

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**OA No. 520 of 2010
Cuttack, this the 24th day of April, 2013**

**CORAM
HON'BLE MR.A.K.PATNAIK, MEMBER(JUDL.)
HON'BLE MR. R.C.MISRA, MEMBER (ADMN.)**

Harihar Mohanta,
Aged about 31 years,
Son of Sri Laxmidhar Mohanta,
Vill-Rugudibeda,
Post/PS-Thakurmunda,
Dist.Mayurbhanj,
Orissa-757038

....Applicant

(Advocate(s)- **Mr.P.K.Padhi,M.Rout**)
-VERSUS-

Union of India represented through –

1. Director General of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi-110 001.
2. Superintendent of Post Offices,
Mayurbhanj Division,
At/Po.Baripada,
Dist.Mayurbhanj-757 001.
3. Inspector of Post,
Karanjia Sub Division,
At/Po.Karanjia,
Dist.Mayurbhanj-757 037.

.....Respondents

(Advocate (s)-**Mr.G.P.Mohanty**)

1/10/2013

O R D E R

(Oral)

A.K.PATNAIK, MEMBER (JUDL.):

In this Original Application filed U/s.19 of the Administrative Tribunals Act, 1985 the prayer of the Applicant is to quash Annexure-A/2 and direct the Respondents to reinstate him into service forthwith with all consequential service and financial benefits including back wages. In letter dated 18.8.2010, at Annexure-A/2, it was intimated to the applicant that since his selection as GDSMD/MC, Mituani BO, in account with Thakurmunda SO, found to be irregular on review his service is hereby terminated with immediate effect.

2. The stand of the Applicant is that the said impugned order at Annexure-A/2 is not sustainable in the touch stone of judicial scrutiny as the same has been issued without putting him prior notice in compliance of natural justice or by following due procedure of Rules/Law. Further case of the applicant is that as the termination is by way of



review of the selection and appointment by the higher authority the same is not sustainable.

3. Respondents filed their counter in which it has been admitted that on receipt of allegation regarding irregularity in the matter of selection to the post in question the selection was reviewed by the higher authority and on review it was noticed that the Inspector of Post Offices, Karanjia Sub Division selected the applicant to the post ignoring the candidature of six other candidates who had secured more percentage of marks than the selected candidate in HSC examination and that though the vacancy was notified for OBC community, the IPOs, Karanjia Sub Division selected and appointed the applicant who belongs to SEBC community ignoring the candidature of OBC community candidates available in the fray of selection. Hence the selection and appointment of the applicant was cancelled by the higher authority for which the services of the applicant were terminated with effect from 18.8.2010. It has been contended by the Respondents that as the applicant had not completed three years regular service

Abus

question of following due procedure of rules does not arise. Hence, as per the provisions of the Rules, his services were terminated and, therefore, there being no illegality in the said order of termination this OA is liable to be dismissed.

4. Fact remains that the applicant was recruited through a regular process of selection pursuant to the notification issued by the Respondents and pursuant to the offer of appointment at Annexure-A/1 he joined the post on 3.9.2009 and while continuing as such, on the basis of the review of the selection order of termination was issued by the Respondents.

5. Mr.P.K.Padhi, Learned Counsel for the Applicant and Mr. G.P.Mohanty, Learned Additional CGSC appearing for the Respondents have reiterated the stand taken in their respective pleadings and to avoid repetition we avoid to record the same once again especially because the issue involved in this OA centers round as to whether superior authority has statutory power to review the selection and order cancellation of appointment of an incumbent who has joined the post. In this connection it would be profitable to note

Akbar

that similar question came up for consideration before the Division Bench of this Tribunal in OA No. 154 of 1999 (Ashok Kumar Behera-Vrs-UOI & Others) disposed of on 7th November, 2000. This Tribunal interfered in the impugned order directing reinstatement of the applicant in the said OA as the same was issued on the basis of the review of the selection by the higher authority. Being aggrieved by the said order of this Tribunal dated 7th November, 2000, Respondents, therein, preferred OJC No. 3768 of 2001 before the Hon'ble High Court of Orissa and the said OJC No. 3768 of 2001 was disposed of on 18.1.2010. The order of the Hon'ble High Court of Orissa is very much relevant for taking a decision on the issue raised in this OA for which relevant portion of the order dated 18.1.2010 is quoted herein below:

“3. The only question for consideration before this Court is as to whether the higher authority has any authority under the relevant rules for reviewing a selection. This question has been settled by the Hon'ble Supreme Court in the case of Union of India and Others Vrs. Bikash Kuanar in Civil Appeal No. 4388 of 2006 disposed of on 10.10.2006. In the said judgment, the Hon'ble Supreme Court held that in terms of the Rules, 1964, the superior authority had no

Alex

statutory power to direct cancellation of selection. The aforesaid judgment was followed by this Court in the case of **Union of India and others Vrs Radhashyam Sahoo and another** (OJC No.1394 of 2000 disposed of on 5.8.2008). These two decisions were followed by this Court in the case of **Asrasada Surya Mouli Vrs. Union of India and others** reported in 2008(II) OLR-646. Admittedly, the higher authority in this case exercised its power under Rule 6 of the E.D.A (Conduct and Service) Rules, 1964 and directed the appointing authority to cancel the selection. The higher authority having no such statutory power under the said Rules, as held by the Apex Court; followed by this Court in the aforesaid two judgments and the Tribunal having followed the said judgments while quashing the notice, we find no infirmity in the order of the Tribunal impugned before us.

4. Accordingly, the writ application being devoid of merit is dismissed."

6. By following the law laid down by the Hon'ble High Court of Orissa, the order of termination of the applicant dated 18.08.2010 at Annexure-A/2 is hereby quashed. Consequently, the Respondents are hereby directed to reinstate the applicant to service forthwith. The Applicant is entitled to count the intervening period from the date of termination till reinstatement as qualifying service but in so far as payment of back wages for the above periods, the same shall be decided by the Respondents as per existing Rules/Law.

[Signature]

28

7. With the aforesaid observation and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.

R.C.MISRA
Member (Admn.)

A.K.PATNAIK
Member (Judl.)