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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.961 OF 2015

Cuttack this the 29th day of November, 2016

Biswanath Baral.....Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be referred to CAT, PB, New Delhi for being
circulated to various Benches of the Tribunal or not? ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.961 OF 2015

Cuttack this the 29th day of November, 2016

CORAM:

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

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Biswanath Baral, aged about 38 years, S/o.Gundicha Baral, At-Jaripada, PO-Kalupadaghat, PS-Tangi, Dist-Khurda

...Applicant

By the Advocate(s)-M/s.D.N.Mohapatra

G.R.Mohapatra

A.Dash

-VERSUS-

Union of India represented through:

1. The Chief Post Master General, Odisha Circle, Bhubaneswar-751 001, Dist-Khurda
2. Senior Superintendnet of Post Offices, Puri Division, Puri
3. Sub-Divisional Inspector of Posts, Jatni Sub-Division, At/PO-Jatni, Dist-Khurda
4. Branch post Master, Anda Post Office, At/PO-Anda, Via-Bajpur, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.S.Behera

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ORDER

A.K.PATNAIK, MEMBER(I):

Heard Mr.D.N.Mohapatra, learned counsel for the applicant and Mr.S.Behera, learned SCGPC on the question of admission and perused the records.

2. Facts of the matter in brief are that initially applicant had been appointed to the post of GDS Mail Deliverer in Anda Branch Post Office and while working as such, vide order dated 21.09.2002, respondents terminated his service with effect from the date of expiry of one month from the date of receipt of the said letter. Aggrieved with this, applicant approached this Tribunal, which formed the subject matter of O.A.No. 963/2002. This Tribunal while admitting the said O.A., as an interim measure, stayed the operation of the orders of termination issued by the respondents. However, vide order dated 12.3.2004, this Tribunal disposed of the O.A.No.963/2002, in the following terms.

"So, in the recruitment instructions the conditions of income and means of livelihood have not been put as eligibility conditions. In the circumstances, the notification dated 06.02.2002 and the requisition sent to the Employment Exchange(Annexure II) are without authority and hence defective in the eye of law and rejection of the candidature of Shri B.Prusty on these ground is unsustainable in the eye of law. In fact, Shri B.Prusty having secured 55.60% marks in the HSC Examination was the most meritorious among the three OBC candidates. As the vacancy notification has been found to be

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defective by us the decision not to select Shri Prusty on that ground is also equally bad. This important point having been overlooked by the Respondent No.2 his decision as contained in his letter dated 17.09.02 at Annexure-R/7 is also bad in law and, therefore, must be quashed. In the circumstances, we direct as the selection of Shri B.Baral, the applicant was done on the basis of a defective advertisement his appointment also is unsustainable and is hereby revoked. We further direct the Respondent to re-advertise the post strictly in terms of the qualifications contained in Section-IV Method of Recruitment, instructions issued regarding selection for GDS Delivery Agents/Mail Carriers and other categories, in Swamy's Compilation of Service Rules for GDS. It should be noted that according to these instructions conditions of income and ownership of property or vocation are not eligible pre-requisites for appointment to this category of posts. We also direct that the post should re-advertised curing the defect and the OBC candidates who had responded to the earlier notification need not apply again. The process of fresh selection should be completed within a period of 120 days from the date of receipt of this order. As the applicant's appointment has been found to be bad ab initio his service to be terminated and after that Shri B.Prusty who has secured higher marks among the OBC candidates may be offered the post, if so advised, provisionally till the regular appointment is made as per our order dated earlier. The Respondents are also given the liberty to combine the job of this post with another existing GDS post till the fresh selection is finalized and the post is filled up on a regular basis. Accordingly, this O.A. fails. No costs".

3. While the matter stood as such, Inspector of Posts, Jatni Sub Division, (Respondent No.3) sent a communication dated 27.10.2015(A/6) to the applicant, which reads as under.

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"Sub: Implementation of CAT Cuttack Bench order dtd. 12.03.2004 in O.A.No.963/2002 filed by Sri Biswanath Baral.

Pursuant to Hon'ble CAT Cuttack Bench order dtd. 12.03.2004 in O.A.No.963/2002 as intimated vide SSPOs, Puri Division letter No.A-161/Ch.I dated 15.10.2015, you are hereby terminated from the post of GDSMD, Anda B.O. in account with Bajpur S.O. under Khurda H.O. with immediate effect".

4. Aggrieved with this, applicant has moved this Tribunal for quashing the impugned communication dated 17.10.2015 (A/6) whereby and whereunder his service as GDSMD, Anda B.O. has been terminated with immediate effect.

5. Grievance of the applicant is that in pursuance of the direction of this Tribunal in O.A.No.963 of 2002, the respondents did not re-advertise for selection to the post in question nor did they terminate his service and this is how, he could ~~to~~ continue in the post of GDMD, Anda B.O., *inter alia* having been assigned other duties until November, 2015. Applicant has further urged that the direction of this Tribunal in O.A.No.963 of 2002 having not been implemented within the ~~time~~ stipulated time frame, the action of the respondents in implementing the said order of the Tribunal after more than a decade is bad in law and therefore, this Tribunal should interfere in the matter of termination of service of the applicant.

6. We have considered the rival submissions threadbare. We would like to observe that order of termination dated

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21.09.2002 was the subject matter of challenge before this Tribunal in O.A.No.963 of 2002 and as quoted above, this Tribunal, vide order dated 12.03.2004 held that ***"as the applicant's appointment has been found to be bad ab initio his service to be terminated and after that Shri B.Prusty who has secured higher marks among the OBC candidates may be offered the post, if so advised, provisionally till the regular appointment is made as per our order dated earlier"***

and accordingly, dismissed the O.A. From this, it is quite clear that the order of termination dated 21.09.2002, in effect, stood validated and thus governed the field after disposal of O.A.No.963/2002. The contention of the applicant that the respondent-authorities did not take any action in pursuance of the orders of this Tribunal in O.A.No.963 of 2002 or for that matter in pursuance of the order of termination dated 21.09.2002 does not hold any water inasmuch as, applicant's continuance if any after the disposal of O.A.No.963 of 2002 was an apparent illegality in the face of termination of order dated 21.09.2002 and therefore, no indefeasible right accrues on the applicant to hold the post in question ad infinitum. However, we may indicate that his continuance as such after the disposal of O.A.No.963 of 2002 by this Tribunal was at the risk and responsibility of the departmental authorities. Once his appointment to the post in question has already been held by this Tribunal in the earlier O.A. *ab initio void*, continuance of the

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applicant against the said post thereafter, in the face of the order of termination dated 21.09.2002 is in flagrant violation of the orders of this Tribunal and therefore, we are unable to persuade us to tilt our view in favour of the applicant. In the result, the O.A. is rejected without being admitted. No costs.

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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