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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 544 of 2011
Cuttack, this the 29th day of September, 2014

Trilochan Nath Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 544 OF 2011
Cuttack, this the 29th day of September, 2014

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

.....
Trilochan Nath,
Aged about 57 years,
Son of Late Sadhu Nath,
At/P.O.- Satyabhamapur, Via- Bahugrama, Dist.- Cuttack,
Presently working as GDSMD-cum-GDSBPM,
Satyabhamapur B.O.

.....Applicant

Advocate(s)... M/s. D.P.Dhalsamant, N.M.Rout

VERSUS

Union of India represented through

1. Director General of Posts,
 Govt. of India, Ministry of Communications,
 Department of Posts, Dak Bhawan,
 Sansad Marg, New Delhi-110001.
2. Chief Post Master General,
 Odissa Circle, Bhubaneswar,
 Dist- Khurda, Pin- 751001.
3. Superintendent of Post Offices,
 Cuttack South Division,
 Dist- Cuttack, 753001.
4. Inspector of Posts,
 Cuttack Central Sub-Division,
 Cuttack- 753002.
5. Postmaster,
 Athgarh H.O.,
 Dist- Cuttack- 754029.

..... Respondents

Advocate(s)..... Mr. P.R.J.Dash

.....

Akbar

ORDER**A.H.PATNAIK, MEMBER (JUDL.):**

The case of the applicant in nut shell is that he joined the post of EDDA (re designated as GDSMD) Satyabhamapur BO on 01.12.1981. One Shri Manoranjan Pradhan was continuing as the GDBPM of the said post office and was found suitable for promotion to the Gr.D post of the department. Therefore, the Respondent No.4 issued an order on 5th June, 2010 directing that Shri Pradhan will be relieved in the afternoon of 08.06.2010 by Sri Trilochan Nath, GDSMD, Satyabhamapur BO who will take Leave Without Allowance from his original post and provide a suitable substitute therein. Accordingly, on being relieved from his original post by providing substitute, the Applicant took over the charge of the GDSBPM of Satyabhamapur BO on 08.06.2010 from Shri Pradhan. Again vide Memo dated 24.11.2010 Respondent No.4 directed that the applicant will manage the duty of GDSBPM of Satyabhamapur BO in addition to his own duty of GDSMD without taking LWA by terminating the substitute arrangement and accordingly, applicant took over the charge of GDSMD on 30.11.2010 and managing the work of both the posts i.e. GDSBPM Cum GDSMD since then. Thereafter another Memo was issued on 03.01.2011 by the Superintendent of Post Offices, Cuttack South Division in which it was stated that the applicant was provisionally appointed to the post of GDSBPM of Satyabhamapur BO from 08.06.2010 to 30.11.2010 or till regular appointment is made whichever period is shorter and accordingly he was offered the provisional appointment to the ⁸aid post with the condition that such appointment will be terminated when regular appointment to the post is made. In view of the above an amount of Rs.9245/- (i.e. @ Rs.2000/- pm)



was ordered to be recovered from the TRCA of the applicant in the guise of excess payment. It has been stated that he made series of representations praying therein not to make any recovery but no action was taken by the Respondents thereon. Hence he has filed this OA in which he has prayed to quash the order dated 03.01.2011 and to direct the Respondents to protect the pay of the applicant (as GDSMD) for the period from 08.06.2010 to 30.11.2010 and the amount which has been deducted be refunded to him.

2. Respondents filed their counter in which it has been stated that admittedly as per the order of the Respondent No.4 the applicant worked against the post of GDSBPM from 08.06.2010 to 30.11.2010 and with effect from 01.12.2010 he has been managing the duties of both the posts. However, vide order dated 03.01.2011 the applicant was provisionally appointed to the post of GDSBPM. As per the order dated 05.06.2010 by providing substitute the applicant was relieved from his post and took over the charge of GDSBPM. Therefore, as per rules, payment was made to his substitute provided by the applicant in his original post of GDSMD. There was no mention in the said order that during the period he worked as GDSBPM he will be entitled to pay protection. The applicant having accepted the appointment without any demur is not entitled to the relief claimed in this OA. Accordingly, Respondents have prayed for dismissal of this OA.

3. We have heard Mr.D.P.Dhalsamanta, Learned Counsel for the Applicant and Mr. P.R.J.Dash, Learned Additional CGSC appearing for the Respondents and perused the records.

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4. Mr.Dhalsamanta's contention is that the applicant was not appointed to the post of GDSBPM on his own volition. He took the charge of the post of BPM as per the order of the competent authority. As such, his pay should have been protected during the period he worked as GDSBPM. Further stand of the applicant's counsel is that as the order of recovery having been made without giving him any opportunity the same is liable to be set aside.

On the other hand Mr.Dash submitted that since the applicant accepted the post of GDSBPM without any demur by providing substitute in his original post and the substitute has been paid the TRCA for the period in question, if the pay of the applicant is protected it will tantamount to double payment which is not permissible in Rules. Hence Mr.Dash has sincerely prayed for dismissal of this OA.

5. In this prayer one of the prayers of the applicant is to quash the order dated 03.01.2011 by which he was provisionally appointed to the post of GDSBPM of Satyabhamapur BO. Since the applicant himself prays to quash his order appointing him to the post of GDSBPM provisionally we see no reason not to grant the said prayer. Hence, the order dated 03.01.2011 is hereby quashed.

6. As regards allowing him protection of pay during the period he worked as GDSBPM we find that the applicant took over the charge of the said post as per the order of the competent authority and not on his own volition. Admittedly the TRCA of a GDSMD is higher than GDSBPM and, that the applicant was getting higher TRCA than attached to the post of GDSBPM. The applicant was directed to take over the charge of GDSBPM



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in the interest of the Department. Merely because TRCA was paid to the substitute does not mean the applicant was not entitled to the TRCA which he was getting before being relieved from his original post. Had the applicant proceeded on leave by providing substitute, in that case the applicant was not entitled to TRCA of the post. But certainly not in the present scenario. Further we find that before ordering recovery no opportunity was allowed to the applicant and even though the applicant submitted representations against such recovery the authorities sat over the said representations which are highly deprecated. Hence while declaring the recovery from the TRCA is bad in law we direct the Respondents to refund the amount already recovered from the TRCA within a period of thirty days from the date of receipt of copy of this order.

7. For the discussions made above, 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 (Judicial)