

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOs. 147 OF 2008

Cuttack, this the *9th* day of *March* 2009

Dushasan Biswal Applicant


Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

15

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 147 OF 2008

Cuttack, this the 2nd day of March 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member

&

Hon'ble Mr. C.R. Mohapatra, Administrative Member

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Dushasan Biswal, aged about 54 years, S/o Late Raghunath Biswal, Village-Nadakhanda, P.O.-Abhayamukhi Ramachandrapur, Dist-Puri at present working as Mailman attached to SRO, 'N' Division, Bhubaneswar, Dist-Khurda, Orissa. **Applicant**

By the Advocate(s) M/s. K.C. Kanungo
Subas Beuya
Saroj Pattnaik

Vs.

Union of India, represented through

- 1) The Secretary, Ministry of Communication-cum-D.G. Posts, Govt. of India, Dak Bhawan, New Delhi-1.
- 2) Director of postal services (Hqs.), Office of Postmaster General, Director of Postal Services, Bhubaneswar, Orissa Circle, Bhubaneswar-751001, Dist-Khurda, Orissa.
- 3) Senior Superintendent RMS 'N' Division, At/Po/Dist-Cuttack, Orissa.
- 4) SRO, RMS-N, Division, Bhubaneswar, Dist-Khurda, Orissa.
- 5) P.C. Sethi, SRO, RMS-N, Division, Bhubaneswar, Dist-Khurda, Orissa.
- 6) Ashok Kumar Mohanty, Mailman, aged about 48 years, S/o-Late Prafulla Chandra Mohanty Office of the SRO, RMS-N, Division, Bhubaneswar, Dist-Khurda, Orissa.
- 7) Natabar Nayak, Mailman, aged about 48 years, S/o-Late Fakir Charan Nayak, Office of the SRO, RMS-N, Division, Bhubaneswar, Dist-Khurda, Orissa.

..... **Respondent(s)**

By the Advocate(s)..... M/s. J. Sengupta,
P.K. Panda,
G. Sinha,
A. Mishra,
S. Mishra, ASC
Mr. U.B. Mohapatra, Sr. S. C.

2 16

O R D E R

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

The applicant is at present working as Mailman, (which is a Group 'D' post) in the Office of SRO, RMS-N, Division, Bhubaneswar (Respondent No.4). Two posts of office peon having fallen vacant in SRO, BBSR, were intended to be filled from amongst the Group 'D' officials attached to SRO, RMS-N Division as well as priority to be given to the candidates those who have not worked against the tenure post, as per Annexure-A/6 dated 07.01.2008, in response to which the applicant applied for the same. He having not been selected made a representation as per Annexure-A/8 to the authorities. While the matter stood thus, this Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“to quash Annexure-A/7 and Annexure-A/8(a) for ends of justice;

To direct Respondent No.4 for the posting of the Applicant against the post of office Peon attached to the Office of SRO RMS 'N' Division, Bhubaneswar since he has all eligibility for holding the tenure post.

To direct the Respondent No.4 to act upon the rules and guidelines on the subject of tenure posting as was directed by Respondent No.3 from time to time.”

2. While admitting the O.A and directing notice to the Respondents, this Tribunal, as per order dated 31.03.2008, as an ad- interim measure, stayed the operation of Annexure-A/7. Subsequently, as per order dated 12.05.08 the adinterim order was made absolute. In the meanwhile, the official Respondents and Respondent No.6 filed their respective Counters/Reply Affidavits stating that the steps for posting 02



MMs including Respondent No.6 is justifiable and it is in accordance with rules for posting of peons in the office of SRO, RMS-N, Division, Bhubaneswar.

3. Heard Mr. K.C. Kanungo, Ld. Counsel for the applicant, Mr. U.B. Mohapatra, Ld. SSC for the Official Respondents and Mr. J. Sengupta, Ld. Counsel for the Respondent No.6. We have also perused all the documents submitted before us. The contentions of the Ld. Counsel for the applicant are based on rule relating to the posting of office Peon in the office of SRO, RMS-N, Division, Bhubaneswar. The Ld. Counsel had relied on Rule 60 of the Indian Posts and Telegraphs Manual issued for transfer and posting of office Peons. It is stated therein that certain posts should not ordinarily be occupied by the same officials continuously at a time for more than the period shown against each posts. According to the Ld. Counsel, it means that if a peon is posted, it should be for a tenure period, i.e., 04 years. It is also contended by the Ld. Counsel for the applicant that Respondent No.6 had already represented before the authorities for posting as peon in the office of SRO, RMS-N, Division, Bhubaneswar, which was rejected as per Annexure-A/2 dated 10.07.07. Hence, the steps taken for posting Respondent No.6 as Group 'D' office peon in the office of SRO, RMS-N, Division, Bhubaneswar, is not in accordance with the tenure posting as per orders/Rules followed in the Department. Hence, according to the Ld. Counsel for the applicant, normally, these posts of office peons in the office of SRO, RMS-N, Division, Bhubaneswar, are based on so many criteria, like, seniority and the completion of tenure period and also shall be in accordance with rules provided for the above purpose.



4. Resisting these contentions of the Ld. Counsel for the applicant, the Ld. SSC for the Official Respondents and the Ld. Counsel for Respondent No.6 contended that it is not necessary to look into the guidelines followed in posting of peons in the office, as the authorities are competent in that behalf according to the option or willingness given by the officials. That apart, it was contended by the Ld. Counsel for the official Respondents that even though once the representation of the Respondent No.6 for posting as peon in the office had been rejected, that by itself is not a reason to re-post him in the office of SRO, RMS-N, Division, Bhubaneswar, as peon. The Ld. Counsel appearing for the Respondents further submitted that there are so many instances of such postings made by the authorities earlier. It is also stated in the reply statement filed on behalf of the official Respondents in page 4 of the counter as follows:-

"Being aggrieved the applicant submitted a representation on 27.03.2008 vide Annexure-A/8 to this OA through SRO, Bhubaneswar (that was received in this Office on 31.03.08) to the Respondent No.3 regarding irregular selection of office peon and requested to reject the said selection of Respondent No.4 and requested to post him as office peon as he is senior to the official selected. Before reviewing the order of Respondent No.4 the applicant took shelter before the Tribunal vide this O.A. The Hon'ble Tribunal vide its interim order dated 31.03.08 stayed the order of Respondent No.4. Thus the applicant has not given ample time to the Respondent No.3 to review the case."

Reading of the above would show that the authorities could have reconsidered the question of posting of peons in the office of SRO, RMS-N, Division, Bhubaneswar, but for the interim



5 19

stay order passed by this Tribunal. In the light of the above contentions raised, the short question to be decided in this Original Application is whether the applicant is justified in approaching this Tribunal or not.

5. Admittedly, there are 38 posts of peons in the Postal Division of Orissa, out of which only 02 posts are available in the office of SRO, RMS-N, Division, Bhubaneswar, to be filled up. In this background, it is advantageous to quote hereunder Rule 60 as set out in Annexure-R/2:-

“ The following posts should not ordinarily be occupied by the same officials continuously at a time for more than the period shown against each:-

- (1) Head clerk of Superintendents
- (2) Investigating inspectors and sorting inspectors in Circle Offices
- (3) Head clerks of sections in Circle Offices.
- (4) Clerks in General Post Offices or first class head post offices dealing with staff cases.
- (5) Time-scale clerks in offices of the Superintendents of post offices and Railway Mail Services except sorting clerks in offices of Superintendents, R.M.S.
- (6) Clerks working in the correspondence and accounts Branches of head post offices.”

Reading of the above Rules would show that the posting of peons in the office of SRO, RMS-N Division, Bhubaneswar, shall be on rotation basis. It is the case of the applicant that Respondent No.6 having been posted earlier as peon, should not be again posted. To this, it is the case of the official Respondents that Respondent No.6, in course of his posting as Peon, wanted a transfer on his own request and this is how he could not complete his tenure of 04 years. The official Respondents have stated that the seniority is not the criterion for posting and in that event, the persons senior to the applicant have

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also been eliminated. As regards rejection of representation of Respondent No.6 as pr Annexure-A/2 for his posting, the official Respondents have submitted that such rejection has no bearing with the present posting. Be that as it may, in view of averments made at page-4 of the counter, as quoted above, it is only proper for the authorities to reconsider the case of the applicant for posting as peon in the office of SRO, RMS-N Division, Bhubaneswar, and a final decision is taken in this regard, as early as possible, at any rate, within a period of 30 days of the receipt of this order. Till such a decision is taken, Annexure-A/7 shall be kept in abeyance.

6. With the above, this Original Application stands disposed of. No order as to costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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