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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No.621 of 2005
Cuttack, this the 07th day of January, 2009

Smt.Jogeshwari Panigrahi Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Smt. Jogeswari Panigrahi, aged about 29 years, W/o.Shri Rama Narayan Panigrahi, At-Ushra Po.Ushra Colony, Dist. Sundergarh 770034.

.....Applicant

By Advocate : Mr.P.K.Padhi

- Versus -

1. Union of India represented through Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi 110001.
2. Director of Postal Services, Sambalpur Region, At/Po/Dist.Sambalpur 768 001.
3. Sr. Superintendent of Post Offices, Sundargarh Division, Sundargarh 770001.

....Respondents

By Advocate :Mr. R.N.Mishra,ASC

O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

The case of the Applicant, in nut shell, is that she having been selected through a due process of selection, joined in the post of EDBPM of Ushra Colony BO on 30.01.2003. After long lapse of time, the Respondents, in exercise of the power of review passed the order of termination under Annexure-A/11 & 12 dated 11.7.2005 and 18.07.2005 respectively. Her main ground of challenge of the impugned order under Annexure-A/12 is that higher authority has no power to review the

appointment of the EDAs/GDSs. Further, the instructions dated 13.11.1997 based on which the authority exercised the power of review and issued the order of termination having been quashed by Full Bench as also Division Bench of this Tribunal, exercising of such power is non-est in the eyes of law and as such, the order of termination under Annexure-A/12 is liable to be quashed. The matter was listed on 01.08.2005 on which date this Tribunal while calling upon to the Respondents to file their counter, as an ad interim measure stayed the operation of the impugned order under Annexure-A/12. On the strength of interim order dated 01.08.2005 which is in force till now, the Applicant is still continuing in service.

2. In the counter filed by the Respondents it has been stated that irregularity in the matter of selection and appointment to the post of EDBPM of Ushra Colony BO having been noticed and on enquiry held to be in existence by the Director of Postal Services of Samblapur Region, who is the authority higher than the appointing authority, in exercise of the review power conferred on him by the instructions of the DG of Posts, New Delhi dated 13.11.1997, ordered for termination of the services of the Applicant. As such, there being no wrong on the same, the order of termination is unquestionable and this OA is liable to be dismissed.

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

4. Relying on various decisions of this Tribunal as also Hon'ble High Court of Orissa it has been argued by learned counsel for the Applicant that the instructions dated 13.11.1997 based on which the Director of Postal Services exercised the power of review and passed the order of termination having been quashed, the order of termination can be said to be without jurisdiction and is non-est in the eye of law. As such, he sincerely prayed for quashing of the same. Learned Counsel appearing for the Respondents though opposed the arguments advanced by the Learned Counsel for the Applicant but did not show us any authority superseding the decisions of the Full Bench of the Tribunal Madras Bench in the case of R.Jambukeswaran and others v Union of India and others, reported in A. T. Full Bench Judgments 2002-2003 page 200 and other several cases. Rather Learned Counsel for the Applicant, during the course of argument drew our attention to the decision of the Hon'ble High Court of Orissa dated 8.8.2008 in OJC No. 10541 of 2000 (Arasada Sourya Mouli v Union of India and others) in which this Tribunal was not inclined to interfere in the order of termination passed in exercise of the power of review filed by Arasada (supra) But in the aforesaid Writ Petition the Hon'ble High Court quashed the order of this

Tribunal dated 12.07.2000 in OA No. 558 of 1995 relevant portion of the observations of the Hon'ble High Court is quoted herein below:

"3. Learned Counsel on behalf of the Union of India submitted that in the present case, the order of termination was issued by the appointing authority and not the Reviewing Authority and, therefore, the judgment cited by the Petitioner is of no relevancy.

We are not inclined to accept such a submission in view of the fact that the letter of termination though issued by the Head Postmaster i.e., Appointing Authority, clearly indicates that he had acted in compliance of the direction issued to him by the Sr. Superintendent of Post Offices (Reviewing Authority) and, therefore, the order of termination has to be deemed to be an order of Reviewing Authority communicated through the appointing authority and not an order of the appointing authority.

4. The view expressed by the Full Bench of the Central Administrative Tribunal, Madras has been reiterated by the Hon'ble Supreme Court in the case of **Union of India and others vrs. Bikash Kuanar (Civil Appeal No. 4388 of 2006 decided on 10.10.2006)**. In the aforesaid judgment, the Supreme Court affirmed the order of the Orissa High Court whereby the Orissa High Court had set aside the order of the Central Administrative Tribunal passed in OA No. 6 of 1999 holding that in terms of 1964 Rules, which was prevalent at the relevant time, the superior authority had no statutory power to direct cancellation of selection. That judgment has been followed by this Bench in the case of the **Union of India and others v Radhashyam Sahoo and another (OJC No. 1394 of 2000 disposed of on 05.08.2008)** and the said judgment also covers the facts of the present case.

5. Accordingly, the impugned order of the Tribunal dated 12.07.2000 passed in OA No. 558 of 1995 under Annexure-7 is quashed and in consequence thereof, the order dated 20.09.1995 under Annexure-3 is also quashed and Opposite Party No.4 is directed to reinstate the Petitioner to his service and permit him to resume his duty within a

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period of four weeks from the date of communication of this judgment. It is made clear that the Petitioner shall be entitled to 50% of the back wages with all service benefits including seniority.”

5. In the instant case it has been admitted by the Respondents that the present impugned order of termination under Annexure-A/12 is the out come of the order under Annexure-A/11 and this Annexure-A/11 was passed on review of the selection by an authority higher than the appointing authority. When the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that the impugned order under Annexure-A/11 and consequential order under Annexure-A/12 are bound to be set aside and we do so,

6. In the result, this OA stands allowed by leaving the parties to bear their own costs.

L. Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

C.R. Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)