

6

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 466 OF 1992

Cuttack this ~~6th~~ <sup>the</sup> day of April, 1998.

SRIBANTA KUMAR RAY.

.....

APPLICANT.

VRS.

UNION OF INDIA & OTHERS.

...

RESPONDENTS.

(FOR INSTRUCTIONS )

1. Whether it be referred to the reporters or not? YES
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 6.4.98

*S. K. Agarwal*  
(S. K. AGARWAL) 6/4/98  
MEMBER (JUDICIAL)

7

14

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 466 OF 1992.

Cuttack this the 6th day of April, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

A N D

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL).

...

In the matter of:

Sribanta Kumar Ray,  
S/o. Hariprasad Ray,  
Extra Departmental Branch  
postmaster, Khuntiapada,  
Boudh.

...

Applicant.

By legal practitioner : M/s. S.C. Ghose, S. Ghose, Advocate.

-Versus-

1. Union of India represented by the  
C.P.M.G., Orissa, Bhubaneswar.
2. The Superintendent of Post Offices,  
Phulbani Division, Po and Dist. Phulbani. ... Respondents.

By Legal Practitioner :- Mr. Ashok Mishra, ~~Sd/-~~  
Senior Standing Counsel (Central).

.....

  
6/4/98



135

O R D E R

MR. S.K. AGARWAL, MEMBER(JUDICIAL):-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the impugned order at Annexure-2 may be quashed and the applicant may be allowed to continue as Extra Departmental Branch Post Master, Khuntiapada B.O. in Boudh.

2. The short facts of this case, as stated by the applicant, are that Respondent No.2 by his order dated 18.9.1991 appointed the applicant as Extra Departmental Branch Post Master of Khuntiapada Branch Post Office vide Annexure-1 and pursuant to the said order, the applicant joined the said post and thereafter performed his duties sincerely and faithfully to the entire satisfaction of his authorities and the general public. But all of a sudden, Respondent No.2 by his order dated 2.9.1992 terminated the services of the applicant. It is submitted that no enquiry was made and no opportunity of hearing was given to the applicant before passing the impugned order at Annexure-2. It is also submitted that the post of Extra Departmental Branch post Master, Khuntiapada is still there. As Respondent No.2 wants to appoint another person in the said post, the services of the applicant has been terminated illegally and arbitrarily vide order at Annexure-2. Therefore, it is requested that the impugned order at Annexure-2 be quashed

and the applicant be allowed to continue in the said post.

3. Counter was filed on behalf of the Respondents. In the Counter, it is admitted that the post of Extra Departmental Branch Post Master, Khuntiapada Branch Post Office fell vacant due to retirement on superannuation of the regular E.D. Agent Shri Raihari Prasad Deo with effect from 23.2.1991. Thereafter, the District Employment Exchange Officer, Phulbani was requested to sponsor names of candidates from the Post village within 30 days for the post in question and the District Employment Exchange Officer directed the Junior Employment Officer, Boudh to sponsor adequate number of candidates to meet the demand. Thereafter, the Junior Employment Officer, Boudh sponsored five candidates. These candidates were asked to submit the application /documents by 1.4.91 and in response to which applications of Shri Biswamitra Pradhan and Shri Sribanta Kumar Ray were received on 1.4.91 and 27.3.1991 respectively. Application of one Shri Premananda Pradhan whose name was not sponsored by the Employment Exchange, was also received on 20.3.1991 and his application was entertained during the final selection made on 1.5.1991. Shri Sribanta Kumar Ray (applicant) having annual income of Rs.8000/- and all requisite qualifications was selected for the post of E.D. Branch Postmaster vide Annexure-1 to the application. The applicant was appointed to the post of Extra



-3-

Departmental Branch postmaster, Khuntiapada Branch Post Office on 18.9.1991. It is stated that the Postmaster General Berhampur Region, Berhampur called the selection file on account of preventive vigilance report and after going through it, observed the following irregularities in the matters of selection for the post of Extra Departmental Branch Postmaster, Khuntiapada Branch post Office:

1. That the application of Shri Premananda Pradhan one of the candidates in the field of competition was entertained direct whose name was not sponsored by the Employment Exchange without making a public notification calling for applications from the open market;
2. Out of five candidates sponsored by the Employment Exchange, only two candidates responded and selection made hurriedly instead of making public notification;
3. appointment of the applicant was made before verifying the property and income as required in the Director General Posts letter No. 43/198/85 dated 14.8.1985.

It is further stated that the income certificate produced by the applicant was not verified but the source of his income

and particulars of property and the agricultural land if any possessed by the applicant has not been reported and verified. Due to this procedural lacuna in the selection, the Postmaster General, Berhampur Region, Berhampur directed for cancellation of the selection of the applicant made by the Respondent No.2. Upon the above, the appointing authority terminated the services of the applicant vide order dated 2.9.92 (Annexure-2) and the applicant was informed accordingly with directions to the Sub Divisional Inspector Boudhraj to depute Overseer Mails to relieve the applicant from the post of E.D.B.P.M. Khuntipada Branch Post Office. Soon after the receipt of orders of termination by the applicant, the applicant proceeded on leave providing substitute at his place in order to escape from relief from the Post of Extra Departmental Branch Post Master, Khuntipada Branch Post Office. As a result the Overseer mails, Boudh who had been Khuntipada Branch Post Office on 14.9.1992 to relieve Shri Ray (Applicant), returned Boudh invain and the orders of termination could not be implemented. It is submitted that the applicant had rendered about one year of service and under Rule-6 of E.D.A. conduct and Service Rules, 1964, empowers the respondent no.2 to terminate the services of the applicant without assigning any reason. Rule-6 of the E.D.A. Rules, 1964 does not provide to hold enquiry and to give opportunity of hearing before issuing the order of termination of service. It is submitted that the order



order at Annexure-2 was passed under the provisions of law established and no natural justice violated in this case. The services of the applicant were terminated due to some procedural lacuna in the process of selection which is purely for administrative reasons. Therefore, it was submitted by the Respondents that the Original Application has no merit and is liable to be dismissed.

4. Applicant has submitted a rejoinder. In the rejoinder, it is stated that he received notice from Superintendent of Post Office as per Annexure-3 and submitted the application in the prescribed form enclosing the original income certificate and solvency certified issued in his favour by the Revenue Officer-cum-Tahasildar of Boudh (Annexures-4, 5 and 6). It is stated that before terminating the services of the applicant, the Post master General, Berhampur did not intimate him about the alleged lacuna in the said certificates and he was not called upon to produce any further certificate and no opportunity of hearing was given to him before termination of his services.

5. We have heard Mr. S. E. Ghose, learned counsel for the applicant and Mr. ~~Subh~~ Ashok ~~Mishra~~ Mishra, learned Senior Standing Counsel appearing on behalf of the Respondents and perused the whole records.

*[Signature]*

6. Learned counsel for the applicant has submitted that the applicant was recruited as per the Recruitment Rules, and instructions issued from time to time, and after due selection, he was appointed to the said post and in response to the said order of appointment, the applicant joined his duty. But all of a sudden, Respondent No.2 vide impugned order at Annexure-2, terminated the services of the applicant under Rule-6 of Extra Departmental Agents Rules, 1964. According to the learned counsel for the applicant, the powers exercised by the Respondents were arbitrary and against the principles of natural justice. Therefore, learned counsel for the applicant has very vehemently, argued that the impugned order at Annexure-2 should be quashed and the applicant should be allowed to continue in the post in question.

On the other hand, learned Senior Standing Counsel Shri Aswini Kumar Mishra, appearing on behalf of the Respondents has argued that the Postmaster General, Berhampur Region, Berhampur reviewed the matter and found certain procedural lacuna in the process of selection and therefore, directed for cancellation of the selection and appointment of the applicant made by the Respondent No.2 and pursuant to that direction, the appointing Authority i.e. Respondent No.2 terminated the services of the applicant vide Annexure-2. It is therefore, stated by the learned Senior Standing Counsel for the Respondents that the Respondents rightly terminated the services of the applicant


*[Signature]*



under rule 6 of the E.D. Agent and conduct rules, 1964 and the Tribunal should not interfere with the decision taken by the Respondents. It has also been argued by the learned Senior Standing Counsel appearing on behalf of the Respondents that the order of termination in Annexure-2, is neither arbitrary nor against the principles of natural justice or in violation of Articles 14 and 16 of the Constitution of India. It is also stated that the appointment of the applicant was provisional and rule 6 of the Rules, 1964 provides for termination of the services of an incumbent who has not rendered three years of continuous service, without any reason. Therefore, no irregularity was done while terminating the services of the applicant under rule 6 of the ED Agent (conduct and Service) Rules, 1964.

7. We have given our thoughtful consideration to the contentions of the rival parties and gone through the records.

8. Rule-6 of the ED Agents (conduct and Service) Rules, 1964 provides as follows:-

  
26. Termination of Services-(a) the Services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month; provided that the service of any such employee may be

terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing then immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month".

9. In the instant case the services of the applicant have been terminated under rule-6 of the Extra Departmental Agents (Conduct and Service) Rules, 1964 on the ground that certain irregularities were noticed in the matter of selection for the post and one ground was that one Shri Premananda Pradhan, filed application for consideration to the post and this application was entertained directly without making any publication of notification calling for applications from the open market. It is also stated that out of five candidates only two candidates responded and selection was made hurriedly instead of making public notification, and the appointment of the applicant was made before verifying the property and income of the applicant as required under the rules.

10. We have considered the submissions and records concerning the alleged irregularities and we are of the opinion that even the Postmaster General, Berhampur Region, Berham was not of the opinion that the Income Certificate (Annexure-5) and the Solvency certificate (Annexure-6), was in any way incorrect. Even on verification by the P.M.G., it does not appear that the person who was selected is not having the income as stated by him or the



list of property which he has filed is in any way wrong. On the perusal of the record, it also appears that out of five candidates sponsored by the Employment Exchange, two have only responded and one Shri Premananda Pradhan, who had submitted application directly, was considered. We do not find any irregularity in considering the candidature of the applicant who had applied directly to the concerned authority and whose name has not been sponsored by the Employment Exchange and the person who had applied directly to the concerned authority, was also not selected. Therefore, we are of the opinion that the selection of the applicant, was not in any way irregular.

11. In the case of TILAK DHARI YADAV - VRS. - UNION OF INDIA AND OTHERS reported in (1997) 36 Administrative Tribunals Cases 539 (FB), it was held that "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 with conduct of the appointee, without giving him an opportunity to show cause". In this judgment, the decision

*[Signature]*

of the Honourable Supreme Court in the case of Union of India Vrs. Jayakumar Parida 1996 SCC (L & S) 320, S. G. Jaisinghani Vrs. Union of India (AIR 1967 SC 1427) and Shrawan Kumar Jha Vrs. State of Bihar (1991 Suppl. (1) SCC 330; 1991 SCC (L&S) 1073 were also considered.

12. In(1997) 35, Administrative Tribunals Cases 474 VISHNU KANT SHUKLA VRS. UNION OF INDIA AND OTHERS, it was held that review could be conducted by the Appointing Authority and not by the higher authority. Appointing Authority mechanically acting on the directions of the Higher authority which conducted the review, termination order was declared invalid inter alia.

13. In the instant case, the review was conducted by the higher Authority i.e. Postmaster General, Berhampur whereas the appointing authority, in this case, was Superintendent of post Offices, Respondent No.2. Therefore, on the direction of the Reviewing Authority, i.e. Postmaster General, Berhampur, termination order ~~was~~ issued by the Appointing Authority is inter alia invalid.

14. In the case of ANDESH KUMAR VRS. UNION OF INDIA AND OTHERS reported in (1997) 35 Administrative Tribunals Cases 511, it was held that the services of an ED Agent could only be terminated under rule-6 only when the appointment of the said ED Agent was irregular.

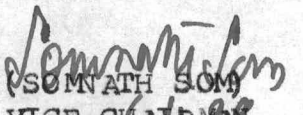



15. In the instant case, we are of the opinion that the appointment of the applicant was not irregular so as to cause any prejudice. Therefore, Rule-6 of Extra Departmental (Conduct and Service) Rules, 1964 are not applicable in the instant case and the termination of the services of the applicant under rule-6 of the ED Agents Rules, 1964, is not in accordance with law.

16. The applicant has not been relieved from the said post and he is continuing in the said post by the interim orders of this Tribunal. Therefore, we are of the considered opinion that termination of the appointment of the applicant vide order Annexure-2 is arbitrary and against the principles of natural justice as also against the provisions of law as discussed above and therefore, it is liable to be quashed.

17. We, therefore, allow this Original application and quash the impugned order of termination at Annexure-2 and direct that the applicant shall continue in the post.

18. Thus, the Original application is allowed but in the circumstances, there would be no order as to costs.

  
(SOMNATH SOM)  
VICE-CHAIRMAN

  
(S.K. AGARWAL)  
MEMBER (JUDICIAL) 6/4/98