

Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 21st day of December 1995

Original Application No. 1879 of 1994

DISTRICT : AZAMGARH

QUORUM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Manoj Kumar Maurya, son of Sri Ram Nain Maurya,
at present working as EDBPM Yudhisthir Patti
Resident of Village & Post-Yudhistir Patti
District-Azamgarh.

(By Shri NP Singh, Advocate)

..... Applicant

Versus

1. The Union of India through the

Director General (Posts)

Dak Bhawan, New Delhi.

2. Post Master General/DPS

Gorakhpur Region, Gorakhpur.

3. Senior Superintendent of Post Offices,

Azamgarh Division, Azamgarh.

4. Sub Divisional Inspector (Postal),

Phoolpur, District-Azamgarh.

(By Km. Sadhna Srivastava, Advocate)

..... Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

Under challenge in this O.A. filed under Section 19 of the Administrative Tribunals Act 1985 is the order dated 21-12-1994 by which the services of the Applicant as Extra Departmental Branch Post Master (EDBPM for short) have been terminated with immediate effect. The Applicant has prayed that the said order be set aside and the Applicant be declared as continuing in service as EDBPM at Yudhisthir Patti, Azamgarh.

2. The admitted facts in this case are that the Applicant was one of the candidates sponsored by the Employment Exchange to whom a reference was made by the Respondents for sponsoring the candidates to fill up the vacancy caused due to the disciplinary proceedings taken against the existing incumbent of the post. The Applicant was selected and a letter of provisional appointment dated 29-9-1994 was issued. A copy of the appointment letter clearly indicates that the Applicant's appointment is on provisional basis and the same would be tenable until the departmental action against the previous incumbent is complete and the appointment shall come to an end in case that person is re-instated in service. The Applicant thereafter took charge of the EDBPM and was continuing to perform his duties until

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by the impugned order his services were terminated without giving him any notice.

3. The Applicant's grievance is that he was duly selected by the Respondents after verifying all the particulars given by him in his application and having fulfilled all the requirements for the appointment as EDBPM. As such, the order of termination of his services without affording him an opportunity of hearing is illegal and arbitrary.

4. Indicating the reasons for terminating the services of the Applicant, the Respondents have stated in their counter affidavit that the requisition to the Azamgarh Employment Exchange was sent on 29-7-1994 in response to which a list of three candidates was sent on 27-8-1994 which was received by the Respondents on 30-8-1994. ~~DRX-00001884~~ On 2-9-1994, the second list containing the name of only the Applicant was sent by the Employment Exchange to the Respondents, stating that this name was left out due to clerical mistake. A photocopy of the letter dated 2-9-1994 by which the name of the Applicant was sponsored is at Annexure-2. It is stated that thereafter, the third list of one more candidate was forwarded by the Employment Exchange, which was received by the Respondents on 5-9-1994. Thus a

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total number of five candidates were sponsored by the Employment Exchange and as the applicant was found most suitable among others, he was provisionally appointed on the post of EDBPM. However, on the basis of the complaint made by two of the candidates sponsored in the first list, Respondent No.2 reviewed the appointment of the applicant and found that the said appointment has been irregular. The services of the applicant were accordingly terminated by the impugned order dated 21-12-1994. The applicant could not, however, be relieved from the post as he had filed a petition before this Tribunal and obtained stay order. It is the contention of the respondents that the impugned order of termination dated 21-12-1994 is a simpliciter order without attaching any stigma and, therefore, it was not necessary to give any opportunity to the applicant before passing the order. It has also been stated that the reasons for termination ^{are} not required to be disclosed in the order of termination.

5. The applicant has filed a rejoinder affidavit in which the contention of the OA has been re-affirmed.

6. The Learned Counsel for the respondents argued that the impugned order being a simpliciter order cannot be challenged on the ground that the applicant was not given an opportunity to show cause. She relied on

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several decisions in support of his contention. These are (1) the decision of the Hon'ble Supreme Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, reported in (1995) Supreme Court Cases (L&S) 364 (2) The decision of the Patna Bench of the Tribunal in the case of Shanker Dayal Upadhyay and Another Vs. Union of India and Others reported in (1995) 30 Administrative Tribunals Cases 18 and (3) the Full Bench decision of the Hyderabad Bench of the Tribunal in the case of S. Ranganayakulu Vs. Sub-Divisional Inspector (Postal) and Others reported in (1995) 30 Administrative Tribunals Cases 473 (FB)

7. In the case Devendra Kumar Jain (Respondent) decided by the Hon'ble Supreme Court it was interalia held that when appointment is made on temporary basis and the services have been terminated without notice or assigning reason, it was not necessary to follow the formalities of Article 311 before termination. In this case, the appointment of the respondent was ~~not~~ only on temporary basis and terminable without any notice, but it was also made without obtaining prior approval of the State Government. In the case before us, the appointment of the applicant was no doubt on a provisional basis and was terminable without any notice in terms of the appointment letter but it is

not the case of the respondents that the appointment was not approved by the competent authority.

8. In the case of Shanker Dayal Upadhyay, it was a case of the respondents that the applicants have been appointed in violation of the established norms/guidelines ignoring candidates of superior merits and that the applicants did not even fulfil the requisite conditions for the appointment. The termination of services of the applicants appointed by such irregular means by an order ~~of~~ simpliciter was held valid. In the case before us it is not the contention of the respondents that the applicant was inferior in merit or has not fulfilled the condition of the appointment. It has merely been stated that his appointment was irregular but the nature of irregularity has not been specified.

9. In the Full Bench decision in the case of S. Ranganayakulu, it was held that in the absence of statutory rule governing the recruitment of ED Agents, the instruction to be followed for such recruitment shall have full play. If any such administrative instruction has been violated in making an appointment, it would render the candidate ineligible or disqualify to enter the arena of either competition or selection and such a defect would be fatal to the candidature. In

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the present case the respondents have shown us that the name of the applicant was sent by the Employment Exchange by second list on 2-9-1994 i.e. more than 30 days after the date of requisition sent to the Employment exchange. The learned counsel for the respondents argued that in term of the existing instructions in this regard, the name of the applicant could not have been considered by the appointing authority as the nomination was received more than 30 days after the date of requisition. In this regard, we were referred to instruction No.12 regarding method of recruitment of ED Agents contained in Section III of the EDA (Service & Conduct) Rules 1964. Relevant portions of Instruction No.12 read as follows:-

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2. It has now been decided that the employment of ED Agents should be made through Employment exchanges. For this purpose the concerned recruiting authority should send a requisition to the local employment exchange, having jurisdiction over the area, requesting nomination of suitable candidates for the post, having the prescribed qualifications, within a period of 30 days from the date of sending requisition to the Employment exchange for nomination of candidates to the concerned authority.

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5. In case no nominations are received from the employment exchanges regarding the candidates as per requirements within the stipulated period of 30 days or if any of the candidates sponsored by the Employment Exchange is not found suitable as per prescribed conditions of eligibility, it would be open to the competent recruiting authority to make selection from other applicants in accordance with the existing procedure.

6. The Heads of Circles will please issue appropriate instructions to all recruiting authorities in their jurisdiction and ensure compliance of the revised procedure for recruitment to different categories of ED Agents.

(D.G., P&T, letter No.45-22/71-SPS.I/Pen., dated the 4th September, 1982.).

It was ordered above that ED Agents should be appointed through the employment exchange of the area. Several instances of nomination of only one candidate by the employment exchange have come to the notice of this Directorate. In such cases, the resultant selection

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process gets totally devoid of any element of competition. It has, therefore, been decided that in future sponsoring of at least three candidates by the employment exchange should be insisted upon. In case of any difficulty in this regard, the matter may be taken up with the Director of Employment Exchanges of the State Government concerned. Normally they have instruction to send a panel of candidates not less than thrice the number of posts notified to them. In the event of the employment exchange failing to sponsor the minimum number of candidates, the vacancy should be notified through public advertisements and while making the final selection, the comparative merit of all the candidates i.e. those who respond to the notification as also those sponsored by the employment exchange should be taken into consideration.

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10. It is clear from the above instructions that nomination received from the employment exchange within 30 days of the date of requisition should only be considered. It is also the stipulation that the minimum number of names to be sponsored shall be three. We have seen from the facts of this case that three names were sponsored initially by the Employment Exchange by letter dated 27-8-1994 which was received by the respondents on 30-8-1994. Thus the employment exchange had nominated three persons within a period of 30 days and the number nominated was sufficient for the appointing authority to have an adequate field of choice in terms of the relevant instructions. The name of the applicant was admittedly sponsored by the employment exchange after expiry of 30 days from the date of requisition. This name, therefore, could not have been considered by the appointing authority and consideration of his candidature was violative of the Instruction No.12, as quoted above. As was decided by the Full Bench in S. Ranganayakulu's case, administrative instructions in this regard having been violated in making appointment of the applicant, such violation is ~~fatal~~ to his candidature and appointment.

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11. Therefore, action of the respondents in terminating the services of the applicant by a simpliciter order without attaching any stigma, in such a circumstance, cannot be faulted.

12. The application, therefore, lacks merit and is dismissed accordingly. The interim order is vacated.

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Member (J)

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Member (A)

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