

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PATNA BENCH, PATNA.

Registration No. OA - 219 of 1996

Date of order : 14th May, 1998

Sahdeo Mandal, aged about 45 years, sone of Sagam Mandal
resident of village Baskupi, P.S. Karon, Distt- Deoghar.
..... Applicant

By Advocate Shri Ravi Ranjan with Shri M.K. Ambastha

Versus

1. The Chief Postmaster General, Bihar Circle, Meghdoot
Bhawan, G.P.O., Campus, Patna.
2. Senior Superintendent of Post Offices, Santhal
Pargana Division, Dumka.
3. Shyam Charan Rai, S/o Sagan Charan Rai, resident
of village Nawadih, P.S. Karon, Distt.- Deoghar.
4. Sub-Divisional Inspector (Postal), Deoghar.
..... Respondents.

By Advocate Shri P.K. Jaipuriyar for official
respondents and Shri S.N. Tiwary the counsel for
the private respondents.

CORAM : Hon'ble Mr. Justice V.N. Mehrotra, V.C.
Hon'ble Mr. L.R.K. Prasad, Member (A).

O R D E R

Hon'ble Mr. Justice V.N. Mehrotra, Vice-chairman:-

This OA has been filed under Section 19 of the
Administrative Tribunals Act, 1985 with the prayer that
the orders dated 3.4.96 passed by the respondent No. 2

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posting respondent No. 3 as Branch Postmaster of Banskuppi Post Office be declared as illegal and be quashed. The applicant has also prayed that the respondent No. 3 be directed not to disturb the applicant from the post of Branch Postmaster Banskuppi and the applicant be allowed to continue on the said post till the date of his retirement.

2. The facts of the case as appears from the material on record are that the respondent No. 3, Shyam Charan Rai was previously working as EDBPM of Banskuppi Branch office. He was accused of misappropriating Govt. money. After making departmental inquiry, a criminal case was lodged against him on 15.3.74. The respondent No. 3 was put off duty by office memo dated 6.2.74. The respondent No. 3 was prosecuted in the criminal Court and he was convicted by that Court. After his conviction, he was asked to show cause as to why his services be not terminated. He filed reply to the show cause notice and after that he was dismissed from service vide memo dated 3/4.9.90. While these proceedings were still pending, the authorities concerned advertised the post and thereafter appointed the present applicant on 20.10.76 to that post. The respondent No. 3 filed appeal against his conviction by the Criminal Court. That appeal was allowed by the Addl. Sessions Judge, Deoghar on 3.4.91 and his conviction and sentences was set aside by the appellate

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Court. The respondent No. 3 then filed representation before the authority concerned for his reinstatement. In the light of the order of the appellate Court, the authority concerned reinstated respondent No. 3 by letter dated 3.4.96.

3. The applicant claims that he had worked for nearly 20 years and had thus acquired the status of permanency over the post of Branch Postmaster. It is claimed that he cannot be removed or terminated from that post but by the impugned order the authority concerned has wrongly reinstated respondent No. 3 to the post which the applicant was holding. It is asserted that this order was illegal and was liable to be quashed.

4. On behalf of the official respondents, it is claimed that respondent No. 3 was put off duty when a fraud was detected. His services were terminated when he was convicted by the Criminal Court but after his acquittal by the appellate Court, he was legally reinstated. It is also claimed that the appointment of the applicant to the post of EDBPM was only provisional and as respondent No. 3 has been acquitted, he has to be reinstated to that post.

5. The respondent No. 3 has also asserted the same facts. He has alleged that after his acquittal by the appellate Court, he was entitled to be reinstated to the same post but instead of doing that, chargesheet under Rule 8 of the EDA (Conduct & Service) Rules, 1964 was

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issued to him. He submitted his defence and thereafter the respondent No. 2 accepted his defence and dropped the proceedings on 29.12.95. It is also claimed that the respondent No. 3 represented for his reinstatement and served notice through his counsel on which the impugned order of reinstatement was passed on 3.4.96. The applicant has, however, refused to make over charge of the office of EDBPM to the respondent No. 3. It was brought to the notice of respondent No. 2 and he was pleased to order opening of a parallel post office by order dated 25.4.96. The respondent No. 3 was allowed to join duty as EDBPM with effect from 4.5.96. It is claimed that the applicant has no right to claim that respondent No. 3 could not be reinstated to that post.

6. We have heard the learned counsel for the parties and perused the material on records. As will be apparent from the assertions made by the parties, the respondent No. 3, Shyam Charan Rai was the regular EDBPM of the said Branch Post Office. He was put off duty and he was thereafter terminated when he was convicted by the Criminal Court. He filed an appeal against his conviction which was allowed and his conviction was set aside. He thereafter claimed for his reinstatement to the post. The authority concerned instead of immediately reinstating him initiated departmental proceedings but the same were also dropped by order dated 29.12.95. Thereafter, the

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impugned order of reinstatement was passed. While all these proceedings were still pending, the applicant was appointed as EDBPM by order dated 20.10.76 (Annexure A/1). The learned counsel for the respondents have pointed out that this appointment of the applicant was purely provisional and could have been terminated any moment without notice as will appear from the order itself. It is also mentioned that the applicant continued to work as EDBPM for a long time merely because long time was taken in conclusion of the criminal proceedings and disposal of appeal. It is, thus, asserted that the applicant has no right to continue on the post to which the respondent No. 3 is being reinstated. On consideration of the arguments advanced by the learned counsel, we are of the view that in the facts and circumstances of the present case the applicant has no right to assert that he cannot be replaced by respondent No. 3 or he has ^a right ^{to} to continue on the post of EDBPM even after respondent No. 3 has been acquitted by the appellate Court and has been rightly reinstated by the appropriate authority. It is not the case in which the services of the applicant was sought to be terminated for no apparent justified reason. The authorities concerned were fully justified in ordering reinstatement of the respondent No. 3 to the post of EDBPM and the applicant has no right to the ^{post} ~~the~~ even though he continued to work on that post. Thus, the

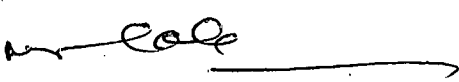
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DA has no force and ~~xx~~ is liable to be dismissed.

7. The learned counsel for the applicant has argued that the applicant has served faithfully for about 20 years and it will be very unjust if he is terminated, and in any case he should be given some alternative appointment as EDBPM at some other place. It cannot be disputed that the applicant has served for about 20 years but the authority concerned ~~has~~ no alternative but to reinstate respondent No. 3 on the post and to terminate the appointment of the applicant. Still in view of the hardship which may be caused to the applicant in ~~a the~~ peculiar facts and circumstances of the present case, the authorities concerned may consider representation by the applicant for giving some alternative appointment in case such representation is made, but it is made clear that appointment of applicant on some other post as EDBPM will be solely ~~at~~ the discretion of the appropriate authority.

8. With the above observation, this DA is dismissed.

No order as to costs.


(L.R.K. Prasad) 14/5/98
Member (A)


(V.N. Mehrotra)
Vice-chairman

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