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Central Administrative Tribunal
Principal Bench

O.A.No.1149/2002
M.A.No.2539/2002
with
O.A.No.1150/2002
M.A.No.2538/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 17th day of March, 2003

O.A.No.1149/2002:

Smt. Monika
w/o Shri S.N.Kaushik
r/o B-1/160, Prayaga Apartments
Vasundhara Enclave
Delhi - 110 096. Applicant

with

O.A.No.1150/2002:

Shri Anil Kumar
s/o Shri Kartar Singh
r/o House No.170
Sarai Peepal Thala
Delhi - 110 033. Applicant
(By Advocate: Sh. G.S.Lobana)

Vs.

1. Union of India through
its Secretary
Ministry of Communication
Deptt. of Posts
Dak Bhawan
New Delhi - 110 001.
2. The Chief Post Master General
Delhi Circle
Meghdoot Bhawan
New Delhi - 110 001.
3. Sh. B.D.L.Srivastava
Sr. Supdt. of Post Offices
New Delhi Central Division
Meghdoot Bhawan
New Delhi - 110 001.
4. The Asstt. Supdt. of Post Offices
New Delhi Central 1st Sub-Division
S.R.T.Nagar
New Delhi - 110 005. ... Respondents
in both the OAs
(By Advocate: Sh. R.P.Aggarwal)

O R D E R

By Shri Shanker Raju, M(J):

As common question of law and facts are involved in the afore mentioned OAs, the same are disposed of by this common order.

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2. Briefly stated in OA 1149/2002, applicant impugns respondents' order dated 23.4.2002 passed under Rule 6(b) and Rule 8 (b) of Postal & Telegraph Extra Departmental Agents (Conduct & Service) Rules, 1964. Applicant was appointed as Extra Departmental Agent on 13.10.2000 for a short period of 90 days which was extended on 16.1.2001 for a further period of 180 days. This was provisional and in lieu of regular vacancies. A notification dated 31.1.2001 inviting applications for the posts of Extra Departmental Stamps Vendors (herein after call as "EDSV") at Shahjahan Road P.O. and Gymkhana Club P.O., New Delhi. In pursuance, applicant has applied and on after finalisation of selection process, by a communication dated 22.3.2001, has been informed about her selection. On completion of all the pre-appointment formalities, applicant was appointed as EDSV on regular basis by an order dated 12.6.2001. During the working period, her record remained satisfactory. A show cause notice was issued on 7.3.2002 wherein it has been proposed to terminate the services of applicant on the ground that irregularities have been found in selection, to which a reply has been filed thereupon the impugned order has been passed terminating the services of applicant, giving rise to present OA.

3. Applicant, in OA 1150/2002, was appointed vide letter dated 13.10.2000 as EDSV for a period of 90 days which was extended for a further period of 180 days vide letter dated 16.1.2001. Applicant was responded to notification dated 31.1.2001 issued by

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respondents for appointment of EDSVs at the aforesaid Post Offices and on selection and after completion of all the pre-appointment formalities, he was appointed as EDSV vide order dated 5.7.2001. He was served upon a show cause notice on 7.3.2002 alleging serious irregularities in the selection process and to which he has responded to resultingⁱⁿ the impugned order of termination, giving rise to the present OA.

4. Shri G.S.Lobana, learned counsel appearing on behalf of applicants, contended that the appointment of applicants was legal, in accordance with rules and cannot be done away through by way of termination. According to him, applicants have acquired a right on their appointment and the same cannot be disturbed on mistakes committed by the department.

5. Shri Lobana also contended that assuming that there had been some irregularities committed by the appointing authority, i.e., Assistant Supdt. of Post Offices, the same should have been decided by the higher authority than the appointing authority.

6. It is also stated that the contentions put forth in the representation have neither been considered nor deliberated and as a result non-speaking impugned orders have been passed in both the OAs.

7. During the course of the hearing, Sh. Lobana contended that applicant was an Other Caste (OC), i., General Category and secured higher marks and was fully eligible whereas the other OC who secured more marks in Matriculation has not eligible as ~~she~~ ^{he} have not been sponsored through Employment Exchange. It is stated that as per the notification, one of the requirement was enrollment with the Employment Exchange. Despite having higher marks, they have not ^{been found to} be eligible to be appointed. In so far as the advertisement/notification is concerned, learned counsel for applicants produced a copy of the requisition form for notification of vacancies sent by the respondents on 31.1.2001 wherein two posts have been notified, and out which one was to be filled through OC and the other one OBC. In this conspectus, it is stated that the instructions dated 3.3.1978 giving preference to SC/ST candidates and other OC candidates has been superseded by Ministry of Communication's letter dated 27.11.1997 wherein the vacancies are to be filled on post basis reservation. Placing reliance on this, it is stated that a firm decision should be taken before-hand whether the post falling vacant is to be filled up by a reserved category candidate and if so a specific mention to this effect and the particulars of the community should be make in the notification while notifying the vacancy to the employment exchange or calling for applications from the open market. If the reserved candidates fulfil all the conditions of eligibility, they are to be appointed. All the earlier instructions which are inconsistent with the aforesaid

instructions stood superseded. In this view of the matter, it is stated that one of the grounds of the respondents that both the posts were for OC, cannot be countenanced as the respondents are mandated or duty bound to maintain the roster which they admittedly have not maintained, and moreover, by producing a chart it is stated that the representation of quota for SC category was complete whereas the ST category is in excess. Moreover, one OBC candidate and four OC candidates ~~were~~ to be appointed. This has been averred on the strength of the fact that there were 15 posts to be filled up. Accordingly, it is stated that, in view of the decision of this Court in P. Joseph v. A.D.P.M.G., ATC 1990(12) P.312, in absence of production of roster adverse inference is to be drawn against the respondents.

8. Shri Lobana further, relied upon a decision of Division Bench of this Tribunal in Shri Ravi S. Bankar v. Superintendent of Post Offices, ATJ 2002(3) CAT(Bangalore) P.104, contended that in absence of any challenge to the appointment of applicant by the candidates, who had secured more marks, and being really aggrieved, having failed to turn up, termination resorted to cannot be sustained in law.

9. Shri Lobana has further relied upon the decisions of Division Bench, in OA 377/2002, decided on 11.3.2003 in J.T.Lalege v. SSPO, of Bangalore Bench of this Tribunal as well as decision dated 12.12.2001 in OA 626/2000 in M.C.Gadageri & Others v. Superintendent of Post Offices & Others by the

Division Bench of this Tribunal (Bangalore Bench) to contend that the termination resorted to even despite show cause notice cannot be sustained in law if the orders have been passed by the appointing authority terminates the services and the matter has not been reviewed by an higher authority. It is also contended that applicants cannot be attributed any fault in selection and as there is no irregularity, termination resorted to is arbitrary and is in violation of Articles 14 and 16 of the Constitution of India.

10. It is also stated that this is not a case where selection has been found to be based on forged or fictitious documents.

11. In so far as OA 1150/2002, it is contended that OBC certificate was produced and verified, the respondents are not competent to decide about status of applicant as an OBC and it is to be decided by the competent authority. The certificate produced is genuine, issued by competent authority under the rules and as one of the post reserved for OBC, applicant, who got higher marks and was eligible in all other aspects, was rightly appointed.

12. On the other hand, respondents' counsel Shri R.P. Aggarwal controverted the contentions and stated that as per the relevant instructions for appointment of EDSVs, preference is to be given to SC/ST. Applicant, Ms. Monika was appointed on regular basis and on scrutinising the relevant documents it has been found that she has not moved any

application for appointment but the same has been written by one ASPO, the appointing authority, Smt. Raj Kishori. Further the documents in support of educational qualification and employment registration card and marks sheet, have not been given by applicant. The application was undated, and as per the merit list prepared SC candidates having higher marks, namely Azad Singh, Raj, Jai Prakash Dagar and Sanjay Katara and OBC candidate Premlata, have not been selected and no remarks have been recorded in the merit list for their non-consideration. Although 68 applications have been received for the two posts of EDSVs, the applications were undated for both the applicants. The OC candidates ~~of~~ Seema Sharma and Pooja Tuli who secured more marks than the applicants, have not been considered on the ground that their employment registration was not done which was on the face of departmental instructions issued in 1997 in an open advertisement was not necessary but these candidates have been ignored. Accordingly, show cause notices have been issued where vague reply has been given, and after following principles of law and natural justice, termination has been resorted to on the ground that the selection is vitiated by irregularities. It is further stated that now a major penalty proceedings have been drawn up against the concerned ASPO for commission of irregularities and favouritism as well as appointment without following the rules, has been taken up. These appointments were against the instructions.

13. Shri R.P. Aggarwal further, on the strength of the following decisions, contended that if the selection is unfair, irregular and against the rules, the same does not vest an indefeasible right to be continued or appointed.

- 1. Union of India v. Tasuri K. Singh, 2002(2) SCCLJ 286.
- 2. Union of India & Ors. v. O. Chakradhar, 2002(1) SCCLJ P.286.

14. Shri Aggarwal further stated that in the event the selection is vested with malpractices, even notice/opportunity need not be afforded before cancellations of the selections and relies upon the decision of the Apex Court in Biswa Ranjan Sahoo & Ors. v. Sushanta Kumar Dinda & Ors., 1998(2) SCCLJ 141.

15. In so far as applicant in OA 1150/2002 is concerned, it is contended that in the attestation form, the applicant has not mentioned about his being OBC whereas in his application he has not mentioned about post for which he has applied and has signed in Hindi whereas in the attestation form he signed in English. Apart from it, the surname of applicant has been written as Kumar Bhardwaj Anil and father's name as Kartar Singh Bhardwaj whereas the Bhardwaj community is not included in the list of OBC. However, as the post notified was not reserved for OBC applicant has no indefeasible right to be appointed but for the action of ASPO, who had ignored these irregularities and appointed the applicant in utter violation of the rules of the department, a major departmental inquiry has been initiated against him.

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16. I have carefully considered the rival contentions of the parties and perused the material on record, including the official record.

17. Apex Court in Nazira Begum Lashkar & Others v. State of Assam & Others, (2001) 1 SCC 143 held as follows:

"Since the appointments to the posts are governed by a set of statutory Rules, and the prescribed procedure therein had not been followed and on the other hand appointments have been made indiscriminately, immediately after posts were allotted to different districts at the behest of some unseen hands, such appointments would not confer any right on the appointee nor can such appointee claim even any equitable relief from any court. That apart, the appointments the appointments stood annulled hardly after six months from the date of appointments and the appointees cannot claim to be continuing for an unusual long period, so as to claim a humanitarian consideration in their case. The decisions cited by Mr. Parikh, in support of his contention, not only do not support his contention but on the other hand, appears to us to be against his contention. In Ashwani Kumar case this Court in no uncertain terms held that as the appointments had been made illegally and contrary to all recognised recruitment procedure and were highly arbitrary, the same were not binding on the State of Bihar. This Court further went on to hold in the aforesaid case that the initial appointments having been made contrary to the statutory rules, the continuance of such appointees must be held to be totally unauthorised and no right would accrue to the incumbent on that score. The Court had also held that it cannot be said that the principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were recalled and terminated. But, while dismissing the appeals, the Court had issued certain directions as to how the

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appointments should be made in future and how the case of the illegally-recruited teachers should be dealt with. In the facts and circumstances of the present case, we are unable to persuade ourselves to give any such direction, other than the directions given by the Division Bench of the High Court regarding condonation of overage inasmuch as none of the appointees have been allowed to continue for any long period beyond six months and wherever they have been allowed to continue, it is because of the judgement of the learned Single Judge. In this view of the matter, question of issuing any direction for adjustment of equities in favour of the appellants would not arise. It may not be out of place to mention at this stage that even though, the appointments made in favour of the appointees indicated clearly that the appointment is purely temporary and can be terminated without any notice but before cancellation of the appointments, the Government did issue notice to the appointees and it is only after that, the termination orders had been issued. In the aforesaid premises, we do not find any merit in any of these appeals and the appeals accordingly fail and are dismissed, but in the circumstances there will be no order as to costs."

18. If one has regard to the aforesaid ratio, an appointment made de hors the rules, or in violation of the statutory instructions, including the claim of more meritorious candidates, merely because the person has been appointed would not vest him with an indefeasible right to continue and his appointment is liable to be terminated/cancelled.

19. In the instant case, though the learned counsel for applicants, Shri G.S.Lobana produced the parallel record of the selection, and tries to convince the Court as to the reference made to the employment exchange, with regard to two posts of EDSV where one is reserved for OBC ^{he} cannot be relied upon on the ground that despite an internal correspondence between employment exchange and the

respondents these posts have been notified through an open advertisement, where there is no reference of reservation to the OBC and these posts are advertised for OC candidates.

20. As per the method of recruitment laid down under EDA Rules ibid for the post of EDSV, minimum qualification is 8th standard and preference is to be given to the candidates with Matriculation.

21. I have also perused the relevant record of selection and find that in the merit list prepared by ASPO, one Seema Sharma, a OC candidate, was Matriculate secured 54% marks whereas Monica who was also OC candidate was selected with 48 Marks. The request for not considering Seema Sharma was that she was not registered with employment exchange. Similarly, another OC candidate Ms. Pooja also a Matriculate secured 60% of the marks more than the applicant, Monica, who has not been considered for want of employment registration. The reasons for non-consideration of these two OC candidates, being fully eligible as per the rules and having more marks, cannot be countenanced and are contrary to Department of Posts, Ministry of Communication's letter dated 19.8.1998 which on the basis of decision of the Apex Court has clearly laid down that in that event that apart from notification of vacancies to the employment exchange, all vacancies of EDA in addition to notifying through employment exchange, the vacancies shall be simultaneously notified through public advertisement and the requirement of enrollment with employment exchange is no more an impediment for

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consideration. The aforesaid instructions have not been taken note of by the appointing authority and in utter violation, applicant Ms. Monica has been selected despite OC candidate more meritorious persons have been left. Apart from these irregularities, other irregularities were also their in the selection as the application of the applicant was undated even without annexing the relevant documents.

22. Moreover, the aforesaid appointment is also rendered irregular and illegal as before filling up the posts, ASPO has not taken any approval or permission of SSPO for filling up the posts.

23. In so far as the other applicant in OA 1150/2002, from the perusal of the official record, though in the attestation form, he has not mentioned about his being OBC and no certificate was annexed. He has annexed the certificate afterwards which has being sent for verification. Respondents have doubted the status of applicant as OBC because as per his surname filled up in the attestation form as Bhardwaj and this does not come in the category of an OBC. Moreover, the application moved by him is also undated. The resort of applicant to the Circular of respondents whereby, the earlier instructions have been superseded and post basis roster has been promulgated and the account of vacancies of roster produced, I find that in the notification issued on 31.1.2001 there is no reference of any reservation and in this view of matter, the vacancies notified are meant for OC's. Accordingly, applicant, Anil Kumar, has no right to be considered against OBC quota. ASPO without any basis, reserved one post for OBC despite

the fact that a roster has not been maintained. My view is fortified by decision of the Apex Court in Srikant Tripathi v. State of U.P., 2002 SCC (L&S) 968.

24. Be that as it may, the fact remains that the aforesaid selection has not been held in accordance with the rules and this irregular selection does not vest any right upon the applicants to continue when the selection is de hors the rules. The contention that the candidates who are more meritorious have not assailed the appointment of the applicants and is resorted to the decision of Division Bench cannot be followed in the light of the decision of the Apex Court in Nazira Begum Lashkar & Others' case (supra). As the appointments are not in accordance with rules, instructions and on irregular for which the concerned appointing authority has been booked and proceeded against in a departmental inquiry, the action of the respondents after according a reasonable opportunity to show cause to the applicants in terminating their services cannot be found fault with and is as per law. Further the Apex Court in Brij Mohan Singh v. Union of India, 2002 SCC (L&S) 1118 has held that in Appointment of EDA's if gross irregularities are there in Section-Appointee has no claim or right to the post.

25. For the foregoing reasons, I do not find any merit in the present OAs, the same are accordingly dismissed. No costs.

26. Copy of this order be kept in respective files.

S. Raju
(Shanker Raju)
Member(J)