Central Administrative Tribunal

Principal Bench

1)O.A. No. 1044 of 2000
2)O.A. No. 1602 of 2000
3)O.A. No. 1991 of 2000

New Delhi, dated this the 1st MAY, 2002.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

OA No.1044/2000

Kavita Rani
W/o Manoj Kumar
R/o Village Abupur,
Modi Nagar,
District Ghaziabad.
(By Advocate: Mrs. Rani Chhabra)

Versus

1. Union of India
through Secretary,
Ministry of Communications,
Department of Posts,
Dak Tar Bhawan,
Parliament Street,
New Delhi.

2. The Postmaster General,
Dehradun Region,
Dehradun.

3. The Senior Superintendent of Post Offices,
Ghaziabad Division,
Ghaziabad.

4. Sunil Kumar Sharma ...Respondents.
(By advocate : Shri N.S.Mehta)

OA No.1602/2000

Shri Sunil Sharma,
s/o Shri Moolchand Sharma,
Village Abupur,
District Ghaziabad.
(By Advocate: Mrs. Rani Chhabra)

Versus

1. Union of India
through Secretary,
Ministry of Communication,
Sanchar Bhawan,
New Delhi.

2. The Chief Postmaster General,
U.P.Lucknow.

3. The Post Master General
Dehradun (UP).

4. Senior Superintendents of Post Offices,
Ghaziabad (UP).

5. Smt.Kavita Rani
W/o Manoj Kumar
R/o Village & P.O.Abupur,
Via Modi Nagar,
District Ghaziabad.
(By advocate : Shri N.S.Mehta) ...Respondents.

OA No.1991/2000

Ajay Kumar Tyagi
s/o Shri Shiv Raj Tyagi,
R/o Village & Post Office Morta,
Tehsil & District Ghaziabad.
Ghaziabad.
(By Advocate: Shri B.S.Mainee)

Versus

1. Union of India
through Secretary,
Ministry of Communications,
Department of Posts,
Dak Tar Bhawan,
Parliament Street,
New Delhi.

2. The Postmaster General,
Dehradun Region,
Dehradun.

3. The Senior Superintendent of Post Offices,
Ghaziabad Division,
Ghaziabad.
(By advocate : Shri N.S.Mehta) ...Respondents.
Mrs.Rani Chhabra, Pvt.Respondent.

ORDER

S.R. ADIGE, VC (A)

These 3 OAs involve similar questions of law and fact, and are therefore being disposed of by this common order.

OA No.1044/2000

2. Applicant impugns respondents' notice dated 4.5.2000 issued under Rule 6(a) and (b) of P & T Extra Departmental Agent (Conduct and Service) Rules terminating his services with 1 month's notice. Applicant also impugns aforesaid Rule 6.

3. Pleadings reveal that the post of EDBPM Abupur fell vacant due to the promotion of the existing incumbent w.e.f.15.12.97. Suitable candidates were requisitioned by respondents from local Employment Exchange vide letter dated 22.5.98. Three candidates were sponsored by Employment Exchange, but one candidate did not fulfil the required eligibility conditions, while the remaining two candidates were not available. Accordingly respondents issued a local notification inviting applications on 3.9.98, in response to which candidates applied. Respondents then prepared a comparative chart in which 11 candidates (2 sponsored by Employment Exchange and 9 direct) were listed. On the basis of the comparative chart and having regard to the marks obtained in the exam. by each of the candidate, as well as whether each of the candidates had an independent source of income, applicant Kavita Rani was appointed as EDBPM Abupur w.e.f. 22.9.99. Thereupon certain complaints were received alledging that the recruitment process had been manipulated and the recruitment norms had been vitiated. P.M.G Dehradun reviewed the case and cancelled the select list on the ground that:

a) the independent income certificate issued by the revenue authority in favour of Smt. Kavita Rani was subsequently cancelled by the revenue authority and held to be false;

b) the said certificate did not contain any proof of income of applicant;

c) Cancellation of income certificate by the revenue authority having been held to be false and fictitious was a disqualification for the purpose of selection and hence applicant's appointment was void.

4. The first point which arises for adjudication is whether the applicant's services could have been terminated under Rule 6 ibid by giving her 1 month's notice vide impugned order dated 4.5.2000, without giving her a reasonable opportunity of a personal hearing. In this connection we have heard learned counsel appearing on both sides.

5. The question whether any opportunity had to be given to an EDA before terminating his services under Rule 6 was gone into in detail by CAT Allahabad Bench in its order dated 18.9.96 in OA No. 1049/89 Dharmapal Vs. UOI and Ors. (Annexure P-5). In its aforesaid order dated 18.9.96 the Bench stated that this matter had been referred a larger Bench for an authoritative pronouncement in view of the considerable divergence of decision's of various Benches, but so far there had been no sitting of that larger bench. However, one fact which stood out from the trend of the decisions by various Benches was that if the appointment of an EDA was void ab initio, the appointment could be cancelled or his services terminated without giving any opportunity, but if

there was no apparent irregularity in the appointment and it did not suffer from any patent infirmity, either cancellation of the appointment or the termination of services of the EDA would require an opportunity of hearing, in accordance with the principles of natural justice. An appointment could be considered to be void ab initio in case it was in contravention of any rules and/or instruction. In view of the fact that in Dharam Pal's case (supra) the only reason given was that his services were terminated as he had secured less marks than respondent no.5. Shri Hari Prasad Singh in the High School exam, the CAT Allahabad Bench held that respondents could not terminate Shri Dharam Pal's services without putting him to notice. Accordingly the notice terminating his services was quashed and he was ordered to be reiterated.

6. Against the aforesaid order dated 18.9.96 Shri Hari Prasad Singh filed CA No. 8600/97 in Hon'ble Supreme Court but in its detailed order dated 30.1.2001 the Apex court affirmed the CAT Allahabad Bench order dated 18.9.96 in Dharam Pal's case (supra).

7. Another ruling in the same vein relied upon by applicant's counsel is that of OA No. 1949/2000 Braham Singh Vs. UOI and Ors. disposed of by the Tribunal on 12.2.2001. Shri Braham Singh was appointed as an Extra Departmental Messenger and later on upon complaints received that he did not belong to the village and post office where he had

been appointed. An inquiry was held and upon the allegations being found true, his services were terminated under rule 6 ibid without putting him into notice. The Bench in that case held that Shri Braham Singh should have been given an opportunity of being heard before action was taken against him in an enquiry conducted behind his back, and quashed the termination notice and ordered his reinstatement.

8. Respondents have relied upon CAT, PB's order dated 01.10.99 in OA No. 692/99 Umesh Chand Sharma Vs. UOI & Ors. to contend that no show cause notice was necessary before terminating applicant's services after giving him one month's notice, but in the light of the CAT Allahabad Bench order in Dharam Pal's case (supra), whose reasoning has been affirmed by Hon'ble Supreme Court in its order date 30.3.2001, we are of the considered view that by issuing impugned order dated 4.5.2000 terminating applicant's service by giving him one month's notice, without giving him a reasonble opporutinty to show cause against such termination, respondents have not acted in accordance with the principles of natural justice. While coming to this conclusion we also note that no cogent materials has been shown to us directly implicating applicant in the submission of the income certificate from the revenue authority which was was subsequnty found to be false.

9. In the result the impugned order 4.5.2000 is quashed and set aside. Applicant should be reinstated in services within one month from the date

of receeipt of a copy of the order but she will not be entitled to backwages. After applicant has been reinstated, it will be open to respondents to proceed against her in accordance with law, if so advised.

10. As the CAT Allahabad in its order dated 18.9.96 in Dharam Pal's case (supra) has aready noted respondents' averment that the Constitutional validity of Rule 6 EDA (Services and Conduct) Rules has been upheld by the Hon'ble Supreme Court in Union of India and Ors. Vs. T.Kumar Pasida SCC 1996 (L&S) 320 and that finding has not been interferred with by the Hon'ble Supreme Court in its appellate order dt. 30.1.2001, the challenge to the aforesaid rule 6 fails.

11. The OA succeeds and is allowed to the extent contained in para 9 above.

OA No.1602/2000

12. In this OA applicant challenges the appointment of Smt. Kavita Rani, applicant in OA No.1044/2000 as EDBPM Abupur, and seeks his own appointment to that post. This prayer could be considered only if OA No.1044/2000 had failed. As Smt. Kavita Rani has been ordered to be reinstated, the prayer made in the present OA has to be rejected and the OA is dismissed.

OA No.1991/2000

13. In this OA applicant impugns respondents' order dated 5.9.2001 (Annexure A-1) terminating his services after giving him one month's notice without giving him an opportunity of being heard before issue of the notice.

14. In this connection, respondents state that the post of EDBPM Morta fell vacant on 22.6.98. As per Recruitment Rules, local Employment Exchange was asked to sponsor the list of eligible and suitable candidates within 30 days vide Office Memo dated 6.1.99 (Annexure R-I). Simultaneously a public notification was also issued calling for applications from open market vide Memo dated 6.1.99 (Annexure R-II). 5 candidates were sponsored by the Employment Exchange vide letter dated 9.2.99 (Annexure A-III). The list of the said candidates was received on 12.2.99 while stipulated last date of receipt of the said list was 6.2.99. Four candidates applied in response to open notice issued while 1 candidate applied after the due date had expired. All the candidates, excluding the candidate who applied after the scheduled last date, were considered and the applicant was appointed as he was found best among the said candidates. Later the selections were reviewed by the PMG Dehradun and the following irregularities were reportedly detected in the procedure followed:

i) The public notification inviting applications from open market was for a period less than the prescribed period of 30 days. As a result, the scope for receipt of more applications was lost;

ii) The list of candidates from the employment exchange was received after the last date had expired but these candidates were also considered for selection.

15. Accordingly respondents terminated applicant's services by giving him one month's notice vide impugned order dated 5.9.2000.

16. In this case also we are of the considered opinion that the principles of natural justice required respondents to put applicant to notice, and give him a reasonable opportunity of being heard before terminating his services by impugned order dated 5.9.2000. Accordingly the impugned order dated 5.9.2000 is quashed. Applicant should be reinstated in service within one month from the date of receipt of a copy of this order but he shall not be entitled to backwages. After the applicant has been reinstated, it will be open to respondents to proceed against applicant in accordance with law, if so advised.

17. We may summarise. OA No.1044/2000 is allowed to the extent contained in para 9 above. OA No.1602/2000 is dismissed vide para 12 above. OA N.1991/2000 is allowed to the extent contained in para 16 above. No costs.

(Kuldip Singh)
Member (J)

(S.R. Adige)
Vice Chairman (A)

/kd/