

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A. No. 381 of 2007

Madan Mohan Samal .....Applicant

Vs

UOI & Ors. ..... Respondents

1. Order dated: 24<sup>th</sup> June, 2011.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDICIAL)

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While the applicant was working as EDBPM of Retang Branch Post Office simultaneously he was continuing as Headmaster in Government High School, Retang. He has been continuing as EDBPM of Retang BO w.e.f. 01.03.1974 on regular basis.

2. On the ground that working hours of the two organizations clashed and thereby the post office work was suffering disciplinary proceedings were drawn up against the Applicant. The matter was enquired into. The findings of the IO are as under:

**"FINDINGS ON CHARGE -**

From the documentary evidence place before me and from all depositions of witnesses, there is no iota of doubt that the timings of Branch Post Office where the CO is working as BPM clash with the timings of Ratneswar Bidyapitha where he is working as Headmaster.

He did not comply with the requests of SPO's Cuttack North Division at Exhibits S 9 and S 11. As per S 11 the duties of Shri M.M.Samal CO as HM do not confine within the school hours only and he is to prepare for next day teaching and other administrative work. These exhibits indicate that the CO swerved his duties.

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The article of charges that the timings of BO clash with the institution and CO did not choose either of the posts and tendered his resignation to either of the posts as per requirements is proved in toto."

3. Thereafter, following due procedure of Rules and natural justice in Annexure-A/9 dated 25.11.2002; the applicant was removed from service with immediate effect. The appeal preferred by the Applicant was rejected and communicated to the Applicant in Annexure-A/10 dated 10.10.2003. Then on 23.09.2004, Applicant preferred petition to the CPMG, Orissa Circle, Bhubaneswar. The said petition having been rejected, he has approached this Tribunal in the present Original Application with the following prayers:

- "(i) To make provision of voluntary retirement in the GDS conduct and Service Rules;
- (ii) To make provision/insert the punishment of Compulsory retirement in GDS conduct & Employment Rules;
- (iii) To quash Annexure-A/9, A/10 & A/11 and direct the Respondents to reinstate the applicant in service with all consequential benefits;
- (iv) And any other order/orders as the Hon'ble Tribunal deems just and proper in the interest of justice."

4. Respondents filed their counter in which it has been stated that for committing money order fraud, disciplinary proceedings were initiated against the applicant. During the pendency of the said proceedings, the Departmental proceedings initiated by issuing the charge sheet under consideration culminated with imposition of punishment of removal from service which was upheld by the Appellate as well as Revisional Authority on the Appeal and Revision petition preferred by the

Applicant. The charge of clash of timings of Branch Post Office where the applicant was working as BPM with the timings of Ratneswar Bidyapitha where the applicant was working as Headmaster was proved after due opportunity to the Applicant to defend his case he was imposed with the punishment of removal.

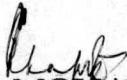
5. Learned Counsel for the Applicant has contended that the applicant has been managing the work of BPM since 1974 besides discharging his duties as Head of the School. He was appointed to the post of BPM knowing well that the applicant was a teacher. There was no complaint of his working as BPM at any point of time. However, it was contended that as the applicant in the meantime retired from service as Headmaster, there is no impediment on the part of the authority to allow him to continue in service as BPM. As such order of removal is not sustainable in the eyes of law. This was opposed by the Learned Counsel appearing for the Respondents. His contention is that it is not correct that there was no complaint against the Applicant and that complaint or no complaint is immaterial. Dereliction of duty is misconduct. As the misconduct was proved during enquiry conducted in accordance with Rules in which the applicant was allowed all reasonable opportunity to defend, interference in the order of punishment is not warranted.

6. We have considered the rival submissions of the parties and perused the materials placed on record. It is not the case of the Respondents that the applicant got the appointment of BPM by suppressing the fact that he was a teacher in the school in question. He worked in both the posts since 1974. Therefore, after putting several years of service removing from service on the ground of clash of timings does not appeal to judicial conscience.

In the above circumstances, the impugned orders under Annexure-A/9, A/10 & A/11 are hereby quashed. The matter is remitted back to the Respondents for considering his reinstatement, as submitted by the Learned Counsel for the Applicant that the applicant meanwhile has retired from teachership and is yet to reach the age of retirement of BPM which is 65 years. The reinstatement will however, be without any back wages. The needful shall be done by the Respondents within a period of 60(sixty) days from the date of receipt of copy of this order.

7. In the result, this OA stands disposed of. No costs.

  
(A.K.PATNAIK)  
Member (Judl.)

  
(C.R. MOHAPATRA)  
Member(Admn.)