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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.839 of 2010

Cuttack this the 9th day of July, 2013

Basanta Kumar Sahoo...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be referred to CAT, PB, New Delhi or not ? No


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Basanta Kumar Sahoo, aged about 41 years, S/o. Tikeswar Sahoo, At/PO-Karambahal, Via-Jheirpani, Dist-Sundergarh presently working as G.D.S.M.D. of Jalda Sub Post Office, Dist-Sundergarh, Orissa

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through

1. The Director General of Posts, Govt. of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi, PIN-110 001
2. Chief Post Master General, Odissa Circle, Bhubaneswar, Dist-Khurda, PIN-751 001
3. Senior Superintendent of Post Offices, Dundergarh Division, Dist-Sundergarh-770 001
4. Inspector of Posts, Rourkela, West Sub Division, Rourkela-769 012

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

The applicant, who is GDSMD of Jalda S.O. in the District of Sundergarh in Orissa, has approached this Tribunal for a direction to be issued to the Respondents, viz., the Department of Posts to regularize his service from 10.4.2004 to 8.9.2006 with all consequential benefits.

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[Signature]

The brief facts of this case are stated below.

2. The earlier permanent incumbent of the post of GDS MD of Jalda S.O. had expired and the post was lying vacant. One Sukanta Behera, who is the son of the earlier incumbent of this post had prayed for compassionate appointment to the same post, but his prayer was rejected by the Department. The Respondents had asked the Employment Exchange to sponsor the names of the candidates for the post and the applicant was one of the sponsored candidates. He was selected by the Department and being appointed to the post of GDSMD, Jalda SO he joined on 24.6.2002. While the applicant was discharging his duties in this post, Respondent No.4, i.e., the Inspector of Posts, Rourkela, served on him an order of termination of his services mentioning therein that this is in pursuance of the order dated 27.8.2003 of this Tribunal in O.A.No.960/02. It was also stated that the Tribunal directed for consideration of the case of appointment of Sukanta Behera on compassionate grounds and this order of the Tribunal was being implemented by the Department. Aggrieved with the above order of termination, the applicant moved this Tribunal in O.A.No.434/2004. After hearing the parties, this Tribunal vide its order dated 10.8.2005, decided that since the applicant was selected and appointed through a regular process of selection, his services were not liable to be terminated and also issued direction to adjust both the applicant as well as Sukanta Behera in G.D.S. Organization. The Respondents filed a Review Application, i.e. R.A.No.2 of 2006 on which the Tribunal passed an order dated 6.7.2006, clarifying that the Tribunal never directed the Respondents to adjust Sukanta Behera as GDSMD at Jalda SO and his appointment may be considered

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against any present or future vacancy. In spite of the orders of this Tribunal, the applicant was not reinstated as GDSMD, Jalda SO, because of which, he submitted a representation after which, the Respondent No.3, i.e., Senior Superintendent of Post Offices, Sundargarh, vide his order dated 1.9.2006, provisionally appointed him as GDS MD, Jalda SO. Subsequently, the Respondent No.4 in his order dated 6.9.2006 issued an order of provisional appointment after which the applicant joined on 8.9.2006. The applicant submitted a representation to Respondent No.4 for regularization of his services for the intervening period. But his services were regularized from 8.9.2006 and not from 24.6.2002. This is the background against which the applicant has approached this Tribunal for direction that the intervening period should be regularized since as per the orders of the Tribunal dated 10.8.2005, the applicant should have been reinstated in the post of GDSMD, Jalda SO and should not have been provisionally appointed afresh. The applicant's case is that he had joined the post of GDS MD, Jalda SO on 24.6.2002 being selected and appointed through a regular process of selection. In O.A.No.434/2004, which was filed by the applicant, the Tribunal vide order dated 10.8.2005 decided that the services of the applicant were not liable to be terminated since he was selected and appointed through a regular process of selection. However, he was given a fresh appointment on 6.9.2006 by the Respondent No.4. The prayer of the applicant is that this needs to be rectified and his entire period of service should be regularized from the date of his initial appointment from 24.6.2002.

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3. The Respondents have filed their counter affidavit in this case, in which they have taken the ground that the services of the applicant were terminated in pursuance of order dated 27.8.2003 of the Tribunal passed in O.A.No.960/2002 and again he was appointed as per order dated 10.8.2005 of the Tribunal in O.A.No.434/2004. The applicant was not in service of the Department of Posts during the intervening period and hence, the prayer of the applicant for regularization of this period is devoid of any merit.

4. To traverse the path of the facts of the case in this O.A., we have to first see the order of this Tribunal dated 27.8.2003 passed in O.A.No.960/2002. In this case one Sukanta Behera approached the Tribunal praying for a direction for appointment under compassionate grounds because of the death of his father, who was working as Extra Departmental Delivery Agent, Jalda SO. In this O.A., the Tribunal passed directions to the Respondents to reconsider the case of the applicant for providing him with an employment assistance on compassionate grounds within a period of sixty days from the date of receipt of copy of the order. After receipt of the order of the Tribunal, the CRC reconsidered the case of Sukanta Behera and passed order for his appointment in the said post by terminating the services of the applicant in the present O.A. who had been appointed by a regular process of selection. This termination was effected on 9.6.2004. The applicant in the present O.A. being aggrieved by that order filed O.A.No.434/04 in this Tribunal. After hearing the parties and considering the facts and circumstances of the case, the Tribunal decided on 10.8.2005, that the



present applicant being selected and appointed through a regular process of selection was not liable to be terminated and the Respondents were directed to adjust both Shri Sukanta Behera and Shri Basanta Kumar Sahoo (the present applicant) in the GDS Organization by giving them appropriate posting. After this decision of the Tribunal, the Respondents, viz. the Department of Posts, filed a Review Application bearing No.2/2006 before the Tribunal. The Respondent-Department, without giving appointment to the present applicant filed the Review Application pleading that there was an error apparent on the face of the record and also submitting that two persons cannot be appointed against one post, viz., GDSMD, Jalda SO in pursuance of the orders of the Tribunal in O.A.No.434/2004. The Tribunal, after hearing the parties in the R.A. came to a finding that the order dated 20.8.2005 in O.A.No.434/2004 did not suffer from any illegal or factual error. It was the further finding of the Tribunal that there was no direction to the Respondent-Department in that order to adjust Shri Sukanta Behera as GDSMD in Jalda SO. In that view of the matter, the Tribunal directed that since Shri Sukanta Behera was selected to appointed as GDSMD on compassionate ground his appointment can be considered against any present or future vacancy. After the order of this Tribunal on 6.7.2006 in the R.A., the Respondents, vide their order dated 6.9.2006 (Annexure-A/4) appointed the present applicant as GDSMD, Jalda SO with immediate effect. This was an order of fresh appointment and therefore, no service benefits accrued between the period ¹⁰6.6.2004, i.e., the date of his termination from service and ⁸6.9.2006, the



date on which he was given a fresh appointment. The crux of the issue in this O.A. is whether the applicant will be entitled to service benefits for this period and if yes, what will be the nature of these service benefits.

5. We have heard the learned counsel for both the sides and perused the records.

6. The learned counsel for the applicant has brought to our notice the judgment of the Hon'ble Apex Court in Civil Appeal No.6376/2009 decided on September, 7, 2009 in **Subash vs. Divisional Controller, Maharashtra State Road Transport Corporation And Another (2009) 2 SCC (L&S) 601**. In that case, the question before the Hon'ble Apex Court was whether the departmental Appellate Authority was justified in ordering fresh appointment of the appellant while setting aside the order of dismissal from service or it ought to have ordered reinstatement with the continuity of service and full back wages. The Hon'ble Apex Court decided that in order to render substantial justice, it is appropriate that the orders of the first appellate authority directing fresh appointment of the applicant be modified by ordering his reinstatement with continuity of service, but without back wages. The observation of the Hon'ble Supreme Court was that this would be commensurate with the delinquency of the appellant. In the interest of justice and fair play, denial of back wages for the entire period from the date of dismissal until his rejoining the duties would be proper punishment.



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7. From the facts of the present case under consideration before us, it is evident that applicant for no fault of his has been denied his service benefits. First of all in O.A.No.960/02, he was not a party and the Tribunal in that O.A. directed for consideration of the case of appointment of one Sukanta Kumar Behera on compassionate grounds. By way of implementing the order of the Tribunal the concerned authorities terminated the services of the applicant which was against the principles of natural justice. Thereafter, the applicant filed O.A.No.434/2004 where the Tribunal vide its order dated 10.8.2005 decided that he was selected and appointed through a regular process of selection and therefore, his services were not liable to be terminated. The orders of the Tribunal were very clear in this regard that the services of the applicant were not liable to be terminated and this would mean that the order of termination of his services was ab initio wrong. However, only after the orders of the Tribunal in the Review Application filed by the Respondents and based on the subsequent representation, the applicant was provisionally appointed as GDSMD Jalda SO on 6.9.2006, but was not reinstated with continuity of his service. The provisional order of appointment was issued by the Inspector of Posts, Rourkela on 6.9.2006. The applicant did not raise any issue with the authorities regarding this fresh order of appointment. Thereafter, the applicant has approached the Tribunal in the year 2010 after a passage of considerable period of time claiming consequential service benefits from 10.6.2004 to 8.9.2006.



8. After considering the facts and circumstances of the matter, we are of the view that it will be denial of natural justice and in fact grossly unfair to deprive the applicant of the service benefits for the period for which he could not work, in the face of the orders of the Tribunal dated 20.8.2005 in O.A.No.434/2004 that he was not liable to be terminated. We would like to observe that since the orders of the Tribunal were clear that the applicant was not liable to be terminated, the office order issued by the Respondents should have been to the effect of reinstatement with continuity of service rather than a provisional fresh appointment.

9. Admittedly, the applicant never challenged this order, nor did he pray for a review. He has certainly approached the Tribunal at a later stage. Even after taking into account this delay, the facts of the case are such that he cannot justifiably be denied his service benefits completely for this period.

10. He shall not be entitled to payment of back wages for this period in pursuance of no work no pay. But for the purpose of ^{of} ~~some~~ other service benefits, the period should be regularized. Our attention has been drawn to the judgment of the Hon'ble Supreme Court in the case of Union of India vs. B.M.Jha (2008) 2 SCC (L&S) 399 in which the Hon'ble Apex Court has observed as follows.


"Therefore, we are of the view that in the light of the consistent view taken by this Court in the above mentioned cases, arrears of salary cannot be granted to the Respondents in view of the principle of no work no pay in case of retrospective promotion".



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11. From the discussions held above, Respondents are directed to confer on the applicant the services benefits that would accrue as a result of the regularization of the period from 10.6.2004 to 8.9.2006. However, no back wages for the period shall be paid to the applicant.

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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