

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 3301 of 2002

New Delhi, this the 27th day of August, 2003

HON BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Sushil Parihar
S/o Shri Rajpal Singh
Extra Departmental Branch Postmaster
Barauli (Baldeo) - Mathura

Residential Address

Village and P.O. Barauli
District Mathura (UP).

...Applicant

By Advocate: Shri D.P. Sharma.

Versus

1. Union of India
through Secretary,
Ministry of Communication,
Department of Posts,
Sansad Marg,
New Delhi-110001.
2. The Director Postal Services,
O/o the Postmaster General,
Agra Region - Agra.
3. The Senior Superintendent Post Office,
Mathura Division - Mathura. . . Respondents

By Advocate: Shri N.S. Mehta.

ORDER

The applicant has impugned an order dated 4.12.2002 issued by the Senior Superintendent of Post Office, Mathura vide which the applicant has been notified with a show cause notice as to why his services should not be terminated. The applicant has been appointed on the post of EDBPM Barauli, Mathura under OBC category but the Jat community does not figure in the Appendix-II vide DOP&T OM dated 13.8.90 and Government of India, Ministry of Social Welfare Resolution No. 12011/68/93-BCC (C) dated 10.9.93 and thus it was stated that the applicant is not entitled to get any benefits of reservation in civil posts and services under

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the Central Government.

2. However, during the pendency of the OA, the services of the applicant was terminated vide order dated 6.1.2003 by an order passed by Shri A.S. Tyagi, Senior Superintendent of Post Offices, Mathura division, Mathura so the applicant made an amendment in the OA and also challenged the order of termination.

3. In order to challenge the same the learned counsel for the applicant submits that the JAT Community comes under the OBC category of UP, therefore, the caste certificate issued by the competent authority as per the provisions of the Reservation Act should have been accepted by the respondents.

4. Beside that the applicant has submitted that the respondent No.3 is not the competent authority to issue show cause notice or pass an order of termination, therefore, the same are illegal and in support of his case he has relied upon some judgments of this Tribunal in OA 912/97 entitled as Naresh Kumar Vs. U.O.I. and Others and in OA 1412/1997 Smt. Parvati VS. U.O.I. and Others so the applicant prays that the OA be dismissed.

5. The respondents are contesting the OA. The respondents submits that the applicant do belong to JAT community but the same is under OBC category in UP but the same has not been included in the list of OBC

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prescribed by the DOP&T so the applicant is not entitled to reservation in Central Government as clarified vide Department of Posts letter dated 1.7.2002, Annexure R-9.

6. As regards the competence of the authority terminating the service of the applicant is concerned, the respondent No.3 is the appointing authority of the applicant so he is entitled to issue show cause notice and terminate the services as per para No.4 of Instructions of the Postal Directorate contained in Communication No.19-23/97 dated 13.11.1997, Annexure R-15 so it is stated that since the order has been passed by the competent authority so the same should be dismissed.

7. The rejoinder was also filed. The applicant also submitted that as per the EOBPA Rules it is the higher authority than the appointing authority who can review an erroneous appointment and can rectify/quash it but not the same authority who have been the appointing authority.

8. As regards the facts that the applicant belongs to JAT Community which has a reservation benefit as per the UP Government is concerned, the same has no applicability for the post under the Central Government as the JAT community has not been listed as a OBC Community by the Central Government particularly by the DOP&T, Ministry of Personnel which is the nodal Ministry for all such type of cases.

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9. Now as regards the competence of the authority to terminate the services of the applicant are concerned, undoubtedly the notice of termination has been issued by the Senior Superintendent of Post Offices, Respondent No.3 who is the appointing authority. For this purpose both the parties have relied upon the instructions as issued as per the Annexure R-15. The relevant portion of the said instructions is extracted hereinbelow:-

"The question whether appointment of a particular ED Agent to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing appointments.

With regard to appointment which was made in contravention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/instructions whether statutory or administrative/executive, as otherwise, it would amount to perpetuation of the mistake and would be detrimental to the larger interests of Government. However, in these cases the principles of Natural Justice should be complied with by giving the ED Agent a show-cause notice and opportunity to be heard before passing any order adversely affecting him. There is no need to invoke ED Agents (Conduct & Service) Rules, while passing final orders in such cases".

10. The perusal of the above instructions would go to show that if there is any dispute regarding the erroneous appointment of ED Agents then the same is to be decided by the authority next higher than the appointing authority in accordance with the established principles governing such appointments. But at the same time in para (ii) it has been mentioned that if appointment was made in contravention of executive or administrative instructions but there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment.

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11. Shri Sharma appearing for the applicant submitted that the appointment made by the respondents in this case has not been made in contravention of any administrative instructions nor any concealment of fact has been made by the applicant. There is only an error that the appointing authority by mistake taking the JAT community which is a reserved category of OBC for appointment made in UP had extended the same benefit to the applicant. Even otherwise the applicant was a meritorious candidate and had secured a good position in the examination and has not played any fraud for obtaining the appointment, so it is submitted that it was an erroneous appointment which could have been set aside by the authority next higher than the appointing authority in accordance with the established principles.

12. On the contrary the learned counsel for the respondents submitted that the post was meant for OBC category and the applicant had not been notified as OBC as per the DOP&T circular. Thus the appointment has been made in contravention of administrative instructions. Therefore, the competent authority was justified in rectifying the earlier erroneous appointment of EDA which was passed in contravention of the existing rules and instructions.

13. The word 'erroneous' has been used in both the paragraphs. In paragraph 1 which empowers the next higher authority to decide whether the appointment is erroneous one or not and in paragraph 2 it has been clarified that when an appointment is made in contravention of executive or administrative

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instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/instructions. The counsel for the respondents has also submitted that this is an irregular or void-ab-initio appointment as per the Concise Oxford Dictionary the word "erroneous" and the word 'Error' has been given meanings as follows:-

" Erroneous - Mistaken, Incorrect.

Error - Mistake (make, commit, an error a clerical error); condition erring in opinion or conduct (error of judgment; realize the error of one's ways); wrong opinion".

14. But the power given to Paragraph II of the instructions quoted above would go to show that the competent authority has been empowered to rectify the order of appointment which has been made in contravention of Executive or Administrative Instructions so the case in hand is not of any mistaken error as the meaning of the word given in Oxford Dictionary stands but it is a clear case of appointment made in violation of the administrative instructions because a person who is not an OBC has been appointed under OBC category and there is no clerical mistake as the meaning of the word error has been given in the dictionary. Thus I am of the considered opinion that since the power has been given to the competent authority/appointing authority to rectify the erroneous appointment made in violation of

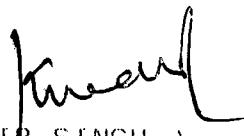


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administrative or executive instructions, so the competent authority has rightly exercised his power as such no interference is called for.

15. In view of the above, OA has no merits and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

Rakesh