10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 239 of 2011
Cuttack, this the 31st day of March, 2014

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

.....

Shri Chhotaray Mohanta, aged about 29 years, S/o. Shiba Charan Mohanta at present working as Gramin Dak Sevak Mail Deliverer (GDSMD), Gobra Branch Post Office, At/Po.Gobra, Dist. Mayurbhanj.

....Applicant

(Advocate(s)-M/s. P.K.Mohapatra, S.K.Nath, S.C.Sahoo)

-VERSUS-

Union of India represented through –

1. Chief Postmaster General, Orissa, Bhubaneswar, Dist. Khurda.

2. The Director of Postal Services, Orissa, Bhubaneswar, Dist. Khurda.

3. Superintendent of Post Offices, Mayurbhanj Divison, Baripada, At/Po.Baripada, Dist. Mayurbhanj.

4. Asst. Superintendent of Post Offices, Central Sub-Division, Baripada, At/Po.Baripada, Dist. Mayurbhanj.

.....Respondents

(Advocate (s)-Mr.Giridhari Singh)

O R D E R

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 hold/declare that the decision taken by the respondents to terminate the service of the applicant is illegal, invalid, mala fide and against the principles of law and accordingly, quash the show cause notice issued to the

applicant. The show cause notice to terminate the service of the applicant is dated 18.04.2011 at Annexure-A/7.

2. The stand of the Applicant is that the said impugned order at Annexure-A/7 is not sustainable in the touch stone of judicial scrutiny as the same has been issued without putting him any 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 stated that the Appointing Authority selected the applicant to the post of GDSMC Gobra BO in due process of selection and after completing all formalities allowed him to join the post on 25.6.2009. Subsequently, the competent authority i.e. higher than the appointing authority conducted review of the selection of the applicant and found certain irregularity in the said selection. Hence notice of termination dated 18.4.2011 was issued to the applicant. It has been stated that as the applicant did not complete the three years of regular service question of following due procedure of rules does not arise. Hence, in terms of the Rules, his services were terminated. 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 and pursuant to the offer of appointment he joined the

post on 25.6.2009. 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.Mohapatra, Learned Counsel for the Applicant and Mr. Giridhari Singh, Learned Additional CGSC appearing for the Respondents have reiterated the stand taken in their respective pleadings and to avoid repetition we refrain from reiterating 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 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 with 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 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 b y 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. The Hon'ble Apex Court in the case of **Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644,** held as under:-

> **"12.** At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle

which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

> The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai case and of Macleod, C.J., in Haridas case did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in Bhagwan v. Ram Chand :
>
> > 'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division

> Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.'

7. We do not find any ground to deviate from the view already taken by the Division Bench of this Tribunal in the case of Ashok Kumar Behera – Vrs-OI & Ors (in OA No. 154 of 1999 disposed of on 7th November, 2000). Further, decision rendered buy the Hon'ble High Court is binding on this Tribunal. Therefore, by applying the law laid down by the Hon'ble High Court of Orissa in **OJC No. 3768 of 2001, the show cause notice dated 18.4.2011 at Annexure-A/7** is hereby quashed and consequently the Respondents are directed to reinstate the applicant to service forthwith (if he is out of service) within a period of sixty days. We also direct that the applicant is entitled to count the intervening period i.e. 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. 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.)