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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 172 of 2009
Cuttack, this the 22nd day of June, 2011

Ajit Kumar Patra Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(A.K.PATNAIK)
Member(Judl)

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

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Cuttack, this the 22nd day of June, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Ajit Kumar Patra, aged about 43 years, Son of Late Jayakrushna Patra, permanent resident of Village/Post-Putina, Via-Kamarda Road, Ps-BNhogari, Dist. Balasore.

.....Applicant

By legal practitioner: M/s.R.B.Mohapatra, D.K.Mohanty, Counsel.
-Versus-

1. Union of India represented by the Chief Postmaster General, Orissa, At/Po.Bhubaneswar-751 001, Dist. Khurda.
2. Superintendent of Post Offices, Balasore Divison, At/Po/Dist. Balasore.
3. Sub Divisional Inspector Post Offices, Jaleswar Sub Divison, At/Po.Jaleswar, Dist. Balasore.
4. Asst. Director (Staff), O/o.the Chief Postmaster General, Orissa Circle, At/Po.Bhubaneswar-751 001, Dist. Khurda.

....Respondents

By legal practitioner: Mr.P.R.J.Dash, ASC

O R D E R

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

The applicant was appointed temporarily as GDSBPM of Putina Branch Post Office on 01.12.1986 against the put off duty vacancy of the regular incumbent. The regular incumbent was reinstated in the post on 30.10.1990. Consequently the temporary appointment of the applicant was terminated vide order dated 31.10.1990. Thereafter, applicant approached this Tribunal in OA No. 417 of 1990 seeking permanency in the post. During the pendency of this OA, the regular incumbent of the post expired and consequently his son was appointed to the post on compassionate ground. Hence this Tribunal without

interfering in the order of appointment of the son of the regular incumbent made on compassionate ground disposed of the matter on 28.4.1992 with observation to consider the case of the applicant sympathetically against Chakeshab Branch Post Office.

Pursuant to the order of this Tribunal, the Applicant was offered two to three other posts but he declined to accept such posts because of long distance from his house.

Applicant again approached this Tribunal in OA No. 669 of 1992. On the submission of the Respondents that in the event of availability of vacancy of EDBPM, Putina or Kachuadi, the case of the applicant would be considered against one of those vacancies provided he gives rent free accommodation for functioning of the post office in the post village, this Tribunal disposed of the OA No.669 of 1992 on 25.1.1993.

Making allegation that despite reaching the age of superannuation, Respondents allowed the existing incumbent to continue in the post of EDBPM, Kachuadi Branch Post Office, the applicant approached this Tribunal in OA No. 95 of 1997. On 17th August, 1990 OA No. 95 of 1997 was disposed of by this Tribunal with direction that the departmental authorities should verify the date of birth of the existing EDBPM of Kachuadi BO within a period of 120 days from the date of receipt of copy of the order. In case as a result of such verification the

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existing incumbent is ordered to vacate the post of EDBPM, the applicant should be considered for appointment to the post.

While the matter stood thus, the existing EDBPM of Kachuadi BO expired on 28.04.2000. His son was approved and appointed to the said post on compassionate ground on 30.04.2001.

Meanwhile the post of EDBPM of Putina Branch Post Office fell vacant due to the death of the permanent incumbent of the said post on 16.12.2006. Hence by filing OA No. 232 of 2008, the Applicant sought direction to the Respondents to appoint him against the said post. Since representations made by the Applicant seeking appointment in the said post were pending, by order dated 2nd January, 2009, this Tribunal disposed of the matter with direction to the Respondents to consider and pass a reasoned order on the pending representations of the applicant within a period of three months.

2. In compliance of the order dated 2nd January, 2009, the Respondents issued a reasoned order denying the applicant appointment. Relevant portion of the order placed at Annexure-A/12, reads as under:

“3. The Applicant filed OA No. 417/90 in the Hon’ble CAT, Cuttack Bench for his regular appointment in Putina BO. Since Shri Sanjay Kumar Patra son of the late Siba Prasad Patra was approved by the Circle Relaxation Committee for appointment as GDSBPM Putina, hence the services of the Applicant was again terminated and the Hon’ble Tribunal directed to consider his case for some other post. Again the applicant filed OA No. 669/92 in which it was ordered on 25.01.2003 that whenever such vacancy arises, the case of the applicant may be considered. The Applicant was offered GDS post twice as per order dtd. 17.8.1999 in OA No. 95/97. But he declined the same.

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4. As per DGP&T letter No.43-4/77-Pen dated 18.05.1979 efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years service. In such cases their names should be included in the waiting list of ED Agents discharged from service prescribed in DG P&T letter No. 43-4/77-Pen dtd.23.02.1970.

5. Further as per para 20 & 21 Section 4 of ED Conduct and Service Rules the maximum period for which the name of a person can remain in the waiting list is 2 years and if the retrenched ED Agent has been offered an alternate appointment but if he has declined to accept the same in such case his name will be removed from the waiting list and he will have no claim for being considered at a later date.

6. In view of above, the undersigned orders that since the Applicant was offered GDS post twice for appointment, but the Applicant has declined to accept the same and the case is more than 15 years old the Applicant forfeits his right to absorption as GDS. For these reasons his case is rejected."

3. The present OA has been filed with prayer to quash the impugned order under Annexure-A/12 and direct the Respondents to appoint the applicant in the post of EDBPM of Putina BO in compliance with the direction of this Tribunal in OA No. 669 of 1992.

4. Respondents filed their counter reiterating the stand taken in the impugned letter under Annexure-A/12. The Applicant has also filed rejoinder, more or less reiterating his stand taken in the OA. The Respondents have also filed additional counter.

5. Heard Learned Counsel for both sides and perused the materials placed on record.

6. From the narration of facts, it would be evident that protracted litigation is dragging on for a small cause since more than a

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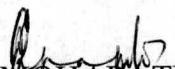
decade. Admittedly, the termination of the Applicant was in the year 1990/31.10.1990 which he first challenged in OA No. 417 of 1990. The said OA was disposed of by this Tribunal on 28.04.1992. In compliance of the order of this Tribunal, the Respondents offered the applicant alternative appointment twice but for one reason or the other he declined to accept such offer of appointment. Law is well settled in a plethora of judicial pronouncements that none has a right to claim appointment in a particular post and place especially when the offer was on sympathetic consideration in compliance of the order of this Tribunal. The case history and the conduct of Applicant give the impression that earning livelihood perhaps cannot be a compelling ground for protracted litigation in a scarce employment market. We have gone through the various orders earlier passed by this Tribunal so also the instructions relied on by the Respondents in the impugned order under Annexure-A/12. The DGP&T letter No.43-4/77-Pen dated 18.05.1979 clearly says that efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years service. In such cases their names should be included in the waiting list of ED Agents discharged from service prescribed in DG P&T letter No. 43-4/77-Pen dtd.23.02.1970. Further as per para 20 & 21 Section 4 of ED Conduct and Service Rules the maximum period for which the name of a person can remain in the waiting list is 2 years and if

the retrenched ED Agent has been offered an alternate appointment but if he has declined to accept the same, in such case his name will be removed from the waiting list and he will have no claim for being considered at a later date. In view of the above, we find absolutely no injustice has been caused to the Applicant especially when he refused to accept the offer of appointment twice. We are reminded of the oft quoted dictum 'beggars cannot be choosers'.

7. In the result, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.



(A.K. PATNAIK)
Member (Judicial)



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