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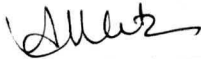
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK


O.A Nos. 563 of 2009  
Cuttack, this the ~~22nd~~ day of December, 2010

Narendra Kumar Guru ..... Applicant  
-Versus-  
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.)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A No. 563 of 2009

Cuttack, this the 22nd day of December, 2010

CORAM:

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

A N D

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

.....

Narendra Kumar Guru, aged about 32 years, Son of Krishna Chandra Guru resident of At/Po.Lathipada, Via-Mandhatapur, PS/Dist. Nayagarh.

.....Applicant

By Legal practitioner: M/s.B.S.Tripathy, M.K.Rath, J.Pati,  
Mrs.M.Bhagat, Counsel.

-Versus-

1. Union of India represented through the Chief Postmaster General Orissa Circle, At/Po. Bhubaneswar, Dist. Khurda.
2. Director of Postal Services (Head Quarter), At/Po.Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Puri Division, Puri, At/Po/Dist. Puri.
4. Sub Divisional Inspector (Postal), Nayagarh (East) Sub Division, At/Po/Dist. Nayagarh.
5. Ajaya Kumar Sahoo, aged about 33 years, Son of Madhab Sahoo, resident of At/Po. Lathipada Via. Mandhatapur, Dist. Nayagarh.

....Respondents

By the Advocate(s)...

Mr. S.Mishra, ASC  
Mr.S.Behera, .  
[for Respondent No.5]

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ORDER

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

In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, the Applicant seeks to quash the order of termination under Annexure-A/5 dated 09.11.2009 and consequently seeks direction to the Respondents to allow him to continue in the post of EDBPM (now GDSBPM) in Lathipara BO in account with Mandhatapur SO under Nayagarh HO. Alternatively he seeks direction to the Respondents to consider his case for appointment against any of the existing GDS vacancies as his termination was not because of any mistake on his part.

2. According to him, though he secured highest percentage of marks in the Matriculation than Respondent No.5 he was not selected as EDBPM/GDSBPM of Lathipara Branch Post Office. Instead of appointing him, Respondent- Department appointed Respondent No.5 (who secured less percentage of marks than the Applicant in the Matriculation Examination) as EDBPM/GDSBPM of Lathipara Branch Post Office. Applicant challenged the said action of the Respondent-Department in Original Application No. 334 of 1998. Respondent-Department

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filed their counter in OA No.334 of 1998 pointing out the lapses in the process of selection. In the said premises, the matter was remitted back to the Authorities/Official Respondents by order dated 24.11.1999. Thereafter, Respondent-Department after giving notice to the present Respondent No. 5 terminated his employment. On receipt of said notice, Respondent No.5 submitted his reply dated 01.06.2000. Thereafter, Respondent No.5's services were terminated. Resultantly, as the Applicant was the best candidate in the fray for selection, he was given appointment as EDBPM/GDSBPM of Lathipara Branch Post Office on 11.10.2000. But instead of giving him regular appointment, Respondents restricted his appointment for six months and extended it from time to time. In course of time, Respondent No.5 challenged his termination before this Tribunal in OA No. 433 of 2000 without making the applicant as a party to the said OA No. 433 of 2000. The said OA No. 433 of 2000 was allowed on 13.2.2002 on the ground that the Director of Postal Services who passed the termination order was incompetent to issue the order of termination. Respondent-Department challenged the order dated 13.2.2002 of this Tribunal rendered in OA No. 433

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of 2000 before the Hon'ble High Court of Orissa in WP (C) No.6477 of 2002 . In the said Writ Petition the present applicant was also not made as a party. The said Writ Petition was dismissed on 22.04.2009 by the Hon'ble High Court of Orissa.

3. After disposal of the WP (C) No.6477 of 2002, the Respondent-Department without giving opportunity to the applicant terminated his service vide order dated 09.11.2009. The said order dated 09.11.2009 has been challenged by the Applicant in the present OA. Though this Tribunal while issuing notice to the Respondents in order dated 02.12.2009 directed an interim stay of the operation of the order of termination of the Applicant, the said order became infructuous as Respondent No.5 had been appointed on 21.11.2009 as EDBPM/GDSBPM of Lathipara BO.

4. Respondents through their counter filed in this case opposed the prayer of the Applicant. Heard Learned Counsel for both sides and perused the materials placed on record.

5. Compliance of the basic principle of natural justice before passing of an order adversely affecting the right of a party is fundamental to service jurisprudence. The sum and substance of the order of the Hon'ble High Court of Orissa in OJC No. 6477

of 2002 was that even for quashing irregular appointment, a notice was required before termination of the services of an irregular appointee. From the record we find no material or reason as to why the applicant was appointed on six months basis although he was the best candidate in the process of selection. Be that as it may, without going into detailed discussions in the matter, as submitted by the Learned Counsel for the Applicant as well as the admitted fact that termination of the applicant was unconnected with his official work/for any irregularity or misconduct committed by him and the termination was after completion of more than three years of continuous service the case of the applicant deserves consideration for appointment in any other vacancy. It is the positive case of the Applicant which has not been disputed by the Respondents' Counsel that there exists regular vacancies in the post of **GDSBPM in Baula Sahi BO under Godipada SO; GDSBPM in Biruda BO under Itamati SO and GDSMD of Mandhatapur SO under Nayagarh HO.**

6. In a similar case, offer of alternative appointment to one Shri Fakir Charan Das Ex-GDSBPM of Kurujanga BPO in account with Chandol SO who was appointed to the post

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through regular process of selection but was thrown out of job in the circumstances as in the present case was directed by the Hon'ble Hon'ble High Court of Orissa in **WP (C) No. 12313 of 2007 disposed of on 30.09.2008**. This was also the direction issued by the Division Bench of this Tribunal in **OA No. 216 of 2007 disposed of on 11<sup>th</sup> September, 2008**. We find no reason or material to deviate from the view already taken in the aforesaid case. In the light of the discussions made above, by applying the decisions already rendered in the aforesaid cases, the Respondents are hereby directed to provide alternative appointment to the Applicant in one of the vacancies stated above or any other vacancy if existing in near by Post Offices. 7. L

7. The above direction shall be complied with within a period of 60(sixty) days from the date of receipt of copy of this order. This OA is accordingly disposed of. No costs.

  
(A.K.PATNAIK)  
MEMBER(J)

  
(C.R.MOHAPATRA)  
MEMBER (A)