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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 908 of 2011
Cuttack, this the 27th day of January, 2014

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

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Amit Kumar Khamari, aged about 22 years, Son of Aswini Khamari a permanent resident of Village/Post-Baiganbadiam, Via-Kuchei, District-Mayurbhanj under order of termination from the post of GDSMD/MC of Haldia Baripada BO in account with Kuchei SO.

.....Applicant
(Advocate(s)-M/s. S.Rath, B.K.Nayak-3, D.K.Mohanty)

-VERSUS-

Union of India represented through –

1. Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhik-110 001.
2. The Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist. Khurda, PIN-751 002.
3. The Director of Postal Services, Office of the Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist. Khurda.
4. The Superintendent of Post Offices, Mayurbhanj Division, Mayurbhanj.
5. Assistant Superintendent of Post Offices, I/C Central Sub-Division, Baripada, Pin-757001.

.....Respondents
(Advocate (s)-Mr. S. Barik)



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ORDER

(Oral)

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 quash the notice of termination dated 08.06.2011 issued by Respondent No.4.

2. The factual matrix of this case is that the applicant belongs to SC community. In pursuance of the notification dated 06.05.2009, applicant applied for the post of GDSMD/MC, Haldia Baripada BO, in account with Kuchei SO. The Respondents-Department vide letter dated 18.06.2009 informed the applicant to join the post of GDSMD/MC, Haldia Baripada BO, in account with Kuchei SO under Baripada HO on 27.06.2009 after completion of training at Kuchei SO positively. Accordingly, the applicant joined the said post on 20.06.2009. While the applicant has been discharging his duties since 20.06.2009, vide letter dated 18.03.2011, Respondent No.5 served with an order of termination on the applicant without assigning any reason. Hence the applicant filed O.A. No.159/2011 before this

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Tribunal. By way of an ad-interim measure this Tribunal vide order dated 24.03.2011 directed Respondent Nos.5 & 6 to allow the applicant to continue in the post of GDSMD/MC, Haldia Baripada BO, in account with Kuchei SO. In response thereto, Respondent No.5 vide Memo dated 08.04.2011 cancelled the order of termination dated 18.03.2011 and allowed the applicant to continue in the said post. While the matter stood thus, Respondent No.4 vide Memo dated 08.06.2011 again issued a Notice for termination to the applicant. After receipt of the said Notice, the applicant submitted his reply to Respondent No.4 on 24.06.2011. On 28.10.2011, on the basis of the submission of the Respondents' Counsel the order of termination has been cancelled, this Tribunal, vide it's order dated 28.10.2011 disposed of the O.A. with the following observation:

“...Sri S. Barik, Ld. Addl. CGSC appearing for the Respondents ~~points~~ ^{points} out that the impugned order under Annexure-A/5 dated 18.03.2011 has already been cancelled by issuing Memo dated 08.04.2011 (Annexure-R/1) and the applicant has been reinstated and charge has been taken over by him.

In view of the above, there remains nothing further to be adjudicated in this case. Accordingly, the O.A. being infructuous stands disposed of”

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Thereafter the applicant has filed the present O.A. challenging the notice of termination dated 08.06.2011. The stand of the Applicant is that the said impugned order dated 08.06.2011 is not sustainable in the touch stone of judicial scrutiny as the same has been issued without putting him prior notice, in compliance of natural justice or by following due procedure of Rules/Law. The 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 admitted that on receipt of allegation regarding irregularity in the matter of selection to the post in question, the selection was reviewed by the higher authority and on review it was noticed that the Assistant Superintendent of Post Offices, I/C Central Sub-Division, Baripada (Respondent No.5) selected the applicant to the post irregularly and three candidates of unreserved community were deprived of getting their legitimate claim for a job. As per recruitment rules the reservation ceiling of 50% of vacancy should not be violated in any particular year or on the basis of total no of posts. But the Respondent No.5 violated this Rule and declared all the five GDS posts approved for recruitment as reserved i.e., SC-2

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and OBC-3. Thereafter, the competent authority issued the order of termination of service of the applicant. Thus, notice of termination was issued to the applicant on 08.06.2011.

4. Fact remains that the applicant was recruited through a regular process of selection and he joined the post on 18.06.2009 and while continuing as such, on the basis of the review of the selection made by the higher authorities notice of termination was issued to the applicant.

5. Mr.D.K. Mohanty, Learned Counsel for the Applicant and Mr. S. Barik, Learned Additional CGSC appearing for the Respondents have reiterated the stand taken in their respective pleadings and to avoid repetition we refrain from recording the same once again especially because the issue involved in this OA centers around as to whether superior authority has the power to review the selection and order cancellation of appointment of an incumbent who has joined the post after dueprocess of selection. 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) which was disposed of on 7th November, 2000, in which this Tribunal interfered with the impugned order directing reinstatement of the applicant, as the same was issued on the basis of the review of the selection by the

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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.”

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The issues involved in this OA again came up for consideration before this Tribunal in OA No. 520 of 2010 filed by Shri Harihar Mohanty-Vrs-Union of India nad others and by placing reliance on the aforesaid order of the Hon'ble High Court of Orissa, this Tribunal vide order dated 24th April, 2013 quashed the order of termination. Also by applying the law laid down by the Hon'ble High Court of Orissa this Tirkunal vide order dated 19th June, 2013 quashed the order of termination of the applicant in OA No.833 of 2012 field by Shri Deepak Kumar Mishra Vrs Union of India and others. We do not find any ground or reason to deviate from the view already taken in earlier OAs. It is also not the case of the Respondents that the aforesaid orders of this Tribunal have in the meantime been reversed/reviewed. Hence by applying the doctrine of precedence and the law laid down by the Hon'ble High Court of Orissa, the order of termination of the present applicant dated 08.06.2011 is hereby quashed. Consequently, it is held that the applicant is entitled to all consequential service and financial benefits from the date of his termination which the Respondents are hereby directed to grant the same to the applicant within a period of ninety days from the date of receipt of copy of this order.

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8. 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.)