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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.816 of 2016
Cuttack this the 15th day of November, 2016

CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Dr.Gurukrushna Mohapatra, aged about 32 years, S/o.
Basukrushna Mohapatra, At-Raipur, PO-Soro, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.B.Mohanty

T.K.Patnaik

S.Patnaik

B.S.Rayguru

-VERSUS-

1. All India Institution of Medical Science, Bhubaneswar represented through its Director, Sijua, Dumduma, PO-Bhubaneswar, Dist-Khurda-751 019
2. The Dean, All India Institution of Medical Science, Sijua, Dumduma, PO-Bhubaneswar, Dist-Khurda-751 019
3. The Sub Dean(Academics), All India Institution of Medical Science, Sijua, Dumduma, PO-Bhubaneswar, Dist-Khurda-751 019
4. State of Odisha, represented through its Secretary, Health and Family Welfare Department, At-Secretariat Building, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)- Mr.S.Behera(Res.Nos.1 to 3)

ORDER(Oral)

A.K.PATNAIK MEMBER(J)

Heard Mr. J.Patnaik, learned Senior Counsel, assisted by Ms.S.Patnaik for the applicant and Mr. S.Behera, learned SCGPC appearing on behalf of Res. Nos. 1 to 3 on the question of admission and perused the records.

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2.

Applicant claims to have been working as Senior Resident under the Director, All India Institute of Medical Sciences, Bhubaneswar (Respondent No.1). His grievance is directed against communication dated 5.11.2016(A/8) by virtue of which applicant has been asked to resign from the State Government Post and report for duties in the post of Senior Resident along with the order of acceptance of resignation.

3.

Facts in torso are that while working as Medical Officer in the State Government of Odisha, applicant came across an advertisement issued by the Respondent-AIIMS for filling up the post of Senior Resident and accordingly, he applied for the same and got through the selection test. Consequently, he was issued with the offer of appointment and in obedience to the same, applicant joined the post of Senior Resident and has been discharging his duties as such. While the matter stood thus, vide communication dated 5.11.2016(A/8), applicant was intimated as under.

"With reference to your joining report dated 6th October, 2016 wherein you have submitted various documents in support of your candidature, it is mentioned that the copies of documents submitted by you has been examined and it has been now found that you are still holding a post in Govt. of Odisha and you have only been relieved for three years.

As the post of Senior Resident is a post having regular Pay Band & Grade Pay and the selection for the post was made on direct recruitment basis, you are required resign from the regular post of Govt. of

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Odisha, and thereafter your joining will be considered.

Accordingly, you are hereby intimated to resign from the State Govt. Post and report for duties along with the order of acceptance of your resignation within one month in case you are interested to report for duties for the Post of Senior Resident at this Institute".

4. Against the above backdrop, applicant has approached this Tribunal in the instant O.A. for quashing communication under A/8 dated 5.11.2016 with direction to respondents to accept the joining of the applicant dated 06.10.2016 and further to hold that the applicant has duly joined under the Respondent Nos. 2 and 3.

5. The main thrust of this O.A. is that since offer of appointment as Senior Resident is a tenure engagement which is for a period of three years, in case applicant resigns from his seat from the State Government of Odisha, on completion of three years' tenure under the Respondent-AIIMS, he will be out of job.

6. On being pointed out as to how this O.A. could be maintained as the applicant has approached this Tribunal in a cut and dry method without exhausting the departmental remedies, Mr.Pattnaik, learned senior counsel submitted that since by virtue of A/8 applicant is going to be instantly prejudiced, he did not chose to prefer any representation to the authorities before approaching this Tribunal.

[Signature]

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7. On a reference being made to communication dated 5.11.2016 (A/8) an instruction has been issued to the applicant to resign from the State Govt. Post and report for duties along with the order of acceptance of his resignation within one month. This being the position, there was every reason for the applicant to ventilate his grievance to the authorities before approaching this Tribunal. Be that as it may, during the course of hearing on admission, Mr.Pattnaik submitted that applicant would like to prefer representations to Res.Nos. 1 to 3 and under the circumstances, this Tribunal may direct the said respondents to dispose of the representation.

8. I have considered the rival submissions advanced at the Bar. In my considered opinion, neither of the parties will be prejudiced if applicant is permitted to prefer representations by ventilating his grievance in response to communication dated 5.11.2016(A/8). In consideration of this, I would direct the applicant to prefer representations to Res.Nos. 1 to 3 by 21.11.2016 and in case any such representations are received within the date fixed, the Director, AIIMS, Bhubaneswar (Respondent No.1) shall consider the same in accordance with the extant rules and instructions on the subject, particularly, keeping in view terms and conditions of the offer of appointment, and communicate the decision thereon to the applicant through a reasoned and speaking order within a period of two months from the date of receipt of this order. It is

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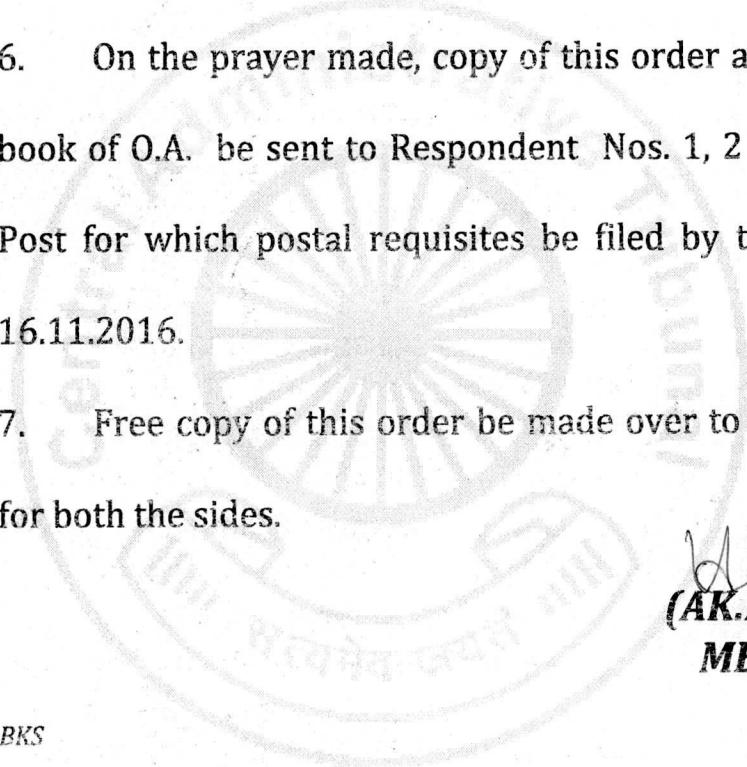
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made clear that no action whatsoever in pursuance of communication dated 5.11.2016(A/8) shall be taken by the respondents for a period of one month from the date of communication of the decision to the applicant. Applicant is at liberty to enclose copy of this order along with his representation to submitted by him, as directed above.

5. With the above observation and direction, this O.A. is disposed of at the stage of admission itself. No costs.

6. On the prayer made, copy of this order along with paper book of O.A. be sent to Respondent Nos. 1, 2 and 3 by Speed Post for which postal requisites be filed by the applicant on 16.11.2016.

7. Free copy of this order be made over to learned counsel for both the sides.


H. Lee
(AK.PATNAIK)
MEMBER(J)

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