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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 188 OF 2006

Cuttack, this the 21st day of December, 2009

Sri Abinash Sahoo Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NOs. 188 OF 2006
Cuttack, this the 24th day of December, 2009

CORAM:

**Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)**

.....
Sri Abinash Sahoo, aged about 31 years, S/o Prana Krishna Sahoo, resident of Vill./P.O. Mamadulla, Via: Dasarathpur, Dist. Bhadrak, At present working as GDS-MD/MC, Mamadulla Branch Office in account with Dasarathpur Sub-Post Office. **Applicant**

By the Advocate(s)..... M/s. K.C. Kanungo,
S. Beura

Vs.

1. Union of India represented thorough the Secretary-cum-D.G. Posts, Dak Bhawan, New Delhi-1.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist-Khurda.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack-1.
4. The Assistant Superintendent of Post Offices, (In Charge, Jajpur Sub Division, Jajpur, Dist-Jajpur).
5. Shri Sudarshan Jena, Village-Mishrapur, P.O-Kantapari, Via-Dasarathpur, Dist.Bhadrak.

..... **Respondents**

By the Advocate(s)..... **Mr. U.B. Mohapatra, SCGSC**

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O R D E R

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

Challenging an order dated 27.02.06 (Annexure-A/2) of the Assistant Superintendent of Post, Jajpur, this Original Application has been filed by the applicant, a provisionally appointed GDSMD /MC, with the following prayer:-

“... (i) to direct the departmental Respondents to consider to regularize the Applicant in any GDS Post under Jajpur Sub-Division for the ends of justice.

(ii) to quash Annexure-A/2 in the interest of Justice.

2. When this O.A. came up for admission on 02.03.06, on hearing the Ld. Counsel appearing for the applicant as well as the Ld. Counsel for the Respondents, this Tribunal had passed an interim order staying the operation of order dated 27.02.06 (Annexure-A/2). Subsequent orders also confirmed the interim order. In pursuance to the notice ordered, a counter has also been filed for and on behalf of the Respondents. On receipt of such counter, the applicant has



also filed rejoinder as an answer to the facts stated in the counter.

3. We have heard Mr. K.C. Kanungo, Ld. Counsel for the applicant and Mr. S. Mishra, Ld. Counsel on behalf of Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents.

4. The brief facts of the case are as follows:

A post of Gr-D Runner Dasarathpur-Gopakul line was abolished w.e.f. 15.01.03. The bags conveyed by the Gr-D in between Dasarathpur-Gopakul line were entrusted to the GDSMD/MC Mamadulla BO, with further direction that the delivery work of Mamadulla BO would be performed by the GDS BPM Mamadulla BO. Thus, the GDSMD / MC Mamadulla BO was ordered to convey the bags of Dasarathpur – Gopakul line in addition to the BO bags of Mamadulla BO. One Sri K.C. Nayak, who was working temporarily in the post of GDSMD / MC, Mamadulla BO was ordered vide ASPOs Jajpur Memo No.B / Dasarathpur dated 14.01.03 (Annexure-R/1) to discharge the above work of conveyance of mails from Dasarathpur to Mamadulla BO. While the work was going on

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by Sri K.C. Nayak, he requested the ASPOs Jajpur to allow him to convey the bags from Dasrathpur to Gopkul as he was being opposed by the villagers of Mamadulla BO to exchange the BO bag of Mamadulla BO at Mamadulla. Under the above circumstances, the ASPOs Jajpur allowed Sri K.C. Nayak to convey the mailbags from Dasarathpur to Gopakul stage and asked the GDSBPM Mamadulla BO to allow Sri Abinas Sahoo (Applicant) to convey the BO bag of Mamadulla and perform the delivery work of Mamadulla BO w.e.f. 04.02.03 to 31.03.03 on stopgap arrangement vide letter No. B/GDS/MD/MC Mamadulla dated 03.02.03 (Annexure-R/2). In the said order it was clearly mentioned that the stopgap arrangement would be terminated if regular selection is completed within that period. Since the post of Gr.D Runner Dasarathpur was already abolished w.e.f. 15.01.03, it was decided that the arrangement of splitting the work should be discontinued. Accordingly the ASPOs Jajpur vide his order dated 15.02.03 (Annexure-R/3) directed the GDSBPM to terminate the engagement of Sri Abinas Sahoo (Applicant) and allow Sri K.C. Nayak to work against the post of GDSMD/MC Mamadulla BO, who would

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convey the mail bags of Dasarathpur-Gopkul line and Mamadulla BO. But the GDSBPM Mamadulla BO, Sri Amitav Sahoo, who is the own brother of Sri Abinas Sahoo (Applicant) in order to give scope to the applicant remained absent from duty unauthorisedly by making over charge to the applicant. The applicant remained in charge of GDSBPM Mamadulla BO unauthorisedly from 17.02.03. On receipt of termination order dated 15.02.03, the applicant had filed O.A. No.110/03 before this Tribunal. This Tribunal by disposing of the O.A.110/03 on 18.05.04 (Annexure-A/1) had directed to consider the case of the applicant with observation that while he was working as provisional appointee, his service was terminated by appointing another temporary hand and in case on inquiry, the said allegation is found true, the applicant would be entitled to get relief and he may be allowed to continue in the said appointment till regular appointment takes place to the post. In obedience to the order of this Tribunal the applicant was allowed to continue as GDSMD/MC Mamadulla BO till regular appointment takes place in that post, and the engagement of Sri K.C. Nayak who was exchanging the BO

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bags from Dasarathpur to Gopakul stage was terminated. On the basis of the order passed by this Tribunal the applicant was asked to continue and subsequently by the order dated 27.02.06 (Annexure-A/2) the services of the applicant has been terminated and one Sri Sudarsan Jena was directed to take charge of GDSMD/MC Mamadulla BO w.e.f. 01.03.06. Under the above background the applicant has filed the present O.A.188/06 with the following prayer:-

“....to direct the Departmental Respondents to consider to regularize the applicant in any GDS Post under Jajpur Sub-Division for the ends of justice.

And
To quash Annexure-A/2 in the interest of justice.”

It is the case of the applicant that since he was continuing on the basis of the order passed by this Tribunal, he should be allowed to continue and his appointment be regularized by quashing Annexure-A/2.

5. But as per the counter, it is stated that the applicant was not selected for appointment as GDSMD/MC for Mamadulla BO by observing usual recruitment process and was temporarily engaged for doing the work as Sri K.C. Nayak, who was carrying the mail bags from Dasarathpur to

Mamadulla BO, was prevented by the villagers of Mamadulla BO to exchange the BO bag of Mamadulla BO at Mamadulla and as such, as a stop gap arrangement, the applicant had to do that work. If so, even by the order of this Tribunal passed in O.A. No.110/03 the post of GDSMD/MC of Mamadulla has to be filled up as per rules. It has been stated that in strict compliance with the Tribunal's order the applicant was allowed to continue as GDSMD/MC, Mamadulla BO, till regular selection takes place for that post and the engagement of Sri K.C. Nayak, who was exchanging the BO bags from Dasarathpur to Gopakul stage, has been terminated. However, as there was ban on GDS recruitment, the Respondents were unable to make regular appointment to the post of GDSMD/MC and decided to make regular appointment to that post by redeployment of surplus GDS staff, which is also an approved procedure for regular appointment. In this regard, Sri Sudarsan Jena GDSMC, Rahasoi BO, who was rendered surplus, was directed to take charge as GDSMD/MC of Mamadulla BO by terminating the services of the applicant. Hence, the claim of the applicant that he is entitled to be appointed to the post in

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question, is unsustainable. It is to be noted that as per the statement contained in the counter, the post of GDSMD/MC, Mamadulla BO, has to be filled up by regular appointment. Since this Tribunal as per order dated 09.12.05 in M.A. 719/05, arising out of O.A.110/03, has already held that the regular appointments include adopting the recruitment procedure as also redeployment of surplus staff, and in the instant case, Sri Sudarsan Jena having been appointed to the post of GDSMD/MC, Mamadula B.O., as a redeployed staff, which, in our considered view, is in accordance with the Recruitment Rules, the applicant cannot have any right to appointment to the post in question, particularly when his engagement was not done after following the due procedure of Rules. The ~~entir~~im stay order dated 02.03.2006 issued by this Tribunal is vacated. However, keeping in view the long standing association of the applicant with the Respondents - Department, it is directed that if any vacancy in the post of GDSMD/MC arises in any nearby place, his candidature be considered along with others as per rules.

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6. With the observation and direction as above,
the O.A. is disposed of. No costs.

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

K. Thankappan
(K. THANKAPPAN)
JUDICIAL MEMBER

Kalpeshwar C M