

02 MAY 2016

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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK.

OA NO 260/00 275 OF 2016

In the matter of

An application under section 19 of Administrative Tribunal Act-1985.

And

In the matter of

Tapan Kumar Swain aged about 47 years Son of Late Jagannath

Swain presently working PA Bhubaneswar GPO under orders of

transfer as SPM Nayhat SO, Nimapara Puri under

Bhubaneswar Postal Division, Khurda..... Applicant

-V-

1) Union of India represented through the Secretary,
Department of Posts, Government of India, Dak Bhawan,
New Delhi.

2) Chief Postmaster General, Odisha Circle,
At/- Bhubaneswar PO/- Bhubaneswar GPO.
Dist- Khurda -751001

3) Senior Superintendent of Posts, Bhubaneswar Division,
At/- Forest Park, Po-Ashok Nagar,
Dist-Khurda, 751009 Respondents.

Tapan Kumar Swain

O R D E R (ORAL)
Dated: 03.05.2016

A.K.PATNAIK, MEMBER (JUDL.):

Heard Mr. T.Rath, Ld. Counsel for the Applicant, and Mr. M.R.Mohanty, Ld. Addl. Central Govt. Standing Counsel appearing for the Respondents, on whom a copy of this O.A. has already been served, and perused the materials placed on record.

2. This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

“A. Quash the part of the Memo No. B.8/ChIII dated 29.03.2016 passed by Respondent No. 3 so far as it relates to the Applicant’s transfer from the post of PA, Bhubaneswar GPO to SPM Nayahat SO, Nimapara Puri under Bhubaneswar Postal Division.

B. Quash the order under Annexure-A/8 and allow the applicant to continue in his present post at Bhubaneswar GPO.

And pass any other orders/directions which would afford complete relief to the applicant to free him from the injustice meted out to him.”

3. The applicant in this O.A. has challenged his transfer from PA, Bhubaneswar GPO to SPM Nayahat SO, Nimapara Puri under Bhubaneswar Postal Division. Mr. Rath, Ld. Counsel for the applicant, submitted that the applicant is a physically handicapped person suffering 55% permanent disability in his right hand. He submitted that under the PWD Act, applicant should be protected. In support of his claim, he has relied upon Annexure-A/9

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(Notification issued under Ministry of Social Justice and Empowerment) as well as Annexure-A/10 (OM dated 31.03.2014 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training). Mr. Rath further submitted that although the applicant ventilating his grievance made representation on 30.03.2016 (Annexure-A/7) but the same has been rejected vide Annexure-A/8 dated 25.04.2016 in an unreasonable and cryptic order.

4. Perused the records vis-à-vis the order of rejection dated 25.04.2016. "Duty to act fairly" is part of the fair procedure envisaged under Articles 14 and 21 of the Constitution of India. It is the settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In the case of S.N. Mukherjee v. Union of India, AIR 1990 SC 1984 the Hon'ble Apex Court unequivocally held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication has been dispensed with, the authority must record the reasons for its decision. We notice that in the instant case, the Respondents in letter dated 25.04.2016 has intimated the applicant that "your application under reference to allow you to continue at Bhubaneswar GPO is considered by the undersigned and not acceded to". This to our mind does not meet the requirement of law as



enumerated above. The Respondents should have given detailed reasons as to why applicant's representation has been rejected.

5. It is trite law that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of the explanation subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant for public effect and are intended to effect the action and conduct of those to whom they are addressed to and must be construed objectively with reference to a language used in the order itself -

Commissioner of Police Bombay Vs Gordhan Das Bhanji, AIR (39) 1952 SC 16.

6. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. Otherwise an order ban in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds - **Mohinder Singh Gill Chief Election Commissioner, AIR 1078 SC 851=(1978) 1 SCC 405.**

7. When the order of rejection is not capable of passing the test of reasonableness as enshrined in Articles 14 and 16 of the Constitution of India and as per the law, reasons to be provided in support of the rejection cannot revalidate the order of rejection, admitting this OA in our considered view will only delay the rights of the applicants for proper consideration of his case. In view of the above, without expressing any opinion on the merit of the matter, we quash the order of rejection dated 25.04.2016 (Annexure-A/8) and remit the matter back to the Respondent No.3 to give proper consideration to the case of



the applicant as raised in the representation dated 30.03.2016 (Annexure-A/7)

and communicate the ~~reason~~ ^{result} thereof to him, in a well-reasoned order within a period of 60 (sixty) days from the date of receipt of copy of this order. We make it clear that till 31.08.2016 applicant will be allowed to continue in ~~its~~ ^{his} present place of posting. The OA is accordingly disposed of. There shall be no order as to costs.

8. Registry is directed to send a copy of this order to Respondent No. 3 at the cost of the applicant for which Mr. Rath undertakes to file postal requisites by 05.05.2016.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

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