

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.804 of 2011**  
Cuttack this the 25<sup>th</sup> day of July, 2014

Sri Bijay Kumar Dehuri...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not ? *yes*

  
(R.C.MISRA)  
MEMBER(A)

  
(A.K.PATNAIK)  
MEMBER(J)

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CUTTACK BENCH, CUTTACK

**O.A.No.804 of 2011**

Cuttack this the **25<sup>th</sup>** day of July, 2014  
CORAM:

HON'BLE A.K.PATNAIK, MEMBER(J)  
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Bijay Kumar Dehuri  
Aged about 29 years  
S/o. Sri Gouranga Dehuri  
Resident of Vill-Belamala,  
PO-Dobal, Via-Dhamnagar  
Dist-Bhadrak, Orissa  
PIN - 756 117

...Applicant

By the Advocate(s)-Mr.P.K.Padhi  
J.Mishra

-VERSUS-

Union of India represented through

1. The Director General of Posts  
Dak Bhawan, Sansad Marg  
New Delhi-110 001
2. Chief Post Master General,  
Orissa Circle, At/PO-Bhubaneswar  
Dist-Khurda-751 001
3. Director of Postal Services (Hqs.)  
O/o.Chief Post Master General, Orissa  
At/PO-Bhubaneswar  
Dist-Khurda-751 001
4. Superintendent of Post Offices  
Bhadrak Division,  
At/PO/Dist-Bhadrak-756 100
5. Sri Balaram Jena, Retd.Superintendent Post Offices/  
Manager Postal Printing Press  
At-Talapada, Dist-Dolasahi  
Dist-Bhadrak

...Respondents

By the Advocate(s)-Ms.S.Mohapatra

ORDERR.C.MISRA, MEMBER(A)

Chronicles of the matter are that applicant was appointed to the post of GDSBPM, Chudakulti Palasa BO in account with Dhamnagar SO under Bhadrak HO vide Memo No.B/E-93 dated 10.6.2010. Later on, the selection and appointment of the applicant to the said post having found to be in contravention of the prescribed procedure, the competent authority issued show cause notice vide Memo dated 17.02.2011 requiring him to submit his representation against the proposed termination of his services. Without preferring any representation to the above show cause notice, applicant moved this Tribunal in O.A.No.150 of 2011. This Tribunal disposed of the said O.A. vide order dated 21.03.2011 with direction to Respondents not to take any decision before disposing of the representation preferred by the applicant. In the above background, Respondent No.3, i.e., Director of Postal Services(HQ) vide order dated 10.5.2011(Annexure-A/8) disposed of the representation of the applicant as aforesaid in the following terms.

"I have gone through the connected records and representation of the applicant carefully and it is seen that the selection of the said Shri B.K.Dehuri was made in contravention of the rules as there were more meritorious candidates than him among the applicants who applied for the post of GDSBPM, Chudakuti Palasa BO. The performance of the selected candidate does not matter, if during the course of review of the selection process at a later stage, the initial selection is found improper. As per Rule 4(3) of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules-2001, the undersigned being superior to the appointing authority has reviewed the selection



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process for appointment to the post of GDSBPM, Chudakuti Palasa BO. On review of the selection, it was found that the selection of the said Shri B.K.Dehuri, the applicant was made irregularly. Besides, the undersigned being superior to the appointing authority of the applicant, is having the statutory power to review the selection under rule *ibid*. Having gone through all the facts and circumstances of the case it is concluded that the representation of the applicant has no merit and stands rejected".

2. Challenging the aforesaid decision, applicant again moved this Tribunal in O.A.No.373/2011. In disposing of the said O.A. vide order dated 09.06.2011, this Tribunal directed the applicant to make a fresh representation to the competent authority against the order dated 10.5.2011 and the latter would consider and dispose of the same by passing an appropriate speaking order thereon. In compliance with the above direction, Respondent No.2, viz., CPMG, Orissa Circle, Bhubaneswar, vide order dated 22.07.2011 disposed of the representation as under.

"I have gone through the connected papers of the case and find that the termination was in order. The procedures followed by the Appointing Authority were incorrect and the claim of more meritorious candidate was deliberately overlooked on flimsy grounds. By this a great injustice was done to the candidate who had deserved the posting in the first place. The department of posts is known for its fairness and its transparency. This recruitment has tarnished the image of the department. In the interest of natural justice, I Hilda Abraham, Chief Postmaster General, Orissa Circle, Bhubaneswar uphold the termination order issued by the Superintendent of Post Offices, Bhadrak Division as well as orders dated 10.05.2011 issued by the Director. This will take immediate effect".



3. The outcome of representation in response to the direction of this Tribunal in O.A.No.373/2011 being not palatable, applicant, has moved this Tribunal in the third round of litigation in the present O.A. seeking the following relief.

“...to quash Annexure-A/8 and A/9 and direct the Respondents to allow the applicant to continue as GDSBPM of Chudakuti Palasa B.O. with all consequential benefits including continuity in service with back wages with interest and cost”.

4. In support of his claim, applicant has urged the following grounds.

- i) Once he has been selected and appointed, he acquires a vested right which cannot be interfered with on the basis of alleged irregularities committed on the part of the Department and therefore, applicant has a right to continue in that post.
- ii) The candidate who stood 1<sup>st</sup> in the process of selection having failed to provide rent free accommodation and at the same time, he having been posted to a place nearby to his native, applicant being an ST category candidate and having fulfilled the eligibility criteria had rightly been selected as the most meritorious candidate.
- iii) If certain irregularity was detected to have been committed by the appointing authority in the matter of appointment, then the higher authority should have asked the appointing authority to explain his conduct instead of issuing show cause notice of termination to the applicant.

5. Accentuating all the above grounds, applicant have questioned the legality of the impugned orders at Annexures-A/8 and A/9 and in the circumstances, he has sought the relief as mentioned above.



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6. Respondent-Department have filed their counter reply stoutly opposing the prayer of the applicant. The main thrust of the counter reply is that Director, Postal Services (Res.No.3) found the selection and appointment of the applicant to have been made in contravention of prescribed procedures in force and with material irregularity. Hence, in exercise of powers conferred under the provision of Rule-4(3) of Gramin Dak Sevaks(Conduct & Employment) Rules, 2001 {hereinafter called as Gramin Dak Sevaks(Conduct & Engagement) Rules, 2011} the Director of Postal Services, considered that the appointment of the applicant was required to be cancelled and as such, follow up action in this regard was resorted to. This is the basis on which the Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

7. Having heard the learned counsel for both the sides, we have also perused the materials. During the course of hearing, apart from the grounds urged by the applicant as mentioned above, learned counsel for the applicant raised a pertinent question regarding the propriety of cancelling the selection and/or appointment of the applicant at the behest of the authority superior to the appointing authority. In support of his contention, he has relied on the decision of this Bench in O.A.No.908 of 2011 – disposed of on 27.1.2014.

8. Before considering the matter in its proper perspective, it would be prudent to bring to the fore the notice dated 17.2.2010 whereby and whereunder, applicant had been asked to show cause against the



proposed cancellation of his appointment to the post of GDSBPM, Chudakuti Palasa B.O., which reads as under.

"WHEREAS Shri Bijaya Kumar Dehuri, S/o.Shri Gouranga Dehuri, At-Belamat, PO-Dobal, Via-Dhamanagar, District-Bhadrak was appointed to the post of GDSBPM, Chudakuti Palasa BO in account with Dhamnagar SO under Bhadrak HO vide Supdt. Of Post Offices, Bhadrak Division, Bhadrak Memo No.B/E-93, dated 10.06.2010.

AND WHEREAS the selection and appointment of Shri Bijay Kumar Dehuri were found made in contravention of the prescribed procedures in force and with material irregularity.

AND WHEREAS the undersigned in exercise of the power conferred under the provisions of Rule-4(3) of GDB (Conduct & Improvement) Rules, 2001 considers that the appointment of the said Shri Dehuri to the post of GDSBPM, Chudakuti Palasa BO is required to be cancelled as it has been in contravention of the rules;

NOW, THEREFORE the undersigned hereby gives the said Shri Bijaya Kumar Dehuri an opportunity to make such representation as he may wish to make against the proposal which will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than thirty (30) days from the date of receipt of this memorandum by Shri Bijay Kumar Dehuri.

The receipt of the memorandum should be acknowledged".

9. Perusal of the above show cause reveals that the entire action has been initiated at the instance of the authority superior to appointing authority with the arms of Rule-4(3) of GDB(Conduct & Employment) Rules, 2001(in short Rules, 2001). For the sake of clarity, Rule-4(3) of Rules, 2001 is quoted hereunder.



(J)

**"4. Appointing Authority**

- (1) XXX XXX XXX
- (2) XXX XXXX XXXX
- (3) Notwithstanding anything contained in these rules, any authority superior to the Appointing Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears –
  - (a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or
  - (b) to have failed to exercise a jurisdiction so vested; or
  - © to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit.

10. It appears that show cause notice has been issued to the applicant under Rule-4(3)© of the Rules, 2001. A careful reading of Rule-4(3)© makes it conspicuous that the authority superior to appointing authority ought to have given an opportunity to the Appointing Authority of being heard having he appeared to have exercised his jurisdiction illegally or with material irregularity and made such order as it thought fit. Instead of acting in consonance with the Rules-2001, Respondent No.3 should not have straight away issued show cause notice of termination of appointment to the applicant.

11. Secondly, the applicant has relied upon the decision of this Tribunal in O.A.No.908 of 2011 disposed of on 27.1.2014 in which

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 similar matter was decided, in order to fortify his claim. A perusal of that order reveals that the issue involved for adjudication therein was whether a superior authority has the power to review the selection and order cancelling the appointment of an incumbent who joined the post after a due process of selection. A reference was made to the order of this Tribunal in O.A.No.154 of 1999(Ashok Kumar Behera vs. UOI & Ors.) which was disposed of on 7<sup>th</sup> November, 2000, in which this Tribunal interfered with the impugned order and directed reinstatement of the applicant, as the same was issued on the basis of the review of the selection by higher authority. The Respondents preferred O.J.C.No.3768 of 2001 before the Hon'ble High Court, which was disposed of on 18.1.2010. The Hon'ble High Court dismissed the Writ Application being devoid of merit. This order was based upon the verdict of the Hon'ble Apex Court in the case of Union of India & Ors. vs. Bikash Kuanar in C.A. No.4388 of 2006, disposed of on 5.8.2008, in which it was held that in terms of the Rules, 1964, the superior authority had no statutory power to direct cancellation of the selection. Law in this regard has been settled by the decision of the Hon'ble High Court of Orissa in which the decision of the Hon'ble Apex Court has also been relied upon.

12. Mention may be made of the fact that the Respondents have recounted the detailed facts of this case in their counter affidavit. They have specifically brought out that the selection process was vitiated by ignoring the more meritorious candidates, and there was considerable



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material irregularity warranting intervention by the Director of Postal Services for terminating the services of the applicant. But whatever be the circumstances, law as laid down by the Hon'ble High Court of Orissa as elucidated in the previous paragraph gains paramountcy, and there is strong judicial precedent to strike down the order of the Respondents with regard to the case of the applicant.

13. To have a reiteration of the Rule-4(3) of the Rules, 2001, as already quoted, it needs to be emphasized that a superior authority needs to give an opportunity to the appointing authority of being heard, in case of *prima facie* evidence of jurisdictional error, or material irregularity in the appointment of Gramin Dak Sevak, and then make such order as it thinks fit. In this regard, it appears that in the order dated 22.7.2011 passed by Respondent No.2, the proper procedure as laid down in the Rule has not been taken recourse to. No doubt the order at Annexure-A/9 is a detailed, speaking order, and on that count the order cannot be faulted. But the procedure statutorily laid down has not been honoured. A superior authority has no doubt jurisdiction; but the way that jurisdiction would be exercised has been laid down in the Rules, and that is the only appropriate way of exercising such jurisdiction. Therefore, the impugned order cannot be sustained on that account.

14. Having analyzed the facts and circumstances of the case, as well as the Rules applicable, and also the earlier judicial pronouncements in the matter, we find that the point in issue involved in this O.A. is no longer

*Ques*

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res integra, and therefore, we cannot but take the view already taken by this Tribunal (supra) under similar facts and circumstances.

15. For the reasons as elucidated above, we conclude that the ends of justice would be met if Memo dated 17.2.2010(Annexure-A/6) order dated 10.5.2011(Annexure-A/8) and order dated 22.7.2011(Annexure-A/9) are quashed and set aside.

Ordered accordingly.

16. As a consequence, Respondents are directed to reinstate the applicant to the position as held by him prior to the notice of termination dated 17.2.2010. With regard to payment of back wages, we are not inclined to pass any direction. However, if applicant makes such a prayer subsequent to his reinstatement, the prayer shall be considered as per the extant rules and decided within a period of thirty days of making such a prayer.

In the result, the O.A. is allowed to the extent as stated above, with a direction that parties will bear their respective costs.

  
(R.C.MISRA)  
MEMBER(A)

  
(A.K.PATNAIK)  
MEMBER(J)

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