

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A No. 159 of 2011

Shri Amit Kumar Khamari, aged about 29 years, Son of Aswini Khamari, a permanent resident of Village/Post-Baiganbadia, Via-Kuchei, Dist. Mayurbhanja under order of termination from the post of GDSMD/MC of Haldia Baripada BO I account with Kuchei SO.

.....Applicant

By legal practitioner: Mr. G.Rath, Senior Counsel

&

Mr.D.K.Mohanty, Counsel

-Versus-

1. Union of India represented through its Director General of Posts, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda, PIN-751 002.
3. The Director of Postal Services, O/O the Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
4. The Superintendent of Post Offices, Mayurbhanj Divison, Mayurbhanj.
5. The Assistant Superintendent of Pot Offices I/C, Central Sub Divison, Baripada, PIN 757 001.
6. Shri K.C.Ghadei, Assistant Superintendent of Post Offices, I/C, Central Sub Divison, Baripada, PIN-757 001.

....Respondents

By legal practitioner: Mr.S.Barik, ASC

ORDER

Cuttack, the 24<sup>th</sup> March, 2011

.....

CORAM:

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

A N D

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

.....

Memo No. A-44, dated at Baripada the 18<sup>th</sup> March, 2011 placed at Anenxure-A/5 terminating the service of the Applicant as GDSMD/MC of Haladia Baripada BO in account with Kuchei Sub Post Office has been challenged in this Original Application filed by the Applicant under section 19 of the

L

Administrative Tribunals Act, 1985 with prayer to quash the above said order and to direct the Respondents to reinstate him to his post with all consequential service and financial benefits retrospectively. Copy of this OA has been served on Mr. S. Barik, Learned ASC for the Union of India appearing on notice for the Respondents. Heard the rival submission of the parties and perused the materials placed on record.

2. The impugned order under Annexure-A/5 dated 18<sup>th</sup> March, 2011 has been assailed by the Applicant on the grounds that as he has been <sup>appointed</sup> in due process of selection on regular basis, the order terminating his service without following due process of Rules and law by way of affording opportunity is not sustainable in the eyes of law. In this context by placing reliance on the decision of the Hon'ble Apex Court in the case of State Government Houseless Harijan Employees' Association v State of Karnataka and others, 2001(1) SCC 610, it was contended by him that principles of natural justice are implicit in the rules and even if any rule relating to disciplinary proceedings and punishment does not incorporate these principles, the same would be read as part of the Rule by necessary implication and as such, after rendering two years regular service in the post, terminating the service of the applicant without complying with the principles of

L


14  
natural /provision of Article 14 of the Constitution of India is not sustainable. Further it was contended by Learned Senior Counsel for the Applicant that no reason has also been assigned in the order of termination nor even the applicant was issued any show cause notice intimating the reason of taking such harsh decision. Learned Senior Counsel appearing for the Applicant has placed into service the decision of the Madras Bench of the Tribunal in the case of V.Antony Selvaraj v Union of India and others, 1991 (1) ATJ, Vol.10, 455 in which termination of service of an EDA under Rule 6 has been held bad for non-compliance of the natural justice. Learned Senior Counsel appearing for the Applicant has also questioned the competence of the Respondent Nos.5&6 to issue the order of termination. Accordingly, Learned Senior Counsel appearing for the Applicant besides impressing<sup>upon</sup> this Tribunal to admit this OA sincerely prays for stay of the order under Annexure-A/5 with direction to the Respondent Nos. 5 & 6 to allow the Applicant to continue in his post. On the other hand, Mr. Barik, Learned ASC appearing on notice for the Respondents has expressed his inability to state anything on the merit of the matter without obtaining instruction in the matter. In this regard, he also prays four weeks time to obtain instruction and file show cause to the prayer for interim relief/counter on the merit of the matter.

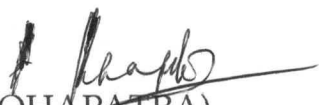
3. Since substantial question of fact and law<sup>s</sup> involved in this OA requiring determination by this Tribunal, this OA is admitted and notice is directed to be issued to the Respondents enabling them to file counter within four weeks, as undertaken by Mr. Barik, Learned ASC appearing on notice for the Respondents, after serving copy thereof on the other side. Learned Senior Counsel appearing for the Applicant is allowed to file rejoinder, if any, within two weeks thereafter. Call this matter on 06-05-2011.

4. In view of the above and in view of the fact that the order of termination is without following the rigors of the Rules and law by way of giving opportunity to the Applicant, this is a fit case where grant of stay on the order of termination under Annexure-A/5 is inevitable. Hence, while granting opportunity to the Respondents to file their show cause to the prayer for interim relief made in this OA, the order under Annexure-A/5 dated 18<sup>th</sup> March, 2011 is hereby stayed, as an ad interim measure with direction to the Respondents 5&6 to allow the Applicant to continue in the post of GDSMD/MC, Haladia Baripada BO in account with Kuchei SO. Put up this matter after filing the show cause, directed above, for giving further consideration in the matter of continuance of stay or other wise.



13  
5. Send copy of this order along with notices to all the Respondents. Applicant is directed to serve copy of this order along with notice on Respondent Nos.5&6 who on receipt of the order shall allow the Applicant to continue in the post of GDSMD/MC, Haladia Baripada BO. Free copy of this order be also given to Learned Counsel for both sides.

  
(A.K.PATNAIK)  
Member (Judicial)

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