

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 870 of 2006
Cuttack, this the 22nd day of May, 2008

Pitabash Gouda Applicant
-Versus-
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? N o
2. WHETHER it be circulated to all the Benches of the Tribunal N o or not?

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

K. THANKAPPAN
(JUSTICE ~~K. THANKAPPAN~~)
MEMBER (JUDICIAL)

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C O R A M:-

THE HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
AND
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

Pitabash Gouda, aged about 32 years, Son of Gurbur Gouda,
Village/Post-Chaitanyapur, Via-Padmanavapur, Dist. Ganjam,
Ex-GDSBPM of Chaitanyapur Branch Post Office.

... Applicant
By legal practitioner - M/s. D.P.Dhalsamanta,
P.K.Behera, Counsel.

-V e r s u s -

1. Union of India represented through its Director General of Posts, Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Postmaster General, Berhampur Region, At/Po. Berhampur, Dist. Ganjam.
4. Senior Superintendent of Post Offices, Berhampur (Ganjam) Division, Berhampur, Dist. Ganjam.

.... Respondents
By Legal practitioner - Mr.P.R.J.Dash, ASC

O R D E R

MR. JUSTICE K. THANKAPPAN, MEMBER (J):

Applicant filed this Original Application firstly
praying for direction to the Respondents to complete the process
of selection to the post of GDS BPM of Chaitanyapur Branch

Post Office within a stipulated period and secondly while considering the candidature of Applicant for the post in question, due weightage should be given to his past experience.

2. Tersely stated, the Applicant was provisionally appointed as GDS BPM as against the put off duty vacancy of Chaitanyapur EDBO vide order dated 20.09.1996. However, on re-instatement of the regular GDSBPM of Chaitanyapur EDBP, the provisional appointment of Applicant was terminated with effect from 26.06.1999. Thereafter, he approached this Tribunal in OA No. 317 of 1999 seeking appropriate direction to the Respondents to adjust him in any of the existing GDS vacancies; as his termination was unconnected with any official conduct. While the matter stood thus, the Applicant was allowed to resume in the post of EDMC/GDSMC of Tikarapara Branch Post Office on provisional basis with effect from 09.06.2000. Since the appointment of the Applicant was as against the leave vacancy of permanent incumbent, on his returning to duty, he was served with a notice of termination of his service w.e.f. 4.11.2000. On 23.03.2001, OA No. 317 of 1999 filed by the

Applicant seeking alternative appointment was disposed of by this Tribunal by directing the Respondents to consider the case of applicant by giving due weightage to the experience against by him whenever department chooses to fill up the post in question. In the meantime, on 01.01.2001, the regular incumbent of Chaitanyapur EDBO was removed from service. As no step was taken by the Respondent-Department to fill up the said post, the Applicant approached this Tribunal in MA No. 1007/2001 seeking direction to the Respondents to fill up the said post in regular manner. When the matter was taken up for consideration, on the submission of the Learned Counsel for the Respondents that the post has already been advertised, MA filed by Applicant was disposed of by reiteration of the direction made in OA No. 317 of 1999. However, the concerned postman was kept in-charge of the post of GDSBPM of Chaitanyapur BO till the post is filled up in a regular manner. Being aggrieved by the delay in filling up of the post of GDSBPM of Chaitanyapur Bo, the Applicant again approached this Tribunal in OA No. 272 of 2004 and by order dated 29.03.2005 this Tribunal disposed of the OA No. 272 of 2004 with the following directions:

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“... We, therefore, direct the Respondents that as and when they decide to fill up the post of GDSBPM, Chaitanyapur BO on a regular basis, they should notify the vacancy to the public whereupon only the applicant will have an opportunity to apply for the job. Although in the circumstances of the case the OA filed by the applicant is premature, we, however, condone this technical lapse and direct the Respondents to consider the candidature of the applicant as and when they decide to fill up the post on regular basis after notifying the vacancy to the public.”

3. In the light of the above direction of this Tribunal, the applicant filed representation to the Superintendent of Post Offices, Berhampur (Ganjam) Division, Respondent No.4. According to the Applicant, in spite of all the above, since there has been no progress to finalize the process of selection to the post of GDSBPM, Chaitanyapur, he has approached this Tribunal in the present Original Application.

4. The question to be decided in this OA is that whether the Applicant is entitled for weightage or preference in the matter of selection appointment, on the basis of his previous working experience in the department to the post of GDSBPM, Chaitanyapur BO.

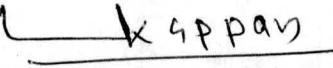
5. Counter-affidavit has been filed for and on behalf of the Respondents. Relying on the counter, Learned Counsel for the Respondents submits that the Department has not, so far, issued any public notification inviting applications for the post of GDSBPM, Chaitanyapur BO. As there has been no such public notification, question of finalization of selection by giving preference treatment to the candidature of applicant does not arise.

6. On going through the averments made in the OA, counter affidavit and on perusing the records placed this Tribunal by either of the parties, we are of the view that since the Applicant has got experience, as per the direction of this Tribunal in the aforesaid OAs, the Applicant is entitled to get weightage/preference in the matter of selection and appointment to the post of GDSBPM of Chaitanyapur BO as and when the Respondents decide to fill-up the post through open advertisement as it is trite law that filling up of the post is purely an administrative matter and no Courts/Tribunal can direct the authorities to fill up any post at any particular time. However, it is seen from the counter that process of selection has not been

undertaken due to ban order imposed by the Government for filling up of such posts in the Department. At the same time, Learned Counsel for the Applicant submits that ban order has already been lifted in the Department since 2007. If so, and if the Respondent-Department decides to fill-up the post, in question, the Applicant is free to submit his candidature by claiming weightage to his experience gained by him previously, and the Respondents are directed to allow the same to the Applicant.

7. Except the above observation and direction, we see no ground to allow this Original Application. This OA is accordingly disposed of. There shall be no order as to costs.


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


(JUSTICE K. THANKAPPAN)
VICE-CHAIRMAN