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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 600 of 2009

Cuttack, this the 27th day of October, 2011

Bibhuti Bhusan Patnaik Applicant

-v-

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?

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


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.600 OF 2009

Cuttack this the 27th day of October, 2011

CORAM:

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

Sri Bibhuti Bhusan Patnaik aged about 50 years, S/o.- late Govinda Ranjit Patnaik, serving as Assistant Post Master (Mails), officiating in higher posts, i.e., DPM & PM, Chatrapur, Head Post Office, Chatrapur, Dist-Gnjam

... Applicant

By the Advocates:M/s.G.K.Bhera & D.R.Mishra

-VERSUS-

1. Union of India represented through the Director General of Post, Dak Bhawan, Sansad Marg, New Delhi-110 001
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda
3. Post Master General, Berhampur Region, Berhampur, Dist-Ganjam
4. Sr.Superintendent of Post Offices, Berhampur Division, Berhampur (Gm)-760 001

... Respondents

By the Advocates:Mr.D.K.Bhera, ASC

ORDER

A.K.PATNAIK, JUDICIAL MEMBER: In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following relief.

- i) Hold/declare that the inaction of the respondents in paying the higher scale of pay to the applicant for the period officiating in higher posts is bad & illegal.
- ii) Direct the respondents to pay the applicant higher scale of pay to the applicant for the period of officiating in higher posts within a short period.
- iii) And pass any such other order(s) as may be deemed fit and proper in the bonafide interest of justice.

2. It is the case of the applicant that while working as Assistant Post Master(Mails), Chatrapur HO, the post of Deputy Post Master fell vacant and he being the senior most was allowed to officiate in that post vide letter dated 4.5.2005(Annexure-A/2). While the matter stood thus, on account of retirement of

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one N.Sahu, on 20.6.2007, the post of Post Master remained vacant against which the applicant was allowed to officiate with effect from 31.7.2007. Thereafter one N.Moharana was transferred and posted against the vacant post of Post Master, Chatrapur HO. According to applicant, after his transfer, the applicant officiated against that post from 13.9.2008 to 20.8.2009. While this was the ongoing situation, one S.S.Satpathy having joined as Deputy Post Master, Chatrapur HO was allowed to officiate as Post Master. In the meantime Shri Satpathy, according to applicant, has been given ad hoc promotion to HSG-I cadre and adjusted at Chatrapur HO and in effect the applicant has been discharging the duties as Deputy Post Master. According to applicant, he is entitled to higher scale of pay for officiating in higher Posts. The representations made by him in this regard having not been responded, the applicant has moved this Tribunal in the present O.A. seeking the relief as aforementioned.

3. Respondent-Department have filed their counter opposing the prayer of the applicant. While the Respondents have not disputed the factual aspect of the matter of applicant having officiated as Deputy Post Master and Post Master, as the case may be, they have stated that by virtue of seniority at Chatrapur Head Post Office, the applicant had managed the duties of Deputy Postmaster of Chatrapur HO and no orders were issued posting him either as Deputy Postmaster or Postmaster. They have submitted that the applicant had worked in the higher post just to manage the office work. According to Respondents, the applicant was not approved to HSG-II and HSG-I cadre by DPC, for which he is not entitled to get higher pay. With these submissions, the Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

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 4. We have heard Shri G.K.Behera, learned counsel for the applicant and Shri D.K.Behera, learned A.S.C. appearing on behalf of the Respondents and perused the materials on record.

5. Admittedly, the applicant has not been issued with any order with a view to officiating against the post of Deputy Post Master or Post Master, as the case may be, for the period in question. The reliance placed by the applicant on Annexure-2 dated 4.5.2005 is clarificatory in nature, issued by the Superintendent of Post Offices, Berhampur Division to act in a manner as instructed therein. Be that as it may, the Respondents have not disputed the applicant's discharge of duties against the higher post to manage the office work. Neither the applicant nor the Respondents have brought to the notice of the Tribunal of any rules or instructions on the pros and cons of the matter for taking care of such a contingency. Viewed from this angle, we would say that rights of a claimant always accrues and is based and founded on the provisions of certain laws, rules, orders or instructions. In the instant case the peculiarity is that the applicant, while making representation to the Respondent-Department appears not to have made his claim based on any law, rule, order or instructions issued by the Respondent-Department in that behalf. Onus lies on the applicant to establish or substantiate his claim being supported by laws or rules. In this view of the matter, we are of the considered ^{view} that the ends of justice would be met if the applicant makes a fresh and consolidated claim supported by laws, rules or instructions issued by the Government of India of the Department concerned from time to time in that behalf, to the competent authorities and in the event such a representation is received, the authorities in the Respondent-Department shall consider and

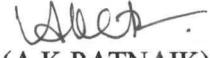
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dispose of the same within a period of sixty days from the date of receipt of such representation. Ordered accordingly.

With the above observation and direction, this O.A. is disposed of.

No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER
BKS


(A.K. PATNAIK)
JUDICIAL MEMBER