

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

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Original Application No.499 of 2009  
Cuttack, this the 27<sup>th</sup> day of October, 2011

Durga Prasad Mishra .... Applicant  
Versus  
Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be circulated to all the Benches of the CAT or ✓  
not?

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.499 OF 2009  
Cuttack this 27th day of October, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Durga Prasad Mishra, aged about 40 years, S/o. Gadadhar Mishra, At-Abakash Lane,  
Town/PO/Dist-Puri

...Applicant

By the Advocates:M/s.A.K.Bose, P.K.Das & D.K.Mallick

-VERSUS-

1. Union of India represented by the Chief Post Master General, Orissa Circle, Bhubaneswar
2. Sr.Superintendent of Post Offices, Puri Division, At/PO/Dist-Puri

...Respondents

By the Advocates:Mr.U.B.Mohapatra, SSC

ORDER

**HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:**

The case in nutshell is that the Applicant, Shri Durga Prasad Mishra, was selected through a regular process of selection to the post of EDBPM of Gopinath Branch Post Office and appointed to the said post w.e.f. 01-08.1998.

2. His selection and appointment was challenged by another unsuccessful candidate namely Shri Promod Kumar Jena before this Tribunal in OA No.42/98. This Bench of the Tribunal vide order dated 08-05-2000 quashed the selection and appointment of the present applicant, Shri Durga Prasad Mishra.
3. The said order of this Tribunal dated 08-05-2000 in OA No.42/98 was challenged by the present Applicant before the Hon'ble

*V. A. S.*

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High Court of Orissa in OJC No. 5126/2000. Be that as it may, by the interim order of the Hon'ble High Court of Orissa in the aforesaid OJC No. 5126/2000, the applicant has been continuing in his post of EDBPM of Gopinathpur BO. The OJC No. 5126/2000 is still subjudice before the Hon'ble High Court of Orissa.

4. Meanwhile Respondent-Department conducted departmental examination for promotion of EDBPMs to the post of Postman. The applicant appeared and came out successful in the examination conducted for the above purpose. He was appointed to the post of Postman on the specific undertaking that his appointment to the cadre of postman is subject to the outcome of OJC No. 5126/2000 arising out of OA No. 42/98 and his appointment in postman cadre can be terminated at any time without assigning any reason with without notice. However, the said appointment of the applicant to the post of Postman was again challenged by one Umeh Chandra Mansingh in OA No. 931 of 2005 before this Tribunal. But the said OA No. 931 of 2005 was dismissed by this Tribunal on 11<sup>th</sup> November, 2008.

5. Respondents issued notification for holding departmental examination in PA cadre for LGOs from among the employees working both as Postman and Group D having rendered three years regular service. Applicant submitted his application to appear at the test scheduled to be held on 06-11-2009. But the applicant was not recommended as he was not declared permanent because of his *all*

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appointment in postman cadre was conditional and he was not declared permanent by his appointing authority, for the reasons stated above.

6. Hence this OA with prayer to declare the applicant eligible to appear at the test for the post of Postal Assistant and to consider his promotion to the post of Postal Assistant. As an ad interim measure, Applicant has sought direction to allow him to appear at the ensuing examination for the PA cadre scheduled to be held on 6.11.2009.

7. By the ad interim order dated 27-10-2009 of this Tribunal, the Respondents permitted the applicant to appear at the test held on 6.11.2009 vide order under Annexure-R/9 and the applicant had appeared at the test along with others.

8. The Learned Counsel appearing for the Applicant has contended that the applicant was selected and appointed to the post of BPM by way of regular selection. Thereasfter, he having been found successful was promoted to the post of Postman subject to the outcome of the OJC No. 5126 of 2000 pending before the Hon'ble High Court of Orissa. As such, debarring the applicant to appear at the test with the condition as was given while allowing to appear at the examination for the post of Postman is not sustainable. Hence, he has prayed for the relief sought in this OA.

9. On the other hand Respondents' counsel reiterated the stand taken in their counter that as per Departmental rules the LGO

official (Both Postman and Group D) having declared permanent and completed 3 years of regular service can be permitted to appear at the examination, As the selection to the post of BPM was declared illegal and quashed by this Tribunal and the applicant has been continuing by the interim order of the Hon'ble High Court of Orissa he was not declared permanent till date. He was allowed to appear at the examination and promoted to the post of Postman conditionally and as such, the applicant is not eligible to sit in the examination for the post of PA/SA. On the above grounds, Respondents' Counsel has prayed for dismissal of this OA.

10. We have given our thoughtful consideration to the rival submissions of the parties and perused the materials placed on record including various instructions/circulars relied on by the respective parties. The objection of the Respondents is that as the applicant has been continuing in the post of BPM on the strength of the interim order of the Hon'ble High Court of Orissa he has not been declared permanent and as such he is not eligible to appear at the examination scheduled to be held for the post fo PA/SA. But we find that despite such provision, the applicant was permitted to appear at the examination for the post of Postman and on being found suitable he was promoted with the rider that his promotion to the post of Postman is subject to the out come of the OJC No. 5126/2000 pending before the Hon'ble High Court of Orissa. In view of the above, we find no justifiable reason to uphold the decision of the Respondents that

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the applicant is not eligible to appear at the test as he has been continuing on the strength of the interim order of the Hon'ble High Court of Orissa and since the writ petition is under subjudice he has not been made permanent. In our opinion the applicant could have been permitted to appear at the examination with the same terms and conditions based on which he was allowed to appear at the Postman examination. Hence we direct that since by the order of this Tribunal the applicant has already been permitted to appear at the test and he has appeared the test, his result shall be published by the Respondents and in the event he is found successful he should be promoted to the post of <sup>Postal Assistant SA</sup> Postman subject to fulfilling other conditions, as in the case of other successful candidates, by obtaining the undertaking from the applicant that his promotion to the post of PA/SA is subject to the outcome of OJC No. 5126/2000 pending before the Hon'ble High Court of Orissa. The entire exercise shall be completed within a period of ninety days from the date of receipt of copy of this order.

11. In the result, this OA stands allowed. There shall be no order as to costs.

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

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

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