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On 21.25.8.04

Copies of order prepared for counsels for both sides.

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Accordingly, the matter is adjourned to 18.08.04 for final order.

Hand over copies of this order to both sides.

[Signature]
Vice-Chairman

Order dated 18.08.04

Mr. S.B. Jena, Ld. A.S.C. is in accommodation. Call on 25.08.04.

[Signature]
Vice-Chairman

Order dated 25.08.2004.

Heard Mr. J. Sengupta, Ld. Counsel for the applicant and Mr. S.B. Jena, Ld. A.S.C. appearing for the respondents. Hearing is concluded. For the reasons recorded separately, this O.A. is disposed of. No costs.

[Signature]
Vice-Chairman

Order dated 25.8.04

Heard Mr. J. Sengupta, Ld. Counsel for the applicant and Mr. S.B. Jena, Ld. Additional Standing Counsel. The applicant Sri Primala Guru had filed this O.A. challenging the letter dated 2.12.02 issued by Respondent No.4 directing him to hand over charge of the post of GDSBPM, Godibandh B.O., where he was working w.e.f. 24.3.2000.

2. The case of the applicant is that

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the post of GDSBPM, Godibandh BO, fell vacant w.e.f. 26.11.98 on the ^{death} ~~date~~ of the permanent incumbent. Thereafter, he was appointed to the post, in the first instance on 10.4.2000, pending decision of the Circle Relaxation Committee on his application for appointment, under Compassionate Appointment Scheme by the Department. When he was thus continuing by their order dated 10.4.2000, he was given provisional appointment to the said post w.e.f. 24.3.2000 till regular selection to the post was made or till the decision of Circle Relaxation Committee, with regard to his application was received, whichever was earlier. His grouse is that while no decision of the Circle Relaxation Committee had been received, he was served with a notice of termination as at Annexure-3. It is in this background that he has approached the Tribunal to quash the impugned order dated 2.12.02 and to direct the Respondents to allow/appoint the applicant to the post on compassionate grounds.

3. The Respondents while admitting the facts of the case, have stated that, in terms of the provision of the Director General Post letter number 14-25/91-ED and Training dated 5.8.93, they could not regularly filled up the post as the claim of the applicant for compassionate appointment was pending with the Circle Relaxation Committee. However, they had issued a public notification in response to which as many as twentytwo applicants had applied including the applicant. Pending

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receipt of the final decision of the Circle Relaxation Committee, the applicant was appointed provisionally to the post, with the understanding that his appointment was tenable till the compassionate appointment case was decided by the authority.

4. The Respondents in their counter have not, however, explained the reason(s) which led to the issue of the impugned order dated 2.12.02. On the other hand, they, on my query, have submitted that the final decision of the Circle Relaxation Committee in the matter of compassionate appointment of the applicant was delayed as the matter had to be referred to the Director General, Posts for obtaining relaxation. They have submitted that the said reference was made as early as in 2000, but, without any reply. It is also disclosed by them that the matter was referred to Director General Post, although Respondent No.2 had not recommended the proposal. They have now obtained the final decision of the Director General, Posts which reads as follows:-

"Since in this case neither the case was recommended by the competent authority, i.e., the Circle Relaxation Committee nor any relaxation was sought for, therefore, no action was required to be taken in this office".

In other words, the ²⁶ Posts considers the reference made by the Circle Relaxation Committee (in short SRC) to that office, was infructuous, as no relaxation of the conditions of the Compassionate Appointment Scheme was proposed by the Circle Relaxation Committee. It is now for the CRC to take a final view.

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That being the position of the case, at this moment. ⁹ ~~2~~ direct the Circle Relaxation Committee to take a final view on the application of the applicant for compassionate appointment, within a period of 30 days from the date of receipt of this order. In case, the Circle Relaxation Committee will approve the application, the applicant will obviously get the benefit of regular appointment. On the other hand, if his application will be rejected by the Circle Relaxation Committee, the impugned order dated 2.12.02 will be given effect to. It has also been disclosed by the Respondents that they had made public notification for the post, in response to which twentytwo applications were received by them, including that of the applicant. I would, therefore, direct that fresh selection for the post of GDSBPM, Godibandh B.O. , if that has not yet taken place, be made from out of the twentytwo applications received in response to the public notification made earlier by the Respondents, as disclosed in their counter and in case, in the final selection, the applicant does not succeed, having regard to his service as GDSBPM for over four years, he would be entitled to the benefit of a retrenched worker. The Respondents are directed to offer him any GDS post subject to the willingness of the applicant for such appointment.

This O.A. is accordingly disposed of with the above directions.


Vice-Chairman 25/8