

13
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 57 OF 2008

Cuttack, this the 11th day of August 2008

Shri Premananda Biswal Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to the Principal Bench or not?

(C.R.MOHAPATRA) (K.THANKAPPAN)
ADMINISTRATIVE MEMBER JUDICIAL MEMBER

14
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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

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Shri Premananda Biswal, aged about 60 years, son of Purusottam Biswal, a permanent resident of Teroi, PO-Teroi, P.S: Pattamundai, Dist.Kendrapara, EDBPM/GDSBPM of Teroi Branch Post Office under Kendrapara Head Post Office, Kendrapara Applicant

For Applicant - Shri Dillip Kumar Mohanty, Advocate

Vrs.

1. Union of India, represented through Director General of Posts, Ministry of Communications, Department of Posts, Dak Tar Bhawan, New Delhi 110 001.
2. The Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.Khurda, PIN 751001.
3. The Director of Postal Services, Office of the CPMG, Orissa, Bhubaneswar, Dist. Khurda.
4. The Superintendent of Post Offices, Cuttack North Division, Cuttack, PIN 753001.
5. Sri Golak Chandra Mohanty, Assistant Superintendent of Post Offices, Outdoor, Cuttack North Division, Cuttack-cum-Inquiring Officer Respondents

For Respondents - Shri S. Barik, ACGSC.

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ORDER

K.THANKAPPAN, JUDICIAL MEMBER

The applicant, an EDBPM/GDSBPM, having faced a disciplinary inquiry, has filed this Original Application challenging the manner of inquiry conducted by the Inquiry Officer, 5th respondent, the Assistant Superintendent

28

of Post Offices, Cuttack North Division, as he is the superior officer of the applicant.

2. The facts as revealed from the averments of the O.A. are that while the applicant was working as aforesaid, a charge memo dated 28.4.2005 was issued to the applicant alleging certain misconducts with Annexure I statement of imputations. The disciplinary authority not being satisfied with the explanation given by the applicant, appointed the 5th respondent as Inquiry Officer. This, according to the applicant, is against the principles of natural justice, in as much as if the superior officer of the applicant himself conducts the inquiry as Inquiry Officer it will cause prejudice to him. This apart, it is further alleged in the O.A. that the same Inquiry Officer had investigated into certain other allegations against the applicant on some previous occasion. So the continuation of the 5th respondent as Inquiry Officer is against the norms of principle of natural justice. To substantiate this contention, the applicant also relies on the judgments of the Hon'ble Supreme Court reported in 1993(4) SCC 10, *Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*; 1998(5)SCC 513, *State of West Bengal v. Shivananda Pathak*; the latest being judgment of the Apex Court reported in 2001(1) SCC 610, *State Government Houseless Harijan Employees' Association v. State of Karnataka and others*.

3. When the O.A. came up for admission, by order, 20.2.2008, this Tribunal found that the inquiry was not in proper line as the applicant was not given sufficient opportunity to cross-examine the witnesses relied on by the

9

Department and hence this Tribunal had issued certain directions. Subsequently, it was alleged in a Misc. Application that the present Inquiry Officer should not continue as Inquiry Officer as he is the superior officer of the applicant. When the said M.A. came up for consideration, this Tribunal required the learned counsel appearing for the Department to get instructions in the above matter. The learned counsel for the respondents, relying on the objections filed for and on behalf of the respondents, stated that the allegations levelled against the respondents are not tenable in law. However, from the counter and the documents relied on by the learned counsel for the applicant, we have found that the present Inquiry Officer is none else other than the superior officer of the applicant.

4. Hence the question to be considered is as to whether the continuation of the inquiry is legal or not. As per the principles enunciated by the Apex Court hitherto and followed in a catena of judgments, an Inquiry Officer being either connected with any of the previous inquiries against a particular employee or being the superior officer of a particular employee shall not be allowed to continue as the Inquiry Officer. If so, on this short point, we are of the view that the applicant has to succeed in this O.A. and therefore, the O.A. is allowed and the respondents are directed to appoint an Inquiry Officer other than the superior officer of the applicant and the inquiry has to start from the stage of taking over the charge of the proceedings by the present Inquiry Officer. Till another Inquiry Officer is appointed and assumes charge as Inquiry Officer, the disciplinary inquiry against the applicant shall be kept in abeyance.

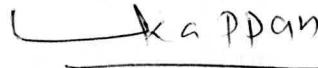
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Whatever may be the facts now relied on by the respondents, the Inquiry Officer, as directed by this Tribunal, has to be appointed within one month from the date of receipt of copy of this order.

5. In the result, the O.A. is allowed to the extent indicated above. No order as to costs.


(C.R.MOHAPATRA)

ADMINISTRATIVE MEMBER


(K.THANKAPPAN)

JUDICIAL EMMBER