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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

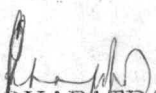
Original Application No.108 of 2011
Cuttack, this the ~~02nd~~ day of ~~July~~, 2011
August,

Golak Chandra Mohanty Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the CAT or not? *Yes*


(A.K.PATNAIK)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 108 of 2011

Cuttack, this the 02nd August, 2011

CORAM:

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

A N D

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

Golak Chandra Mohanty, aged about 54 years, Son of Late Brajakrushna Mohanty, Village-Asthapraharajpur, Po.Michandpur, PS -Jajpur, Dist. Jajpur at present working as Superintendent of Post Offices, Balasore, At/Po/Dist. Balasore.

.....Applicant

By legal practitioner: M/s.D.P.Dhalsamanta,N.M.Rout, Counsel.

-Versus-

1. Union of India represented through the Secretary in the Department of Posts, DakaBhavan, Sansad Mark, New Delhi-110 116.
2. Post Master General, Northern Region, Muzaffarpur-842 001.
3. Chief Post Master General, Orissa Circle, Bhubaneswar, At/Po-Bhubaneswar, Dist. Khurda.
4. Chandramani Mohapatra, Assistant Director, Investigation, Postmaster General Office, Bhubaneswar, Dist. Khurda.

....Respondents

By legal practitioner: Mr.S.B.Jena, ASC

ORDER

MR.C.R.MOHAPATRA, MEMBER (A):

In order under Annexure-A/3 dated 25.2.2011, the Applicant while working as Superintendent of Post Offices, Balasore Division, Balasore on temporary and adhoc basis was reverted to his former cadre of ASP and resultantly was posted to the office of the SSPOs, Puri Division vice Shri B.M.Dasmohapatra

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transferred. Hence this OA seeking to quash the order No. ST/24-15(1/2004) dated 25-02-2011 of the Chief Postmaster General, Orissa Circle, Bhubaneswar under Annexure-3 and to direct the Respondent No. 3 to relieve him to join in his promotional post at Bihar as per the order under Annexure-1 dated 24.11.2010.

2. In the counter the Respondents have objected to the prayer of the Applicant. The reasons furnished by the Respondents, in support of the aforesaid stand are that the applicant while working as Assistant Superintendent of Posts (OD), Cuttack North Division vide Memo under Annexure-R/1, dated 07.05.2009 was posted as Superintendent of Post Offices, Balasore Division, Balasore, on purely temporary/adhoc basis for a period of 11 months. He worked as SPOs, Balasore Division from 08.07.09 to 21.06.2010. Thereafter, he was reverted to his substantive post ASP (OD), Balasore Division. He worked as ASP (OD), Balasore Division from 21.6.2010 (AN) to 01.07.2010. Again vide memo under Annexure-R/2, dated 28.6.2010, he was promoted on ad hoc basis and posted as SPOs, Balasore Division, Balasore for a period of 11 months from the date of assumption of charges or till posting of regular incumbent in which post he joined on 02.07.2010. The Applicant was approved for regular promotion to PSS Gr. Cadre vide Memo dated 24.11.2010

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✓ (Annexure-1). In the said order it was made specifically clear that in case any vigilance/disciplinary case is pending against the official he should not be relieved for posting without specific orders from the Respondent. Meanwhile number of complaints were received against the applicant and enquired into. Since vigilance complaints against the applicant were pending he was not relieved on promotion to join to PSS Gr.B. On the other hand as the vigilance complaints were found substantiated, the applicant was reverted to his substantive post as per Government of India instructions **4(i) below Rule 11 of CCS (CC&A) Rules, 1965**. Meantime, he has also been proceeded with disciplinary proceedings under Rule 14 of the CCS (CC&A) Rules, 1965 vide Memo dated 02.04.2011 (Annexure-R/5). In the above circumstances, it has been contended by the Respondents that there is no illegality in their action; this OA is liable to be dismissed.

3. The contention of the Applicant is that several persons were promoted to the post of SPOs and posted at various places on such adhoc basis but while others have been continuing on their promotional post he was discriminated. Further case of the applicant was that he was found fit for regular promotion and accordingly was posted to **Muzaffarpur** but despite furnishing of

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willingness the applicant was not relieved to join the said post and on the other hand he has been reverted to his former post of ASPO without complying with the principles of natural justice. Next contention of the Applicant's counsel is that the applicant was promoted vide order dated 24.11.2010. In compliance of the said order the applicant vide order dated 13.12.2010 was posted as Assistant Director, III Muzaffarpur. Much thereafter in stead of his relieve, Respondents reverted him to his feeder post vide Annexure0-3 dated 25.2.2011 without giving him any opportunity. Disciplinary proceedings under Rule 14 of the Rules, 1965 were initiated against him much after the order under Annexure-1. As such, the action of the Respondents cannot be said to be legal or bona fide and as such he has reiterated his prayer made in this OA. In this context, he has relied on the decision of the Jodhpur Bench of the Tribunal in the case of D.C.Jain and another v Union of India and others (OA No. 103 of 2001 disposed of on 7.9.2001). On the other hand Respondents' counsel by reiterating the stand taken in the pleadings has vehemently prayed for dismissal of this OA.

In this connection, it is worthwhile to quote the provision of 4(i) below Rule 11 of CCS (CC&A) Rules, 1965. It reads as under:

"(4) Disciplinary proceedings against an employee officiating in a higher post on adhoc basis -The

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question whether a Government servant appointed to a higher post on adhoc basis should be allowed to continue in the adhoc appointment when a disciplinary proceedings is initiated against him has been considered by this Department and it has been decided that the procedure outlined below shall be followed in such cases-

(i) Where an appointment has been made purely on adhoc basis against a short term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant shall be reverted to the post held by him substantively or on a regular basis when a disciplinary proceeding is initiated against him."

4. In course of hearing Respondents' counsel has also produced copy of the instructions of the Government of India to show that no fault can be attributed to the Respondents when withholding ~~of~~ his promotion was due to the disciplinary/vigilance enquiry. The instruction relied on by the Respondents' counsel reads as under:

"7. Officers coming under cloud after DPC meeting-Para 7 of this Department's OM No. 22011/4/91-ESTT.(a) DATED THE 14TH September, 1992 envisages as follows:

"A Government servant, who is recommended for promotion by the Department Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of

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the charges against him and the provision contained in this OM, will be applicable in his case also."

5. Fact remains that the promotion of the applicant to the Postal Service Gr.B grade was on regular basis vide order under Annexure-A/1 dated 24.11.2010 and consequently vide order under Annexure-2 dated 14.12.2010 he was posted as AD-II, RO Muzaffarpur vice Shri S.K.Sinha transferred. The reason for not relieving the applicant to hold the promotional post is the vigilance complaints and enquiry meanwhile conducted against him. And as the vigilance complaints were found substantiated the applicant was reverted in terms of **Rule 4(i) below Rule 11 of CCS (CC&A) Rules, 1965 and thereafter vide memo dated 02-04-2011 disciplinary proceedings** under Rule 14 of the CCS (CC&A) Rules, 1965 was initiated against him. Rule 4(i) below Rule 11 of CCS (CC&A) Rules, 1965 clearly provides the measure of action when a disciplinary proceeding is initiated. It is not the case of the Respondents that at the time when he was reverted there were any disciplinary proceedings initiated against him. It is well settled law that suspicion cannot take the place of proof. As such, complaints and enquiry ought not to have been a ground to revert the applicant. Besides, had the applicant been relieved to join in his promotional post he could not have faced the reversion. No

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substantive ground has been canvassed by the Respondents for approving their action for not relieving the applicant and on the other hand reverting him to his feeder grade especially when all others who were promoted along with the applicant have assumed the promotional post. Admittedly disciplinary proceedings were initiated against the applicant much after his order to be relieved. In this connection we find force on the submission of the Learned Counsel for the Applicant that as per the decision of the Jodhpur Bench (supra), the Applicant is entitled to be relieved to join in his new place of posting in the promotional post. The case before the Jodhpur Bench of the Tribunal was that the applicants therein were ordered to be promoted along with others by order dated 26.4.2000. While others were promoted, the promotion order in respect of the applicants had not been implemented as disciplinary proceedings were contemplated against the applicants when their promotion orders were issued. The Jodhpur Bench of the Tribunal after taking note of the decisions of the Hon'ble Apex Court in the cases of **UOI v K.V.Jankiraman**, AIR 1991 SC 2010 & **Bank of India v Degala Suryanarayana**, 1999 SCC (L&S) 1306 as also the earlier decision of the said Tribunal in the case of **Amit Srivastava v UOI** [OA No. 312 of 1991] decided on 10-11-1999, held as under:

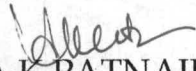
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"The promotion order can only be withheld, if a charge sheet has been issued to the official before the issue of promotion order. In the instant case before us, the charge sheet was issued much after the promotion order had been issued. We are of the view that the action of the respondents is not covered by the instructions of the DoP&Ts letter dated 14.9.1992. Consequently, the action of the Respondents of withholding the promotion of these two applicants is not sustainable and liable to be quashed."

6. In the case in hand, no charge sheet was issued to the Applicant before the orders of promotion or posting. Charge sheet under Rule 14 of the CCS (CC&A) Rules, 1965 has admittedly been issued much after the order under Annexure-A/1 & A/2. As we know, precedents to be followed by the Tribunal are the golden Rule of law [**SI Rooplal and others v Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644]. In view of the above the order No. ST/24-15(1/2004) dated 25-02-2011 under Annexure-3 is quashed and the Respondent No.3 is directed to relieve the Applicant to join his promotional post as per Annexure-2 within a period of thirty days from the date of receipt of copy of this order.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


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


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