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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NOS. 7 and 166 OF 2002
Cuttack, this the 7th day of July, 2004

Ananta Kishore Sahoo (in OA No.7 of 2002)
Smt.Sabitri Parida (in OA No. 166 of 2002)
..... Applicants

Vrs

Union of India, etc. ..... Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not?
2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NOS.7 and 166 OF 2002
Cuttack, this the 7th day of July, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

.....

In OA No. 7 of 2002

Ananta Kishore Sahoo,aged about 52 years, son of Ainthu Ch.Sahoo, At/PO Khairabad,Dist.Jajpur, at present working as Gramin Dak Sevak Branch Post Master, Khairabad Branch Post Office,Khairabad,Dist.Jajpur..... Applicant

Advocate for the applicant - Mr.T.Rath.

Vrs.

1. Union of India, represented through C.P.M.G., Orissa Circle, Bhubaneswar,Dist.Khurda.
2. The Superintendent of Post Offices, Cuttack North Division,Cuttack.
3. Sabitri Parida, w/o late Daitari Parida,At/PO Khairabad,Dist.Jajpur.

..... Respondents

Advocates for Respondents – Mr.A.K.Bose, Sr.CGSC for R 1 & 2
M/s K.C.Kanungo,S.Behera, R.N.Singh for R-4

In OA No.166/2002

Smt. Sabiri Parida,aged 33 years, w/olate DaitariParida, At/PO Khairabad,Dist.Jajpur ..... Applicant

Advocate for applicant - M/s K.C.Kanungo, S.Behera, R.N.Singh B.D.Dash.

Vrs.

1. Union of India, represented through C.P.M.G., Orissa Circle, Bhubaneswar,Dist.Khurda.

2. Superintendent of Post Offices,Cuttack North Division, Cuttack.
3. S.D.I.(P),Dharmasala,At/PO Dharmasala,Dist.Jajpur.
4. Ananta Kishore Sahoo, aged 52 years, son of Ainthu Ch.Sahoo, At/PO Khairabad, Dist.Jajpur
5. Maheswar Samal,s/oMayadhar Samal,At-Potua, P.O.Balarampur, Talgarh, Via Jenapur, Dist. Jajpur.

..... Respondents.

Advocates for Respondents - Mr.A.K.Bose,Sr.CGSC
(For Respondents 1 to 3)
Mr.T.Rath (For Respondent 4)
M/s J.K.Rath,S.N.Rath,B.K.Rout,
C.K.Rajguru, D.N.Rath.
(For Respondent 5)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Both the Original Applications being inter-linked are disposed of by this common order.

2. Shri Ananta Kishore Sahoo, at present working as Gramin Dak Sevak Branch Post Master (hereinafter referred to as 'GDSBPM'), Khairabad Branch Post Office, has filed O.A. No.7 of 2002, being aggrieved by the order of Respondent No.2 (Annexure 6) terminating his service in violation of the departmental instructions as well as the decision of this Tribunal in OA No.197 of 1999.His case is that he was duly selected and appointed as EDBPM on 20.2.1992 when the permanent incumbent Shri Daitari Parida was put off duty. Later on, on 5.5.1997 Shri Parida being reinstated, the applicant was relieved and although he had worked for more than three years, he was not offered any alternative job. The applicant had in O.A.No.418 of 1997 approached this Tribunal to direct the Respondents to offer him an

alternative job and the Tribunal was pleased to direct the applicant to submit a representation to that effect to Respondent No.2.The applicant accordingly preferred an application for the post of EDBPM, M.Badabanta Branch Office and though selected was not allowed to take over charge of the post and his appointment was cancelled by Respondent No.2 by his order dated 22.6.1998. Being aggrieved, he again approached this Tribunal in OA No.197 of 1999. During the pendency of this O.A., the permanent incumbent of Khairabad Branch Office died and on his application the Tribunal directed the Respondents to appoint the applicant to the post of EDBPM,M.Badabanta B.O. However, as the post of EDBPM, Khairabad B.O. was also vacant, the applicant was appointed to that post vide order dated 7.2.2000. When the applicant was discharging his duties as GDSBPM, Khairabad, Respondent No.2, after obtaining approval for compassionate appointment of one Sabitri Parida, widow of late Daitari Parida, former EDBPM,Khairabad B.O., by his order dated 18.12.2001, without any rhyme or reason,served a notice of termination of service on the applicant in terms of Rule 6(a) and (b) of the P&T ED Agents (Conduct &Service)Rules,1964 read with GDS (Conduct &Employment) Rules, 2001. The applicant has prayed for quashing of the said order and for a direction to the departmental Respondents to allow him to continue as GDSBPM,Khairabad B.O. By virtue of this Tribunal's interim order passed on 7.2.2002, the applicant has been continuing as GDSBPM, Khairabad B.O.

3. Smt. Sabitri Parida, widow of late Daitari Parida, former EDBPM,Khairabad B.O.,by filing O.A.No.166 of 2002 has challenged the legality and validity of the provisional appointment of Respondent No.4 (applicant in OA No.7 of 2002) as EDBPM, Badabanta vide order dated 6.2.1998 and as EDBPM,Khairabad B.O. vide order dated 31.3.2001. She has also prayed for declaring Annexure 8, the order modifying her appointment and posting as EDBPM,Khairabad B.O. to that of Kapasi Chhak B.O. and cancelling the order termination of service of Respondent No.4 and allowing him as EDBPM, Khairabad B.O., as void and illegal. She has further prayed for a direction to the departmental Respondents to enforce and implement the orders in Annexures 6 and 7 regarding her compassionate appointment and posting as GDSBPM, Khairabad B.O.

4. There has been a triangular contest between three persons, namely, Shri Ananta Kishore Sahoo, Smt. Sabitri Parida and one Shri Maheswar Samal, because Shri Sahoo is working in the post of GDSBPM, Khairabad B.O. which post is being claimed by Smt.Parida, and Smt. Parida, who is working as GDSBPM, Baidyarajpur B.O., was earlier appointed as GDSBPM, Kapasi Chhak B.O. to which post Shri Samal was appointed by order of this Tribunal dated 31.5.2002 but could not join for certain reasons. The main contest is concerning as to who should be holding the post of GDSBPM, Khairabad B.O. Shri Sahoo claims that he having been appointed to the post under Rule 22, he could not have been deprived of this posting/appointment and the other claimant is Smt.Parida who claims that she having been appointed on

compassionate ground to the vacancy caused by death of her husband while working as GDSBPM should not be denied appointment to that post.

5. The claims of the rival parties have been heard by me on several occasions. During hearing of this matter on 10.4.2002, it was clarified that it was on the request of Smt.Parida that the Tribunal passed an order that "the charge of the post of EDBPM/GDSBPM, Baidyarajpur B.O.should not be taken without taking leave of this Tribunal as the Chief Post Master General,Orissa Circle, Bhubaneswar, is now to take step to cancel the entire process of selection for the post of EDBPM/GDSBPM, Baidyarajpur BO to accommodate either the applicant or the Respondent No.4 in the said post." With regard to the appointment to the post of GDSBPM,Kapasi Chhak, it appears from the order of this Tribunal dated 31.5.2002 that Shri Maheswar Samal, the candidate selected was being obstructed by the local public from taking over the charge of that post office. The Respondents were directed by the Tribunal to take all possible administrative action to ensure handing over of charge of the Branch Post Office to Shri Samal. I had also directed the Respondents to take a final view as to the claims of the Sri Ananta Kishore Sahoo (applicant in OA 7/2002) and Smt. Sabitri Parida (applicant in OA 166/2002) over the post of GDSBPM, Khairabad B.O.. Respondent No.1, after examining the case, by his letter dated 30.3.2004 advised Respondent No.2 to adjust Smt.Sabitri Parida against the post of GDSBPM,Khairabad B.O. since her husband died in harness on 9.8.1999 while working as GDSBPM, to adjust Shri Ananta Kishore Sahoo against the post of

GDSBPM,Kapasi Chhak, and to adjust Shri Maheswar Samal against thepost of GDSBPM, Baidyarajpur.

6. I have considered the report of Respondent No.1 and the submissions made by the applicants in O.A.No.7/2002 and O.A.No.166/2002. I have also heard the learned counsel for the applicants as also the learned Senior Standing Counsel for the departmental Respondents. Having regard to the facts and circumstances of the case, I am unable to see force in the recommendation of Respondent No.1 with regard to appointment of Smt. Parida to the post of GDSBPM, Khairabad B.O. It is to be understood that under the scheme of compassionate appointment the spouse/ward of a deceased employee, who died in harness, acquires a right to be considered for appointment in a suitable post and does not in any way get a right to be considered for appointment against the post vacated by his/her father/husband/mother, because any such prescription will hit at the root our Constitution where equal opportunity in public employment is the hallmark of constitutional right. In the circumstances, the argument advanced by Respondent No.1 for considering Smt.Parida (applicant in OANo.166 of 2002) for appointment to the post of GDSBPM, Khairabad B.O. is unconstitutional. On the other hand, Shri Ananta Kishore Sahoo (applicant in OA 7/2002) having been appointed to the post of GDSBPM, Khairabad B.O. through a selection process and as he is continuing in that post for several years now, his displacement on any ground other than misconduct would be an act of injustice. In the circumstances, the appointment of Shri Ananta

Kishore Sahoo (applicant in OA No.7/2002) as GDSBPM, Khairabad B.O. and that of Smt. Sabitri Parida (applicant in OA 166/2002) as GDSBPM, Baidyarajpur B.O. are confirmed, and consequently Shri Maheswar Samal (intervenor-Respondent No.5 in OA No.166/2002) will continue to work as GDSBPM, Kapasi Chhak. With this direction, both the O.As. are disposed of. No costs.

(B.N.SOM) 7/7/04
VICE-CHAIRMAN

AN/PS