

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P (C) No.1254 of 2017

Biswanath Baral

.....

Petitioner

Ms.Deepali Mahapatra, Adv.

Vs.

Union of India and others

.....

Opposite Parties

*Mr. Chandrakanta Pradhan,
Senior Panel CGC
(O.P.1)*

*Mr.D.R.Mohapatra, CGC
(O.Ps 2 and 3)*

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

**ORDER
22.04.2022**

Order No.

19.

This matter is taken up through hybrid mode.

2. Heard Ms. Deepali Mahapatra, learned counsel for the petitioner, Mr. Chandrakanta Pradhan, learned Senior Panel Central Government Counsel for Union of India and Mr.D.R.Mohapatra, learned CGC for opp. parties 2 and 3.

3. The petitioner by means of this writ petition seeks to quash the order dated 29.11.2016 passed in O.A. No.961 of 2015, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack, has rejected the Original Application filed by the petitioner in view of the earlier order dated 12.03.2004 passed by the tribunal in O.A. No.963 of 2002, as well as the order of termination passed by the authority on 27.10.2015.

4. Ms. D.Mahapatra, learned counsel for the petitioner vehemently contended that the order dated 12.03.2004 passed by the tribunal in O.A. No.963 of 2002 was implemented by the authorities after 11 years. Meaning thereby, when the petitioner lost his job, by that time, he has already rendered service for quite a long time. Therefore, the tribunal has committed grave error by passing the impugned order in not allowing the petitioner to continue in service, by recalling the order dated 12.03.2004 passed in O.A. No.963 of 2002. It is contended that challenging the order

dated 12.03.2004 passed in O.A. No.963 of 2002, the petitioner had also filed a separate writ petition in the year 2018 bearing W.P. (C) No.12329 of 2018 before this Court. It is thus contended that if the order dated 12.03.2004 passed in O.A. No.963 of 2002 cannot sustain in the eye of law, as a consequence thereof, the implementation made by the authority also cannot sustain in the of law. Therefore, the order dated 29.11.2016 passed by the tribunal in O.A. No. 961 2015 has to be set aside.

5. Mr. Chandrakanta Pradhan, learned Senior Panel Central Government Counsel appearing for Union of India contended that the order impugned has been passed in consonance with the order dated 12.03.2004 passed in O.A. No.963 of 2002, in pursuance of which the petitioner has been terminated from service and, as such, the order dated 12.03.2004 was never challenged by the petitioner before any higher forum till 2018 and, thereby, the said order reached its finality. As a consequence thereof, when the petitioner was terminated from service, the present O.A. was filed in the year 2015 and, as the earlier order was binding on the tribunal itself, on that basis, the tribunal, has rejected the present O.A., i.e. O.A. No.961 of 2015 vide order dated 29.11.2016. Therefore, no illegality or irregularity has been committed by the learned Central Administrative Tribunal by passing the order impugned so as to require interference by this Court at this stage.

6. Mr. D.R.Mohapatra, learned counsel for opp. party Nos.2 and 3 also supports the contention raised by Mr. Pradhan, learned Senior Panel Central Government Counsel.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was appointed to the post of GDS Mail Deliverer in Anda Branch Post Office, and while working as such, vide order dated 21.09.2002, the opp. parties terminated his service with effect from the date of expiry of one month from the date of receipt of the said letter. Against such order of termination, the petitioner approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.963 of 2002. The tribunal while

entertaining the said O.A., passed an interim order staying operation of the orders of termination issued by the opp. parties. After pleadings are complete and giving due opportunity of hearing to the parties, the tribunal, vide order dated 12.03.2004, disposed of O.A. No.963 of 2002 with the following observations:-

“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 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 17.09.2002 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.”

8. The aforementioned order dated 12.03.2004 was not challenged by the petitioner in any higher forum till 2018. As such, the order so passed by the Central Administrative Tribunal dated 12.03.2004 reached its finality. But when the opp. parties implemented the order of the tribunal and sent a communication on 27.10.2015 to the petitioner to the effect that “pursuant to Hon’ble CAT Cuttack Bench, order dated. 12.03.2004 in O.A. No.963 of 2002 as intimated vide SSPOs, Puri Division letter No.A-161/Ch.I dated 15.10.2015, the petitioner was hereby terminated from the post of GDSMD, Anda B.O. in account with Bajpur S.O. under Khurda H.O. with immediate effect.”, the petitioner filed present O.A. No.961 of 2015 challenging the order of termination before the Central Administrative Tribunal, Cuttack Bench, Cuttack. Plea of the petitioner before the tribunal was that the opp. parties did not re-advertise for selection to the post in question nor did they terminate the service of the petitioner and this is how he could continue in the post of GDMD, Anda B.O. and inter alia was assigned with other duties until November, 2015. It was further pleaded that the direction of the tribunal, vide order dated 12.03.2004 passed in O.A.No.963 of 2002, having not been implemented within the stipulated time frame, the action of the opp. parties in implementing the said order of the tribunal after more than a decade is bad in law and therefore the tribunal should interfere with the matter of termination of service of the petitioner. Though the tribunal took into consideration such contention raised by the petitioner, but referring to its own order dated 12.03.2004 dismissing O.A.No.963 of 2002, which was filed at the instance of the petitioner, rejected O.A. No. 961 of 2015. As such, the petitioner had not challenged the order dated 12.03.2004 passed in O.A. No. 963 of 2002 in any forum and kept quite till 2018, in which year W.P.(C) No.12329 of 2018 was filed before this Court. But, by that time, the petitioner was already terminated from service because of the compliance of the order dated 12.03.2004 passed in O.A. No.963 of 2002. Therefore, the contention of the petitioner, that the opp. parties having taken steps for implementation of the order passed on 12.03.2004 in O.A.

No. 963 of 2002, i.e., after quite a long period, by passing the termination order on 27.10.2015, as a consequence thereof, the petitioner should have been allowed to continue, has no leg to stand, reason being, once the appointment of the petitioner was declared as *void ab initio* by the tribunal, he has no right to say subsequently that due to delay in implementation of the order passed by the tribunal earlier, the order of termination passed on 27.10.2015, cannot have any justification.

9. In the above view of the matter, this Court is not inclined to interfere either with the order impugned dated 27.10.2015 having been passed by the authority in consonance with the direction issued by the tribunal dated 12.03.2004 in O.A. No.963 of 2002, or with the order dated 29.11.2016 passed by the tribunal in O.A. No. 961 of 2015.

10. Accordingly, the writ petition, being devoid of merits, stands dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Bichi

(SAVITRI RATHO)
JUDGE