

O.A. No. 747 of 2006.

Order dated: 02.11.2006.

Applicant (Smt. Banajalata Jena) having faced the order of termination under Annexure-A/6 dated 20th October, 2006, without preferring appeal to Departmental Authorities has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying to quash the show cause notice issued to the Applicant under Annexure-4 dated 24.07.2006, order of termination under Annexure-A/6, dated 20th October, 2006 and to direct the Respondent Nos.1 to 4 to confirm the order of selection/appointment under Annexure-1 since the said order has not been declared illegal by the Tribunal or by the High Court.

Heard Learned Counsel for the Applicant and Mr. S.B. Jena, Learned Additional Standing Counsel for the Union of India; on whom a copy of this O.A. has already been served on the question of admission as also passing interim order, prayed for in this Original Application.

At the out set, Learned Counsel for the Applicant has pleaded that this is a matter where the applicant has been removed without getting any opportunity to have her say and, therefore, the

order of termination needs to be quashed and till a decision is taken in the matter, the same needs to be stayed. Learned Additional Standing Counsel submits that the applicant has approached this Tribunal without preferring any appeal against the order of termination under Annexure-A/6 and, therefore, this OA should not be entertained at this stage.

Upon hearing the parties, went through the materials placed on record. I have also perused the records of OA No. 1018/2002 disposed of on 24.06.2004. The fact of the matter is that on 01.03.2002, a Notification was issued by the Postal Authorities inviting applications as also employment exchange was requested to sponsor names of eligible candidates for the post of GDSBPM of Dashipur Branch Post Office. The post was meant to be filled up by UR community. As revealed from the record (OA No. 1018/2002), although one Shri Tuna Barik (Respondent No.5 in this OA) was found to have secured more marks in the Matriculation examination among the candidates who have responded to the notification/sponsored by the employment exchange, on some pretext or the other, the present applicant (Smt.Banajalata Jena) was offered the appointment as GDSBPM of Dashipur Branch Post Office. Such

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action of the Postal Authorities in giving preference to the present Applicant formed the subject matter of challenge in OA No. 1018/2002 (Tuna Barik vrs. Union of India and others). In the aforesaid OA, Tuna Barik while seeking appointment to the post in question in preference to the Applicant, (Smt. Banajalata Jena), has also prayed to quash appointment of Smt.Jena/Applicant made vide Memo No. B/ED-113A-dt.24th May, 2002. The Present Applicant was also arrayed as Respondent No.6 in the aforesaid OA.

The matter was listed on 28.11.2002 and this Tribunal while issuing notices to the Respondents calling upon them to file counter, it was specifically ordered that "**selection and appointment of Respondent No.6 shall be subject to the result of the OA**".

Although the Respondent No.6 (Smt.Banajalata Jena) was duly noticed, she did not appear nor did she file counter. However, on the basis of the counter filed by the Postal Authorities and after having heard the parties, this Tribunal in its order dated 24.06.2004 disposed of the said matter with the following directions:

"In view of the facts as stated earlier and for the reasons mentioned herein before, this Application has to be allowed. The official Respondent are directed to consider the application of the applicant for appointment in preference to Respondents No.6 in the light of the decision of the Full Bench

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reference to herein before; which exercise should be completed within a period of 3(three) months from the date of receipt of a certificate copy of this order.”

This order of the Tribunal dated 24.06.2004 was reviewed by the Hon’ble High Court of Orissa in WP (C) No.11445 of 2004 filed by the Postal Authorities. The said Court in its order dated 02.01.2006 passed the following orders:

“Considering the facts and circumstances of the case, we are of the opinion that the direction issued by the Tribunal is not liable to be disturbed. However, the appointment of opposite party No.1 as directed by the Tribunal, is to be considered in preference to respondent No.6 before the Tribunal considering the decision of the Full Bench of the Tribunal, the law laid down by the Hon’ble Apex Court including in the case of Indira Sawheney (supra) and in accordance with the existing rules and regulations The order of the Tribunal be complied with within a period of three months from the date of communication of the certified/authenticated copy of this order.”

Pursuant to the above directions, the Postal Authorities decided to terminate the appointment of the present applicant and accordingly issued show cause notice under Annexure-A/4 dated 24th July,2006. On receipt of show cause, the applicant under Annexure-5 dated 8.8.2006 at para 11 has pleaded as under:-

“11. That if my kind hearted Superintendent has made mind to terminate me from my service I may

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kindly be provided alternate appointment against the vacant post of BPM of nearby offices in pursuant to D (P) Letter No. 43-4/77-PEN dated 23.2.1979."

On receipt of the reply of applicant, the Superintendent of Post Offices, Dhenkanal Division under Annexure-6 dated 20th October, 2006 passed the following orders:

"In the said show cause notice said Smt. Banajalata Jena was directed to submit show cause within a period of one month as to why her services as GDSBPM Dashipur BO would not be terminated in view of the aforesaid directions of the Hon'ble Tribunal and Hon'ble High Court of Orissa. The said Smt. Banajalata Jena submitted her representation dated 8/8/2006 which was received by the undersigned on 14/8/2006. In the said representation Smt. Jena has submitted to the undersigned to provide her alternative appointment against the vacant post of BPMs of nearby offices in pursuant to Directorate letter No. 43-4/77-PEN dated 23/2/1979. The undersigned has gone through the show cause reply dated 8/8/2006 of the said Smt. Jena carefully and applied his mind. Of course her request will be examined in due course in accordance with existing rules and procedures on the subject. Accordingly the appointment of the said Smt. Jena to the post of GDSBPM, Dashipur BO in account with Parjang SO is treated as inconsistent and contrary to the law. Hence in pursuance of Rule-8 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001 the services of Smt. Banajalata Jena GDSBPM, Dashipur BO in account with Parjang SO is hereby terminated with immediate effect."

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I find that the impugned order has been passed pursuant to the directions of the Division Bench of the Tribunal confirmed by the Hon'ble High Court of Orissa. Therefore, staying the order under Annexure-6 would tantamount interfering with the orders of the Division Bench of this Tribunal confirmed by the Hon'ble High Court of Orissa. Further it is seen that the Applicant has approached this Tribunal without exhausting the departmental remedies. I am therefore, not inclined to entertain this OA, being premature.

At this stage, Learned Counsel appearing for the Applicant submits that the liberty may be given to the applicant to prefer representation to her authorities and till a decision is taken on the appeal of the applicant, she may not be sent out of job. Learned Additional Standing Counsel appearing for the Respondents has also agreed to the above prayer of the Applicant. In this view of the matter, without expressing any opinion, this Original Application is disposed of giving liberty to the Applicant to prefer appeal within a period of seven days and since the grievance of applicant for adjusting her in any vacancy is still lying, the appeal be decided by the appellate authority within a period of thirty days from the date of receipt of such appeal and communicate the result to the applicant. **Till then** she

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should be adjusted **without prejudice to the right** of the present Respondent No.5 (Tuna Barik). There shall be no order as to costs.

Send copies of this order to the Respondents along with copies of this O.A. and free copies of this order be given to Learned Counsel for both sides.

B. B. T.
MEMBER (ADMN.)

