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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No.195 of 2010

Pitabas Das Applicant

Vs

Union of India & Others Respondents

1. Order dated : 24 -11-2011.

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

AND

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

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Heard Learned Counsel for both sides and perused
the materials placed on record.

2. The prayer of the Applicant, in this Original Application, is for direction to the Respondents to provide him an alternative appointment in compliance of the circular of the DGP&T, New Delhi and order of the Hon'ble High Court of Orissa,

3. Respondents have filed their counter in which it has been stated that the Applicant Sri Pitabas Das was selected as Extra Departmental Branch Post Master [now re-designated as Gramin Dak Sevak Branch Postmaster], Bharatpur BO and appointed in that post on 31-01-1993.

ii. Being aggrieved by the selection and appointment of the applicant, two candidates who could not be selected approached this Tribunal in OA Nos.462/1993 & 464/1993 challenging the selection and appointment of the Applicant.

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iii. Simultaneously complaint in regard to the irregularity in the matter of appointment was also made to the higher authority by the candidates who could not be selected. On receipt of complaint, the matter was duly enquired into/reviewed by the CPMG, Orissa Circle, Bhubaneswar who having found the irregularity directed termination of the applicant. In compliance of the said order of the higher authority, the service of the applicant was terminated w.e.f. 02.07.1993.

iv. Being aggrieved by the order of termination, the Applicant filed OA No. 332/1993. Meanwhile, the educational qualification for appointment to EDBPMs/EDSPMs was revised to matriculation vide DGP&T order dated 12.3.1993. All the OAs were heard and disposed of in a common order dated 15.09.1993 with direction for fresh selection within a period of 60 days with further direction to allow the applicant to continue in the post till regular selection is made to the post. While the applicant was continuing in the post, misappropriation to the tune of Rs.292/- towards PCO collection committed by the Applicant came to the notice of the authority.

v. However, as per the order of this Tribunal, fresh selection was conducted in which the applicant was again selected to the post in question on 28.1.1994. Again the matter

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was reviewed by the CPMG, Orissa Circle, Bhubaneswar. The irregularity in the matter of selection having been noticed termination notice dated 2.9.1994 was served on the Applicant.

vi. Again the applicant filed OA No. 572/1994 challenging the notice of termination dated 02.09.1994 and by order dated 27.9.1994, the order of termination was stayed by this Tribunal. Omission and commission having been noticed the applicant was placed under off duty vide order dated 07.01.1997. The Applicant avoided to receive the said put off duty order and thereafter approached this Tribunal in OA No. 639 of 1997 challenging the said put off duty order. The stay order earlier granted by this Tribunal was vacated by this Tribunal and both the OAs (572/1994 & 639/1997) were dismissed by this Tribunal vide order dated 18.9.1998.

vii. Applicant challenged the said order in OJC No. 14143/1998 before the Hon'ble High Court of Orissa. The Hon'ble High Court of Orissa disposed of the matter on 19.11.2004. Relevant portion of the order dated 19.11.2004 in OJC No. 14143/1998 is extracted herein below:

“Regard being had to the aforesaid facts and submission, we dispose of this writ petition in the above noted manner with the observation and direction to opposite party no.2 to consider the application of the petitioner, in case of any existing or future vacancies, provided the petitioner applies for the same. We express no opinion on the merit of

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the claim of the petitioner and that be considered strictly in accordance with law."

viii. Alleging non-compliance of the order of the aforesaid order, the Applicant filed CONTC No. 490 of 2006. The matter was disposed of on 16.05.2006. Relevant portion of the order is quoted herein below;

"The writ petition was ultimately disposed of in the above noted manner with the observation and direction to opposite party no.2 of the writ petition to consider the application of the petitioner, in case of any existing or future vacancies, provided that the petitioner applies for the same. This Court had observed that no opinion has been expressed by this Court on the merits of the claim of the petitioner and that be considered strictly in accordance with law.

Since it was a stipulation as mentioned above that the application of the petitioner shall be considered along with other applicants strictly in accordance with law, naturally his application was liable to be registered from the date of receipt and other applicants who are already in queue are also liable to be considered ~~on~~ their turn in such case against the existing and future vacancy. Since future vacancy has also been directed, therefore, no cause of action for contempt has arisen. Accordingly, no case for contempt is made out.

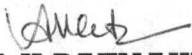
The contempt petition is misconceived and therefore is dismissed."


4. According to the Applicant the post of EDBPM, Chakroda BO under Kendrapara HO; EDDA Bharatpur BO, Kendrapara HO; EDDA, Tilotamadeipur BO under Thakurpatna SO; EDBPM, Badagaon BO under Thakurpatna SO; EDBPM & EDDA Choti BO under Indupur SO, EDDA, Kantia BO under Kerilopatna SO; EDBPM, Barna BO under Kendrapra HO; EDDA

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& EDBPM Belarpur BO under Thakurpatna SO, EDMC
Kampagarh BO under Indupur SO and EDDA, Balia BO under
Indupur SO are lying vacant and as such direction may be
issued to the Respondents to appoint the applicant against any
one of the vacancies. Merely because vacancies are reportedly
available the applicant cannot claim to be appointed against one
of them unless the authority seeks to fill up the same.

5. In view of the above we feel that allowing the prayer
of the applicant would tantamount to sitting over the decision of
the Hon'ble High Court of Orissa which is not permissible under
law. Hence we dispose of this OA with direction to the
Respondents to consider the case of the applicant in the light of
the orders of the Hon'ble High Court of Orissa as stated above.
There shall be no order as to costs.


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


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