

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1314/96

New Delhi this the 14th day of November, 1996.

Hon'ble Shri R.K. Ahooja, Member(A)

Sh. Chandra Sekhar,
S/o Sh. Radhey Shyam,
R/o Vill. & Post Beri,
Distt. Mathura.

Applicant

(through Shri D.N. Sharma, advocate)

versus

1. Union of India
through the Secretary,
Ministry of Communication,
Department of Posts,
New Delhi.
2. The Postmaster General,
Agra Region,
Pratap_pura_Agra.
3. The Sr. Supdt. Post Offices,
Mathura Division,
Civil Lines,
Mathura.
4. The Sub-Divl. Inspector,
Post Offices (East) Mathura,
Civil Lines Mathura.

Respondents

(through Sh. N.S. Mehta, Sr. Standing Counsel)

ORDER.

The applicant applied for the post of Extra Departmental Delivery Agent (EDDA) at P.O. Beri Distt. Mathura in response to an advertisement. The minimum qualification laid down was 8th passed and preference was given to High School pass. The applicant states that he was on the top of the merit list and the selection was made and he was allowed to join as Extra Departmental Delivery Agent Beri (Mathura) with effect from 8.9.95. The applicant was declared medically fit and the police verification was also satisfactory. He also furnished the requisite security after observation

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of all the formalities. His appointment letter was issued by the Sub-Divisional Inspector Post Offices (Annexure A-3). However, the Senior Supdt. Post Offices directed, vide his letter dated 22.3.96 to cancel the applicant's appointment which resulted in the impugned order (Annexure A-1) dated 30.4.1996. The applicant submits that the impugned order is absolutely arbitrary, illegal, mala fide and without jurisdiction since the same has been issued without affording him an opportunity to show cause as the cancellation of appointment amounts to breach of contract as the Extra Departmental Agents (Conduct and Service) Rules, 1964 does not empower the appointing authority to cancel the appointment when the incumbent has already joined the post.

2. The respondents controvert the above allegations. They state that the nominations were sought for from the Employment Exchange which sponsored 5 names vide Annexure R-1. Though letters were supposed to have been issued to all the 5 candidates sponsored by the Employment Exchange, it was found that the same had not been done. The respondents deny that the applicant was at No.1 position. On the contrary they assert that he has qualification (Prathama) offered by Hindi Sahitya Sammelan, Allahabad and this is inferior to the qualification held by all other candidates whose names were sponsored by the Employment Exchange.

3. I have heard the learned counsel on both the sides and perused the pleadings on record.

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4. The learned counsel for the applicant emphasised two points. As regards the first, my attention was drawn to Service Rules of Extra Departmental Staff (copy at Annexure A-4). He submitted that the services of an employee who has not more than 3 years continuous service would be liable to termination at any time, only by a notice and that the period of such notice shall be one month. In the present case no such notice had been given nor one month's basic allowance plus dearness allowance was remitted to the applicant in lieu of the aforesaid statutory notice. The appointment had been made by the competent authority and in case it was considered that any irregularity had taken place then natural justice demanded that before issuing the impugned order the applicant should have been given due opportunity to explain the position. The learned counsel emphasised that the recruitment rules extracted at Annexure A-3 laid down that the minimum qualification would be 8th standard only and that no weightage would be given for any qualification higher than matriculation. It was also laid down that the candidates who have sufficient working knowledge of the regional language would be given preference. The applicant belongs to backward class and as per Extra Departmental Delivery Agent Service Rules he came within the preferential category mentioned in Annexure A-7. The learned counsel argued that such agents are appointed preferably from the same place where the vacancy arises and in terms of his qualification and keeping in view his backward caste status, the applicant

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was fully qualified to hold the post and his appointment could not be set aside on the assumption that a proper opportunity had not been given to other candidates.

5. The learned counsel for the respondents Shri Ramchandani on the other hand submitted that the order of termination was fully within the four wall of the rules. He pointed out that there was no obligation on the part of the respondents to give one month's basic allowance plus dearness allowance in lieu of the notice period, since the rule was that "the employee shall be entitled to claim a sum equivalent". He said that the respondents were willing to pay one month's basic allowance plus dearness allowance for the period of notice in case the employee chooses to make a claim but nothing was paid since no such claim was preferred. The learned counsel also referred to the order passed by DOPT (Annexure A-2) in which it has been clearly stated that the examination Prathma is equivalent examination to S.L.C. only in respect to the standard of Hindi and further it was clearly stated therein that the recognition accorded thereby is not to be treated as equivalent to the full-fledged certificate/degree to which it has been accorded. Thus according to Shri Ramchandani the educational qualification of Prathma did not confer upon the applicant status of an SLC pass.

6. There is no doubt that Rule 6 (Annexure A-4) of EDA Conduct and Service Rules 1964 confers full power to terminate the services of employee who has not rendered more than 3 years continuous service. A notice in writing is an essential requirement which can be

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waived only if basic allowance plus dearness allowance for that period is remitted to the employee. Admittedly this has not been done in the present case. I do not agree with the arguments of the learned counsel for the respondents that the rule does not place the respondents under an obligation to pay such an amount unless the same is claimed by the employee. Note under Rule 6 clearly states that where the intended effect of such termination has to be immediate, it should be mentioned that one month's basic allowance plus dearness allowance is being remitted to the ED Agent in lieu of the notice. Shri Ramchandani says that the said note does not form part of the statutory rules. This, to me, does not appear a valid explanation. What is intended in the rule by the words "the employee shall be entitled to claim" is what he is entitled to receive. The notice does not add or subtract from the Rule 6 but merely explains and therefore must be read together with the Rule.

7. In the light of the above discussion, since the order of ~~Commissioner~~ ^{terminates} of service was faulty in as much no notice was given nor any sum paid in lieu thereof, the application is allowed. The impugned order (Annexure A-1) dated 30.4.96 is quashed and the applicant will be treated as in service and he will be entitled to receive all the consequential benefits. It is made clear that this will not preclude the respondents to take any action against the applicant

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permissible under the rules but such action will have
only prospective effect.

There will be no order as to costs.

R.K. Ahooja
(R.K. Ahooja)
Member(A)

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