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O.A. No.840/2006

ORDER DATED 19th MAY, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

Heard Mr. D.P. Dhalsamant, Ld. Counsel for the Applicant and Mr. P.R.J. Dash, Ld. Addl. Standing Counsel for the Respondents.

2. It is the case of the applicant that he served as EDDA/MC, Mamadula B.O. w.e.f. 01.05.1998 and worked till 13.02.2001. He also discharged duties as such from 04.04.01 to 03.10.2001 and as GDSMC, Rambag S.O. from 04.02.02 to 19.02.02 when he was to discharge duties as GDSMD/MC, Mamadulla B.O. till 08.04.02. On 10.12.02 the applicant was directed to work as GDSMC of Mamadulla B.O. until further orders. However, he could not discharge his duties as such due to public protest instigated by one Abhinash Sahoo. On 14.01.03 the applicant was asked to perform the duties of conveyance bags in Dasrathpur Gopakula line in place of Shri Bishnu Charan Das, Gr 'D' who was relieved on 15.01.03 to work at Jajpur Head Post Office. Although the applicant was not allowed to work as such, on the direction issued by Respondent No.5 to GDSBPM concerned, the applicant was allowed to join there on 22.01.03. However, the services of the applicant having been terminated w.e.f. 02.11.04, he

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preferred representations and appeals to the Superintendent of Post Offices, Cuttack North Division and to the Member of Parliament and having received no response from them, the applicant has moved this Tribunal in the present O.A. seeking the following relief.-

- “ (i) To quash the order of termination dated 02.11.04 (Annexure-A/8);
- (ii) And/or in alternative be pleased to direct the respondents to consider the case of the applicant as per the circulars of the DG P &T dated 30.12.99/23.12.79;
- (iii) And further be pleased to pass any other order/orders as deemed fit and proper.

3. Respondents-Department, by filing their counter reply, have opposed the prayer of the applicant.

4. This matter came up for admission on 13.12.2006, when this Tribunal issued interim direction as under:-

“In the meanwhile, it is open to the Respondents to dispose of the representations (Annexures-A/10, A/11 and A/12), which are pending with them on merit.”

5. It is stated in the counter filed by the Respondents that the representations of the applicant have been answered as per Annexures R/1 & R/2 to the counter. The relevant portion of Annexure-R/1, issued by the Asst. Supdt. Post Offices, Jajpur Sub-Division, reads as under:-

“On careful examination of the case it is found that the applicant Sri K.C.Nayak is not a regularly appointed GDS. He has been working

provisionally as GDS in various spells as stop gap arrangements to manage the work of vacant post. Before his termination on 02.11.04 he was working provisionally as GDSMC (in place of Group D runner staff abolished on 15.01.03). The provisional appointment of Shri Nayak was terminated from 02.11.04 as per judgement of Hon'ble C.a.T. dt. 18.04.2007 in O.A No.110/03 filed by Sri Abhinash Sahoo and not by any administrative reasons.)"

Annexure-R/2 has been issued by the Asst. Director of Postal Services (Hqrs.) in line with Annexure-R/1 in compliance with the interim direction issued by this Tribunal on 13.12.06. The relevant portion reads as under :-

" I have considered both the representations submitted by Shri K.C. Nayak. I find that he was provisionally appointed as GDS MD/MC Mamadalla BO without following the prescribed procedure. As per rule a provisional appointment can be terminated at any time irrespective of the length of service rendered by the incumbent where prescribed procedure has not been followed for selection. Further the Hon'ble Tribunal while disposing of OA No.110/03 observed that one temporary arrangement cannot be terminated by another temporary arrangement. As this observation of the Tribunal came in relation to the case filed by Sri Abinas Sahoo the ASPOs incharge had to terminate the services of Sri Keshab Ch. Nayak to allow Shri Abinas Sahoo to continue in the post of GDS MD/MC Mamadalla BO. Further the arrangement of Shri K.C. Nayak for conveyance of mails in Dasrathpur -Gopakul line in addition to the work of GDS MD/MC Mamadalla BO was only a temporary arrangement which also stands terminated with termination of

his services against the post of GDS MD/MC of Mamadalla BO. The provisional appointment does not confer on the incumbent any right for his permanent absorption against a post. I am therefore, of the view that there is no merit in the representations of Sri K.C. Nayak in which he has prayed for his reinstatement."

6. The applicant has not filed any rejoinder to the counter. Since the applicant had not been appointed to the post in question through a regular process of selection, no right accrues on him to hold the post even if vacancy exists and therefore, we hold that termination of his service in the same manner in which he was appointed cannot be called in question. As regards the prayer of the applicant for alternative employment, as per circular issued by DGP&T dated 30.12.99, as indicated above, the applicant cannot be said to have rendered approved service; his provisional appointment as DDA cum MC or GDS MC, as the case may be, being not in accordance with the rules or procedure laid down in that behalf and therefore, we are not inclined to accede to such request of the applicant.

7. However, keeping in view the long standing association of the applicant with the Respondent - Department, the applicant, if so advised, may make a representation to the concerned authorities for his engagement against any vacancy and in the event any such representation is made, the Respondent - Department may consider the same, keeping in

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view the loyalty, integrity and devotion to duty which the applicant had ^{been} exposed in course of his employment as EDDA/MC.

8. With the above observation and direction, this O.A. is disposed of. No costs.

~~Member (A)~~

~~L. Kappay~~
MEMBER (J)