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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 261 of 2011
Cuttack, this the 30th day of November, 2011

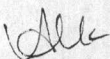
Binod Bihari Mishra Applicant

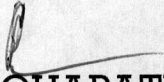
-v-

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 30th day of November, 2011

CORAM:

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

A N D

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

Sri Binod Bihari Mishra, aged about 42 years, Son
of Late Mahadev Mishra, At-Rathapada, Po. Tarava,
Dist. Subarnapur-767016.

.....Applicant

By legal practitioner: Mr.P.K.Padhi, Counsel.

-Versus-

1. Union of India represented through its Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda-751 001.
2. Superintendent of Post Offices, Bolangir Division, At/Po/Dist. Bolangir, 767001.
3. Sub Divisional Inspector (Post), Sonapur Sub Division, At/Po-Sonapur, Dist. Subarnapur-767017.

....Respondents

By legal practitioner: Mr.B.K.Mohapatra, ASC

ORDER

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

Fact of the matter is that the post of GDS MC
Tarbha SO became vacant w.e.f. 10.12.2008 after the
retirement of the regular incumbent Shri Mohan Nag.
The work of the post was managed through other GDS
till 28.11.2010. On consideration of the application
submitted by the applicant, vide order under

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Annexure-A/1 dated 21.9.2010 the SDI(P), Sonapur Sub Division, Sonapur appointed the applicant provisionally in the said post for a period of 89 days with effect from 30.11.2010 or till regular appointment is made to the post whichever period is shorter. Thereafter vide order under Annexure-A/2 the provisional appointment of the applicant was extended from 26.02.2011 to till regular appointment is made whichever period is shorter. It is the case of the applicant that though no regular selection has been undertaken/regular appointment is made to the post, he has been substituted vide order under Annexure-A/3 dated 12.4.2011 by Shri Dhaneswar Kumbhar at present working as GDSMP, Tarabha Bazar, NDTSO. Hence by filing the present OA he has sought to quash the said order under Annexure-A/3 and direct the Respondents to reinstate him to the post with all consequential service and financial benefits retrospectively.

2. His contention is that as per Rulings of the Hon'ble Apex Court one casual hand cannot be

substituted by another casual hand and that when the applicant was appointed to the post with the specific condition that he will be replaced only by regular appointee, termination of his appointment vide Annexure-A/3, without putting him to any notice is violative of the doctrine of promissory estoppel and provisions enshrined in Articles 14 and 16 of the Constitution of India and hence the order of termination is liable to be set aside.

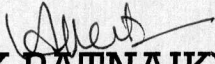
3. Respondents filed their counter in which it has been stated that the applicant was an outsider. He was appointed to the post without following regular selection procedure. He was appointed to the post initially for a fixed period and thereafter he was allowed to continue till regular selection is made to the post. As such the applicant cannot claim any right to continue in the post and there is no provision for giving notice or reason in the order of termination for such termination. Hence Respondents have opposed the prayer of the Applicant and have prayed for dismissal of this OA.

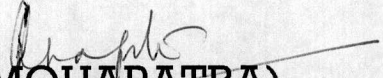
4. We have considered the rival submission of the parties and perused the materials placed on record. It has not been disputed that regular process has not been followed to fill up the said post nor it is the case of the Respondents that the termination of the adhoc appointment of the applicant was for adjustment of any surplus GDS employee. We find that the Applicant has not made the person who has been posted in his place as party to this OA. The order of termination does not show that Shri Dhaneswar Kumbhar has been posted in place of the applicant permanently. In view of the above and in view of the well settled law that one casual hand cannot be substituted by another casual hand we quash the temporary arrangement made by the Respondents in order under Annexure-A/3 in place of the applicant and direct the Respondents that in terms of the order under Annexure-A/2 they should allow the applicant to continue in his post till regular selection is made to the post in question.

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5. With the aforesaid observation and direction
this OA stands allowed. No cots.


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


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

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