

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/974/2016

Date of Reserve:18.07.2019
Date of Order:04.09.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Banchhanidhi Mishra, aged about 61 years, s/O.Late Tripurari Mishra, Retired Senior Superintendent of Post Offices, Berhamur, At-Flat No.S-3, Ganesh Bhaskar Residenc, Near City Bus Stand, PO-Berhampur Town, Dist-Ganjam.

...Applicant
By the Advocate(s)-M/s.T.K.Mishra
P.Bastia
S.S.P.Acharya

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Communication & IT, Department of Posts, Dak Bhaswan, Sansad Marg, New Delhi-110 001.
2. The Secretary, Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training), North Block, New Delhi-110 001.
3. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
4. Director of Accounts (Postal), Mahanadi Vihar, At-Mahanadi Vihar, PO-Chauliaganj, Dist-Cuttack, PIN-753 004.

...Respondents

By the Advocate (s)-Mr.B.R.Raymohapatra
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) ...to quash the order dated 3.10.2016 passed by the Chief Post Master General, Odisha Circle, Bhubaneswar and to direct the Chief Post Master General, Orissa Circle, Bhubaneswar to regularize the period from 04.03.1998 to 17.08.1999".
2. The applicant had earlier approached this Tribunal in O.A.No.357 of 2016 which was disposed of by this Tribunal vide order dated 24.05.2016 with direction to the Chief Post Master General, Orissa Circle (Res.No.3) to consider the

representation dated 16.10.2015 submitted by the applicant and pass a reasoned and speaking order. Consequently, the CPMG, Odisha Circle passed an order dated 03.10.2016 (A/6) which is impugned and called in question in this O.A.

3. For the sake of clarity, the relevant part of the order dated 03.10.2016 is extracted hereunder:

"Sri Banchhanidhi Mishra, retired SSPOs, Berhampur Division has represented vide his representation dtd. 16.10.2015 requesting for regularization of adhoc period of service in ASP cadre from 04.03.1998 to 17.08.1999. The case was referred to the Directorate earlier for obtaining ex post facto approval of the competent authority. The matter was considered at the Postal Directorate. In view of DOP&T disagreement to grant ex-post facto approval for officiating period in ASP cadre beyond one year, the same could not be regularized. Besides, the DOP&T has observed that such adhoc arrangement is in violation of the guidelines issued by the DOP&T in the matter. Hence the request of Sri Banchhanidhi Mishra for regularization/ex-post facto approval for officiating in ASP cadre from 04.03.1998 to 17.08.1999 was not accepted by the Directorate.

In view of the above, the request of Sri Banchhanidhi Mishra for regularization/ex-post facto approval for adhoc officiating period in ASP cadre beyond one year is found not admissible".

4. Aggrieved with this, the applicant has filed the present O.A. seeking for the reliefs as referred to above.

Opposing the prayer of the applicant, respondents have filed a detailed counter to which, a rejoinder has been filed by the applicant.

5. We have heard the learned counsels for both the sides and perused the pleadings of the parties. On a perusal of records, it reveals that ventilating his grievance, the applicant had earlier submitted a representation dated 23.04.2013 (A/2 series) to the CPMG, Odisha Circle. This representation having been considered, the Postal Directorate, New Delhi, communicated the decision vide letter dated 03.06.2013 to the CPMG, Orissa Circle, which reads as follows:

"Subject- Regularization of ad hoc period from 04.03.1998 to 17.08.1999 in ASPs cadre in the case of Shri Banchhanidhi Mishra, Assistant Director, Odisha:

I am directed to refer to your office letter No.ST/2030/2010 dated 14.05.2013 on the above mentioned subject and to say that in a similar case of your Circle, the DOP&T has not agreed to grant ex-post facto approval for officiating period made in ASPs cadre beyond one year in respect of 8 officials as giving such appointment is irregular. Accordingly, all Circles including your Circle were conveyed vide this office letter No.4-2/2012-SPB-II dated 30.1.2012 that no ex-post facto approval shall be given for any ad hoc appointments made beyond one year as these are clearly in violation of the guidelines issued by DOP&T in the matter. In view of the above, proposal of Circle for regularization/ex-post facto approval of officiating appointment in ASPs cadre from 04.03.1998 to 17.08.1999 in the case of Shri Banchhanidhi Mishra, Assistant Director, Odisha Circle cannot be accepted".

6. The applicant did not challenge the legality of this communication wherein his request for regularization of the period in question had not been acceded to by the Postal Directorate. Instead, he chose to prefer another representation dated 16.10.2015 to the CPMG, Orissa Circle, which having not been considered and disposed of, approached this Tribunal in O.A.No.357 of 2016 by suppressing the fact that in consideration of his earlier representation dated 23.04.2013, the Postal Directorate, New Delhi, as mentioned above, had not acceded to his request regarding regularization of the period from 04.03.1998 to 17.08.1999 and communicated the same vide letter dated 03.06.2013. Disposal of representation in pursuance of direction of the Tribunal cannot give rise to a fresh cause of action unless the delay is explained convincingly. The cause of action relates to way back in the year 1998 and/or 1999. Even after rejection of his request vide communication dated 03.06.2013 made by the Postal Directorate, the applicant did not challenge its legality before the Tribunal. Secondly, he even did not bring this fact to the notice of this Tribunal when order dated 24.05.2016 in O.A.No.357

of 2015 was passed directing the Respondent No.3 to dispose of the pending representations submitted by the applicant. Therefore, in our considered opinion, order dated 03.10.2016 (A/6) passed by the CPMG, Odisha Circle by no stretch of imagination, in the face of an existing impugned communication dated 03.06.2013 made by the Postal Directorate rejecting the request of the applicant, can give rise to a fresh cause of action and so long as the communication dated 03.06.2013 holds good, even if the impugned communication dated 03.10.2016(A/6) which is called in question in the instant O.A. is quashed and set aside, the applicant will not be benefited in any way.

7. For the reasons discussed above, the O.A. is held to be without any merit and the same is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)