

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 17 DAY OF 3, 2010)

***Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)***

**ORIGINAL APPLICATION NO. 1532 OF 2001
(Under Section 19, Administrative Tribunal Act, 1985)**

Girija Shankar Mishra, S/o Shri Ram Dulare Mishra, R/o Village and Post Sarsawa via Khera Bj-hera, District- Shahjahanpur.

.....Applicant

By Advocate:- Shri A. Tripathi

Versus

1. Union of India through its Secretary, Ministry of Communication , Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Bareilly Region, Bareilly.
3. Superintendent of Post offices, Shahjahanpur Division, Shahjahanpur.

.....Respondents

By Advocate- Shri S. C. Mishra

O R D E R

(DELIVERED BY: HON'BLE MR. A. K. GAUR, MEMBER-A)

By means of this Original Application, Applicant has prayed for following main relief/s:-

- (i) To issue an order, rule or direction for quashing and setting aside the impugned order dated 25.09.2001/29.10.2001 by which the respondent No. 2 cancelled the appointment of the applicant after review.
- (ii). To issue an order, rule or direction for quashing and set aside the impugned show cause notice dated 01.11.2001 issued by the respondent No. 3 in pursuance of the cancellation order dated 29.10.2001

(Annexure no. A-1 in Compilation no. part 1 to this Original Application)

- (ii)(i). To issue an order, rule or direction for quashing and setting aside the impugned cancellation order passed by the respondent no. 3 in pursuance of the order passed by the respondent No. 2 (Annexure no. A-1(i) in compilation no. part 1 to this Original Application).
- (iii). To issue an order, rule or direction in the nature of mandamus directing the respondents to allow the applicant to continue to work on the said post of E.D.B.P.M, Sarsawa, Shahjahanpur as usual.

2. Brief facts of the case are that in pursuance of the requisition letter dated 04.10.2000 (Annexure A-6 of O.A), the applicant submitted his application on prescribed proforma alongwith all required documents within specified period. The applicant fulfilled all the conditions of eligibility and on the basis of merit, he was selected and appointed as E.D.B.P.M, Sarsawa by the Superintendent of Post offices, Shahjahanpur Division, Shahjahanpur (respondent No. 3) vide Memo No. A-156/PF dated 08.05.2001 (Annexure A-8 of O.A). In pursuance of the order and after completing pre requisite condition, the applicant joined as E.D. B.P.M on 08.05.2001. He is still continuing on the post on the strength of the stay order grated by the Tribunal vide order dated 20.12.2001, which was extended till further order on 17.07.2003.

3. Learned counsel for the applicant submitted that the Post Master General, Bareilly Region, Bareilly /respondent No. 2 suomoto reviewed the appointment of the applicant on the basis of complaint made by one Sri Brijesh Kumar Singh, R/o village-Jagatiapur, Distt.

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Shahjahanpur, who was one of the contesting candidate in the selection and cancelled his appointment and in reference to the cancellation order 25.09.2001 (reference has been mentioned in show cause notice dated 01.11.2001), the respondent no. 3 issued Show Cause Notice dated 01.11.2001 to terminate his services. The applicant filed his reply to the Show Cause Notice on 15.11.2001 (Annexure A-11 of O.A.) but without taking into account the points raised by the applicant in his reply, the respondent No. 3/ Superintendent of Post Offices, Shahjahanpur in pursuance of the letter of P.M.G, Bareilly Region dated 07.12.2001 passed the order dated 19.12.2001 (Annexure A-1(i) of O.A) canceling the appointment of the applicant. Learned counsel for the applicant would further contend that the Show Cause Notice dated 01.11.2001 was issued by the respondent No. 3 as to why the services of the applicant be not terminated but by order dated 19.12.2001, the respondent No. 3 instead of terminating the services of the applicant, cancelled his appointment.

4. The grievance of the applicant is that **the action of the respondents in issuing Show Cause Notice and passing order dated 19.12.2001 by the respondent No. 3 in reference to the direction of respondent No. 2 is totally against the settled principle of law as the higher authority has no power inherent or otherwise to review or cancel the appointment, which was made by the competent authority.** In order to buttress the aforesaid

argument, the learned counsel for the applicant has placed reliance on following decisions :-

- i. **N. Ambujakashi Vs. U.O.I & Ors** passed by Full Bench of this Tribunal at Hyderabad in O.A. No. 57/1991 (dated 10.02.1995)
- ii. **Baij Nath Tripathi Vs. Union of India & Ors.** 2001 (3) ATJ 285.
- ii. **R. Jambukeswaran and Ors. Vs. U.O.I & Ors.** A.T.F (Full Bench) 2002-2003 page 200-201
- iii. **Ravi S. Bhalakar Vs. Superintendent of Post Offices, Haveri & Ors** – A.T.D Vol. 38 (2002) (3) page 104
- iv. **Hari Prakash A.T.J 1993 (3) Vol 29 page 550.**
- v. **Tilakdhari Yadav Vs. U.O.I & Ors.** – 1997 ATC Vol. 36 page 539

5. Learned counsel for the applicant further submitted that the applicant was duly selected and properly appointed and after having taken over the charge of the post in question, he became a central civil servant and is entitled to be governed by service rules and his services could not be terminated under Rules 8 of GDS (C&E) Rules 2001, unless the post was abolished or the work of the applicant was found unsatisfactory. Since both the contingency did not arise, the services of the applicant could not be terminated under rules 6 of GDS (C&E) Rules, 2001. Learned counsel for the applicant would contend that once the applicant was regularly appointed after following proper selection procedure and he had joined the services, it was not open to the respondents to terminate the services of the

applicant arbitrarily instead, the applicant was entitled to protection of Article 311(2) of the Constitution of India.

6. On notice, respondents filed Counter Affidavit. Learned counsel for the respondents contended that on receipt of some complaint the appointment of the applicant was reviewed by the respondent No. 2/ P.M.G. Bareilly Region in pursuance of the D.G. (Posts), New Delhi Letter dated 13.11.1997 and found that the other candidates mentioned at Sl. No. 2, 5, 8, 9, 11 and 13 having secured more marks than the applicant have been ignored by the respondent No. 3/S.P.O, Shahjahanpur, and the appointment of the applicant was found to be erroneous and as such the respondent No. 2 as per order contained in Directorate Letter No. 22-1/2000-ED, Trg dated 24.05.2001 and Sub Rule 8 of GDS (Conduct & Employment) Rules, 2001 reviewed the appointment of the applicant and his services were terminated by the respondent No. 3, who is appointing authority of the applicant, vide order dated 19.12.2001 after giving show cause notice dated 01.11.2001 to the applicant.

7. Applicant filed Rejoinder Affidavit reiterating more or less facts as stated in the Original Application. .

8. We have heard learned counsel for both sides and carefully gone through the written argument filed by the counsel for applicant.

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9. Having heard counsel for the parties we find that the applicant was selected after following recruitment rules and took over the charge of the post in question, hence he became a Central Civil Servant and therefore, his services cannot not be terminated under Rules 8 of GDS (C&E) Rules 2001, unless the post was abolished or the work of the applicant was found unsatisfactory.

10. We have also given our anxious thought to the pleas advanced by the learned counsel for the applicant that when a person fulfils all the eligibility conditions and is appointed by the competent authority, his appointment cannot be cancelled merely on the direction issued by the higher authority. In the instant case, the applicant was appointed after following due recruitment process by the respondent No. 3, his case has been reviewed by the P.M.G. Bareilly Region/respondent No. 2, and in pursuance of the letter No. RPB/Bharti/ED-18/2001 dtd 07.01.2001 issued by the respondent No. 2/P.M.G, Bareilly Region, the S.P.Os, Shahjahanpur/respondent No. 3 cancelled the appointment of the applicant. Learned counsel for the applicant urged that Rule 6 of Extra Departmental Agents (Conduct and Service) Rules, 1964 did not confer power upon a higher administrative authority to review or revise the order of appointment purported to have been passed by the lower authority under Rule 3 of the said Rules. The aforesaid view was also taken by the Full Bench of this Tribunal at Hyderabad In the judgment dated 10.02.1995 passed in O.A. No. 57/1991 - **N. Ambujakashi Vs. U.O.I & Ors.** In the said judgment the Full Bench relying on several decision rendered by the Apex Court has held that Rule 6 of Extra Departmental Agents (Conduct and Service)

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Rules, 1964 (for short, "the Rules") did not confer power upon a higher administrative authority to revise the order of appointment purported to have been passed by the lower authority under Rule 3 of the said rules. The higher authority has no inherent power or otherwise to revise the order of appointment passed by the lower administrative authority.

(Underlined to lay emphasis)

11. Similar view was also taken by this Tribunal at Allahabad in **Tilakdhari Yadav Vs. U.O.I & Ors. – 1997 ATC Vol. 36 page 539 (FB) and at Madras in R. Jambukeswaran and Ors. Vs. U.O.I & Ors. - A.T. (Full Bench) 2002-2003 page 200-201** and in the case of **Baij Nath Tripathi Vs. U.O.I & Ors reported in 2001 (3) ATJ 285**. In the case of Tilakdhari Yadav (Supra) the Full Bench of this Tribunal at Allahabad held as under: -

“6. In the light of our discussion aforesaid , we are of the view that under Rule 6 of the Rules, the appointing authority does not possess power to cancel the appointment of Extra Departmental Agent for reasons other than unsatisfactory service or for administrative reasons unconnected with the conduct of the appointee, without giving him an opportunity to show cause. Accordingly , our answer to the question referred to the Full Bench is as follows:-

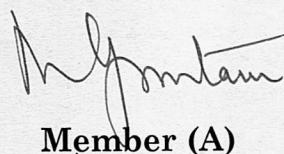
Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected

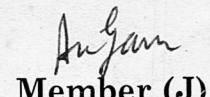
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with conduct of the appointee, without giving him an opportunity to show cause'."

12. In view of the observations made above, we hardly find any justification in the action of respondents in issuing show cause notice dated 01.11.2001 and passing order dated 19.12.2001. Accordingly the O.A is allowed. The letter No. No. RPB/Bharti/ED-18/2001 dtd 25.09.2001 (in reference to which the Show Cause Notice was issued) and Letter No. RPB/Bharti/ED-18/2001 dtd 07.012.2001 of P.M.G, Bareilly Region (in reference thereof the cancellation of appointment order has been passed) are hereby declared null and void. Accordingly the Show Cause Notice dated 01.11.2001/Annexure A-1 of O.A) issued as a consequence of letter No. No. RPB/Bharti/ED-18/2001 dtd 25.09.2001 and order dated 19.12.2001 (Annexure A-1(i) of O.A) passed as a consequence of letter No. RPB/Bharti/ED-18/2001 dtd 07.012.2001 of P.M.G, Bareilly Region are hereby quashed and set aside. As the applicant is still continuing in service on the strength of the stay order dated 20.12.2001 granted by the Tribunal, the respondents are directed not to interfere with the working of the applicant on the post of E.D.B.P.M, Sarsawa.

13. Parties are directed to bear their own costs.


Member (A)


Member (J)

/Anand/