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O.A. No. 34 of 2010

Order dated: 01.02.2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)

Hon'ble Mr. C.R.Mohapatra, Member (A)

The applicant has filed this O.A. with the

following prayers:

“(i) Hold/declare the Order dtd 16.10.2009 passed by the Postmaster General, Berhampur (Annexure-5), rejecting the case of the applicant for promotion against any HSG-II vacancy in Berhampur Division is bad & illegal;

(ii) Direct the respondents to give promotion to the applicant to H.S.G.-II cadre and posting him as DPM, Chatrapur HO, (which is lying vacant after promotion of Sri Satapathy, DPM, Chatrapur HO as Postmaster Chatrapur HO and as which the applicant has been officiating) or posting him as APM (Mails), Berhampur HO or as SPM, Berhampur City SO or as SPM, Medical College SO (which are lying vacant) within a short period;”

2. Prior to the present O.A., the applicant had filed O.A. No. 446 of 2009 against the order dated 02.09.2009 transferring him on promotion. After hearing Ld. Counsel for the parties, we observed in paragraph-4 of the order as under:

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“At present, we are not impressed by the grounds urged by the applicant that he is affected or the employment of the wife of the applicant in the State Government. The reason is that the son, who is studying in Class V, being 10 years old can be taken care of by the wife of the applicant in the State Government is not a valid ground to interfere in the present order of transfer. However, we see some force in the ground urged by the applicant that there are vacancies in the post of HSG-II existing at Berhampur. If such vacancies are there to accommodate the applicant, it is only proper for the Respondents to consider the case of the applicant for which the applicant has already filed representation dated 02.09.2009 itself, a copy of which is produced here and marked as Annexure-A/6.”

Finally, we disposed of the O.A. holding as under:

“However, we also feel that the present post is a promotional post but this order passed by the Tribunal will not affect his promotion or posting at any place after consideration of his representation.”

3. After disposal of the said O.A., in pursuance of the representation filed by the applicant, the present impugned order has been passed by the Respondents, a copy of which has been placed herewith and marked as Annexure-A/5. Aggrieved by Annexure-A/5, the present O.A. has been filed stating that the promotion given to two other



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persons in the same office and posted in Berhampur is irregular and illegal and is in violation of the order passed by this Tribunal.

4. We have heard Mr. G.K.Behera, Ld. Counsel for the applicant and Mr. B.K.Mohapatra, Ld. A.S.C. for the Respondents appearing on notice.

5. The question to be decided is whether the applicant is entitled to the relief claimed in the present O.A. or not. Admittedly, when the applicant was promoted as per Annexure-A/3 order and transferred to Jeypore, he had approached this Tribunal taking the stand that at the point of time, if the transfer is effected, it will cause injury to his family life as his wife is working in State Govt. and his son is studying in Vth standard. However, we have not stated anything about the grounds taken in the earlier O.A. We only said that the applicant may not be transferred till his representation is considered. We had also stated that the present post is a promotional post and order passed by this Tribunal will not affect the promotion of the applicant and posting him at any place or in the same office, if vacancies are there, after considering his representation. Finally, order has been passed by the Respondents vide Annexure-A/5. A



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reading of Annexure-A/5 would show that the applicant had already filed an application on 14.09.2009 for declining his promotion and, after taking into consideration that application, the Respondents found that he has declined promotion and, hence, he was retained in the same office. However, we see that after the said letter dated 14.09.2009, the order dated 16.09.2009 has been passed by this Tribunal. If so, whatever may be the declining or intention of the applicant, it has no meaning as we have said that the applicant shall be promoted and posted either in the same office or in any other place. But, at that point of time, his promotion was kept in abeyance till disposal of the said representation.

6. In the light of the above, we are of the view that the present order passed is not in accordance with the intention of the order passed by this Tribunal. We are also not in a position to take the stand that the applicant has declined his promotion. We see that as we have already held that being a promotional post, the applicant may be considered for promotion and posted in the same office or anywhere in Berhampur, if so, if any vacancy arises in the same office or in other place nearby Berhampur, the

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applicant should have been promoted and transferred, if his transfer is necessitated. But, now the Department has considered or misinterpreted the application given by the applicant on 14.09.2009 as declining from promotion. That stand is not acceptable to us. Hence, this case may be considered afresh, especially when it is seen from Annexure-A/6 that there are two other persons promoted and accommodated. If so, the case of the applicant requires reconsideration, which should be done within a reasonable time at any rate within 30 days from the date of receipt of a copy of this order. Ordered accordingly.

7. With the above direction, the O.A. is disposed of. No order for costs.

Member
MEMBER (A)

Ex APPG
MEMBER (J)

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