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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1048/2004

New Delhi this the 21st day of December, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Smt. Meena Devi,
W/o Sh. Pratap,
R/o A-101, Nathu Pura.
Delhi-110084.

-Applicant

(By Advocate Shri L.K. Singh)

-Versus-

Department of Posts (Govt. of India),
Office of the Senior Superintendent of
Post Offices, through its Senior
Superintendent of Post Offices,
Delhi, North Division,
Delhi-110054.

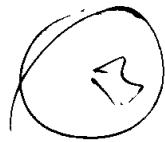
-Respondent

(By Advocate Shri Rajeev Bansal)

ORDER

Applicant impugns respondents' order dated 21.10.2003, terminating ~~his~~ services with a further direction to re-instate her in service with all consequential benefits.

2. As Shri Ashok Kumar, EDBPM, Nathupura has been put off duty, pending finalisation of the disciplinary proceedings a need has arisen to engage a person to look after the work of EDBPM. Accordingly pending decision in the disciplinary proceedings and reinstatement of Ashok Kumar, applicant was provisionally appointed to the post of EDBPM w.e.f. 17.7.96 on a clear understanding that if ever it is decided to take Shri Ashok Kumar back into service, the provisional appointment will be terminated without notice.



3. Vide show cause notice dated 29.4.2003 on a public complaint published in 'Dainik Jagran' Newspaper regarding non clearance of the letter box within the jurisdiction of the post office applicant was asked to explain, which she responded to by responding that the letter box could not be opened for four days for which the pardon was sought. Accordingly vide impugned order applicant was terminated and another incumbent was asked to look after as an addition to his own work at the post office.

4. Learned counsel for applicant contended that the order is innocuous, containing no reasons, whereas from the show cause notice the termination is founded on a misconduct and is punitive, but in the reply the respondents have taken a summer salt by stating that the provisional appointment was not as per the rules. In this backdrop it is stated that as per Annexure 'B' attached to instruction No.15, i.e., provisional appointment of EDA Agents, the only ground to dispense with the service is when the regular incumbent is re-instated after disciplinary proceedings and as per DGPT letter dated 18.5.79 and circular dated 30.12.99 efforts should be made to give alternative appointment to EDA Agent.

5. In the conditions of service it is stated that as the appointment would be governed by the EDA (Conduct and Service) Rules, 1964 as per Rule 6 of the Rules termination can be resorted to only when one is yet to complete three years' service but otherwise one who has completed 3 years service the termination without following the rules and holding enquiry is punitive.



6. Learned counsel for applicant contends that once the enquiry proceedings against Shri Ashok Kumar have been initiated which are yet to be finalized, one has a right after three years' of continuous service to be considered for regular appointment. The action of the respondents, terminating his services, is illegal.

7. On the other hand, respondents' counsel Shri Rajeev Bansal vehemently opposed the contentions and stated that as per Annexure 'B' to clause 15 regarding provisional appointment as per clause 4, appointing authority has a right to terminate the provisional appointment at any time before regular incumbent joins or re-instated and that can be resorted to without notice and without assigning any reasons. However, it is stated that applicant was negligent in performance of her duties and after show cause notice her services have been dispensed with.

8. It is further contended that applicant's provisional appointment was not made after following the procedure for provisional appointment, and as it was decided to take disciplinary action against applicant on show cause notice the services have been dispensed with. As the order is simple, without casting any stigma on applicant and as applicant is not a regularly selected provisional appointee, as she has not faced the recruitment process, in the light of the five-Judge Full Bench decision of this Tribunal in **D.M. Nagesh & Ors. etc. etc. v. The Assistant Superintendent of Post Offices, Bangalore South, Bangalore and Ors.**, A.T. Full Bench Judgments 1997-2001 160, applicant has no right and the termination is legally sustainable.



9. I have carefully considered the rival contentions of the parties and perused the material on record. A provisional appointment as per clause 15 should be avoided as far as possible but when possible it should be made with a stipulation that there would be no claim for regular appointment to the incumbent. When an EDA agent is put off duty pending disciplinary proceedings which are likely to take some time a provisional appointment is to be made as per Annexure 'B' ibid.

10. The provisional appointment as per above Annexure is till the put off ED agent is re-instated with a further stipulation in clause 4 that the appointing authority reserves the right to terminate the provisional appointment at any time before the regular incumbent is re-instated back in service.

11. A Full Bench of this Court in D.M. Nagesh (supra) has held that an EDA Agent appointed on provisional basis has no right for regularisation and no weightage to be accorded for the service rendered. The Calcutta High Court in WPCT No.58/2003 decided on 13.6.2003 upheld the decision of the Calcutta Bench of this Tribunal in OA-14/2003 in **Sanjib Kumar Mondal v. Union of India**, where regularisation of a substitute was denied.

12. In so far as application of Rule 6 and its proviso is concerned, the same would apply only to those provisional appointees who are yet to complete three years' service. However, as applicant has rendered more than three years' service Rule 6 would have no application in her case.

13. It is trite law that appointment is to be governed by the conditions of service if the rules are not applicable. As per Annexure

'B' of the appointment letter, conditions of appointment, though the provisional appointment is till the regular incumbent is re-instated back in service, yet nothing precludes the appointing authority to terminate the provisional appointment even before happening of such an event and that too without notice and assigning any reasons. If the order is simple in nature and the performance is the only motive to dispense with the service and if no disciplinary proceedings have been held and no enquiry officer etc. have been appointed the termination cannot be said to be founded on misconduct but it is motivated on unsatisfactory performance of applicant for which Article 311 (2) of the Constitution of India has no application. In this view of mine I am fortified by the decision of the Apex Court in **Union of India v. A.K. Bajpai**, 2003 (1) SCSLJ 202 and **State of Punjab v. Bhagwan Singh**, 2002 (9) SCC 636.

14. As held by the Apex Court in **Dipiti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Others**, JT 1999 (1) SC 396, if the misconduct is not the foundation and the order does not cast any stigma the termination being simple order on unsatisfactory performance is legal. However, it is trite law as well that an appointment can be dispensed with and services terminated by following the due process of law, I have found that a show cause notice was served upon applicant and was responded to by applicant the action of respondents is in consonance with the principles of natural justice.

15. As regards the contention raised that as per condition No.15 in the proviso thereof under the rules, efforts should be made to give



alternative employment to E.D. Agents who are appointed provisionally and discharged due to administrative reasons, if at any time of discharge they had put in not less than three years' continuous service their names should be included in the waiting list as per DGPT letter dated 23.2.1979. In other words, weightage of service is to be accorded, a five-Judge Full Bench has over-ruled this aspect of the matter by holding that no weightage can be given to ED Agents who had worked on provisional basis. In this view of the matter the aforesaid clause has no legal sanctity.

16. Applicant who has been appointed on provisional basis, pending put off duty of the regular incumbent has not been appointed on regular basis and has not been subjected to due process of law, accordingly being a stop gap arrangement she has no indefeasible right to claim regularisation or re-instatement on the post. However, it is made clear that this shall not preclude applicant from *being appointed* afresh in accordance with rules and consideration thereof.

17. In the result, for the foregoing reasons, OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

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