDICIAL)

22/03/06