

9


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.232 of 2006
Cuttack, this the ~~20th~~ day of ~~May~~, 2009

Makhlu Ekka 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.)

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.232 of 2006
Cuttack, this the ~~20th~~ day of July, 2009

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)

.....
Sri Makhlu Ekka, aged about 39 years, son of Sri Magdha Ekka,
Viilage/Post-Limda, Via-Purunapani, Dist. Sundargarh.
.....Applicant

Advocate for Applicant: Mr.P.K.Padhi
-Versus-

1. Union of India represented by its Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi 110 001.
2. Director of Postal Services, Sambalpur Region, At/Po/Dist. Sambalpur.
3. Senior Superintendent of Post Offices, Sundargarh Division, At/Po/Dist. Sundasrgarh-770 001.

....Respondents

Advocate for Respondents: Mr.R.N.Mishra

O R D E R

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

The order under Annexure-A/3 dated 15.4.2005 accepting the resignation of the Applicant with effect from 02.09.2002 and the order under Annexure-A/5 dated 5th August, 2005 rejecting the representation submitted by the Applicant as against the order under Annexure-A/3 dated 15.4.2003 accepting the resignation of the applicant have been called in question by the Applicant in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying to quash the order under Annexure-A/3 & A/5 and to direct the Respondents to reinstate the applicant with all consequential benefits besides imposition of heavy cost on the Respondents. The ground set forth in support of the above prayer by the applicant is that he was forced

1

to sign the resignation letter by the ASPOs I/C Rourkela who is below the rank of appointing authority and on the next day he sought withdrawal of the his resignation and again after 20 days he has reminded to withdraw the resignation letter and to return the same to him. But the Respondent No.3 has accepted the resignation letter after a period of more than two and half years with retrospective effect which is against the settled principle of law.

2. On the other hand, Respondent-Department by filing counter brought to the notice of the Tribunal that while the applicant was working as Gramin Dak Sevak Branch Postmaster (in short 'GDSBPM), Limida Branch Post Office in account with Purnapani SO, he was elected as the Chairman of Nuagaon Panchayat Samiti. His election as Chairman of Nuagaon Panchayat Samiti while holding the post of GDSBPM was the subject matter of complaint filed by one Shri Jugal Kishore Giri. On receipt of such complaint the matter was entrusted to the Assistant Superintendent of post offices in-charge, Rourkela East Sub Division to enquire and report. Besides, the BDO, Nuagaon Block was also requested to intimate the actual fact whether the applicant has participated and was elected as the Chairman of the Panchayat Samiti. But before any report was received, the applicant tendered his resignation on 02.09.2002. The reason for such resignation was that he was elected as Chairman of Nuagaon Block. However by making representation dated 03.09.2002 applicant requested to withdraw his letter of resignation submitted by him

2

on 02.089.2002. The said request of applicant could not be acted upon as the report from BDO was awaited. Thereafter Collector of Sundergarh was requested in letter dated 27.11.2002 to take action against the applicant for participation in the election while holding the post of GDSBPM. Thereafter past work verification was conducted by the ASPOs and on receipt of report, the resignation of the applicant was accepted by the Respondent No.3. Appeal preferred by the applicant as against the acceptance of his resignation was also considered and rejected by the Respondent No.2 in a speaking order. Respondents have also denied the allegation of obtaining the resignation of applicant forcibly and acceptance of the resignation other than the competent authority.

3. By filing rejoinder, the applicant more or less reiterated the contentions and points raised in his Original Application and has stated that as per Rules/Law an employee has a right to seek withdrawal of resignation before its acceptance. As the applicant exercised his right to withdraw the resignation before its acceptance which has been admitted by the Respondents in their counter, non-acceptance of such request and acceptance of the resignation retrospectively is not countenanced in law and as such the impugned orders need to be annulled.

4. Learned Counsel appearing for both sides emphasized the contentions raised in their respective pleadings. After giving our anxious thoughts to the rival submissions of the parties, perused the materials placed on record. That the applicant was elected as Chairman while

-4- 13

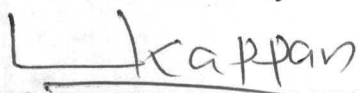
working as GDSBPM has not been disputed by him. But according to the Applicant he belongs to remote area of Purunapani in Sundargarh District and is a well educated person in that locality. With a view to help the people of the locality he participated in the election and got elected. The job of a GDSBPM is a part time one and there is no obstacle for the applicant to manage the job of GDS BPM and the elected post of Sarapanch/Chairman of Panchayat Samiti. The GDS job is an agency job and it is not a permanent or whole time job. The GDSs are free to do any other job or business. Even the GDS can be appointed in other whole time Govt. job like teacher but the only restriction that the working hour of GDSBPM should not clash with the other job and the people should have no objection regarding working in both the job. There is no allegation against the applicant regarding managing of the GDSBPM work. Therefore, the allegation levelled by rival party ought not to have been taken as a weapon to take away the GDSBPM job of the Applicant. We very much appreciate the social activities of helping the people of the locality and for that he has to take up the matter with the district administration of the State to be awarded appropriately for his social work. Judicial review of the administrative action is very limited. This Tribunal is bound by the Rules. Tribunal has to see whether there has been correct interpretation of the rules and while reaching any decision there has been any miscarriage of justice done to any party. This is of course not the case of the Applicant. Rather it is noticed that the very

L

-5- 14

action of the Applicant in participating the election while working as GDS BPM contravenes the Rule 22 (1) (4) of GDS (Conduct and Employment) Rules, 2001. We find no substance on the allegation of the Applicant that his resignation was forcibly taken by the authority or the resignation was accepted by an authority incompetent to do so. However, it is seen that the Appellate Authority after going into details of the matter rejected the claim of the applicant in a well reasoned order.

5. In view of the above, we find no merit in this OA. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


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

Knm,ps