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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

Original Application No.84 of 1993
Cuttack this the 6th day of April, 1998

Purnachandra Panigrahi

Applicant(s)

-VERSUS-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or notn ? **Yes**
2. Whether it be circulated to all the Benches of the Central Administrartive Tribunals or not ? **No**

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
6/4/98

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

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.84 of 1993
Cuttack this the 6th day of April, 1998

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THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

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Purna Chandra Panigrahi,
aged about 26 years,
S/o. Biswanath Panigrahi
At/Po:Bipulinga, Via:Chatrapur
District:Ganjam, Ex-E.D.Mailman
of T.M.O., Khalikote R.S.

...

Applicant

By the Advocate:

M/s.Devanand
Mishra,
R.N.Naik,A.
Deo, B.S.
Tripathy,
P.Panda

-VERSUS-

1. Union of India, represented
by its Secretary, Department of
Posts, Dak Bhavan, New Delhi
2. Chief Postmaster General,
Orissa Circle,
At/PO:Bhubaneswar
Dist:Puri
3. Postmaster General,
Berhampur Region,
At/Po:Berhampur,Dist:Ganjam
4. Superintendent,R.M.S.'B.G.' Division,
At/Po:Berhampur, Dist:Ganjam
5. I.R.M., BG Ist Sub-Division,
At/Po:Berhampur, District:Ganjam

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Respondents

Vy the Advocate:

Mr.Ashok Mishra
Sr.Panel
Counsel(Cent
ral)

ORDER

MR.S.K.AGARWAL, MEMBER(J): This is an application under Section 19 of the Administrative Tribunals Act, 1985, with the prayer that impugned order dated 28.7.1992(Annexure-3) terminating the services of the applicant from the post of E.D.Mailman in T.M.O., Khallikote R.S. be quashed

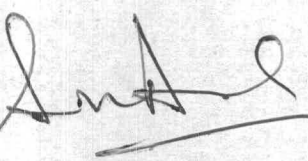
2. In brief, the facts of the case as stated by the applicant in his application are that the applicant was initially appointed as E.D.Mailman in T.M.O., Khallikote R.S. and he worked continuously from 17.8.1985 to 30.9.1985 on casual basis. Subsequently, Respondent No.5 issued a notification and the applicant along with other candidates applied in pursuance of the said notification for the post of E.D.Mailman in T.M.O., Khallikote R.S. for appointment on regular basis. The applicant was duly selected and he was appointed on 15.1.1986 on the post of E.D.Mailman. It is submitted that with effect from 21.7.1986, the Mail Guard, T.M.O., Khallikote R.S. did not allow the applicant to resume his duties and verbally communicated that his services have been terminated. The applicant thereafter filed various representations before the respondents but no reply was given. Ultimately, the applicant submitted representation challenging his removal

before Respondent No.2 through M.L.A., Chatrapur and Respondent No.2 vide its letter dated 20.9.1991 replied to M.L.A., Chatrapur that he has sent the representation of the applicant to Res.3 in original with a request to consider the case at his level and intimate the result thereof. It is submitted that Post Master General(Res.3) disposed of the representation vide letter dated 28.7.1992 intimating that the Chief Post Master General cancelled the selection and appointment of the applicant holding the same as irregular. The applicant remained absent at his address and therefore, the termination order could not be served upon him. It was submitted that the impugned order is absolutely illegal as the same has been passed in contravention of the principles of natural justice and also in violation of Articles 14 and 16 of the Constitution of India. It is also submitted that he did not know how the selection of the applicant was irregular and if it was irregular then it was the mistake of the selecting authority for which he should not be punished. It is, therefore, requested that the impugned order terminating the services of the applicant from the post of E.D.M.M., T.M.O. Khallikote R.S. and the appellate order dated 28.7.1992 (Annexure-3) be quashed.

3. Respondents have filed their counter. In the counter it was stated that I. R. M., B. G., of

1st. Sub-Division(Res.5) requested the Employment Exchange vide its letter No.IRM/ED/80-81 dated 11.9.1985 to sponsor the names of ten persons to be recruited as EDMM in T.M.O., Khallikote R.S. so as to reach in the office by 11.10.1985. But no reply was received from the Employment Exchange. As such notification on 25.10.1985 inviting applications for filling up of the above stated post was issued. The last date of receipt of the application was fixed to 11.10.1985 and as much as four candidates applied for the said post. It is submitted that the applicant was selected for appointment as he was having the highest qualification among all the candidates. It is submitted by the respondents that the applicant has submitted the residential certificate under Sl.No.3 of the enclosures to the application on 6.11.1985. But on enquiry it was revealed that the application of the candidate addressed to Tahasildar, Khallikote for issue of residential certificate was forwarded by the Revenue Inspector vide his letter No.166/85 dated 2.12.1985 to Tahasildar, Khallikote, who issued the certificate only on 16.12.1985. It is also submitted that the applicant is the resident of Bipulingi, Post:Bipulingi, which is at a distance of about 50 kms. from Khallikote. But he had furnished in the application the name of village as Keshpur. In the

School Leaving Certificate and the character certificate name of the village of the applicant is noted as Bipulingi. The applicant has also admitted in his written statement dated 4.4.19986 that he was not residing at Keshpur or any nearby village. His village is Bipulingi from where he was coming by train daily to perform his duties. It is submitted that as per instructions of Directorate, New Delhi vide letter No.43-84/80-Pen. dated 30.1.1981, the E.D.M.M. may as far as possible reside in or near the place of their work. The applicant did not fulfil the eligibility criteria for the recruitment to the post of EDMM as is required. Therefore, his recruitment was found to be irregular. Hence the services of the applicant were terminated under Rule-6 of the E.D. Agents Conduct and Service Rules, 1964 by the IRM BG 1st Sub-Division, Berhampur vide his memo No. PF/P.C. Panigrahi dated 17.7.1986 with effect from 22.7.1986 without any notice. It is further submitted that the applicant got the selection stating himself to be the resident of Keshpur whereas he is the resident of Bipulingi which is about 50 kms. away from the place of work, i.e. Khallikote. Therefore, the selection of the applicant was held to be irregular and his services were terminated under Rule-6 of E.D. Agents (Conduct & Service) Rules 1964 for which no notice is required



to be given. Therefore, on the basis of the averments made in the counter, the respondents have requested to dismiss the application filed by the applicant with costs.

4. We have heard the learned counsel for the applicant and the learned Senior Panel Counsel Shri Ashok Mishra, appearing on behalf of the respondents

5. Learned counsel for the petitioner has submitted that the applicant was appointed as E.D.M.M., Khallikote, after following the due process of law. But from 31.7.1986 the applicant was not allowed to resume his duties. He has further submitted that the order terminating the services of the applicant is absolutely illegal and it has been passed in violation of principles of natural justice.

6. On the other hand learned Senior counsel Shri Ashok Mishra appearing on behalf of the respondents submitted that on review, the applicant's appointment was found ^{be} to ~~be~~ irregular. Therefore, the competent authority has terminated the services of the applicant under Rule-6 of E.D. Agents (Service & Conduct) Rules, 1964.

7. We have given our thoughtful consideration to the rival contentions of both the parties and perused the whole record.

8. It is the admitted case of the parties that the applicant was selected for the post of E.D.M.M., T.M.O., Khallikote R.S. after following due process of law and the applicant was appointed on 15.11.1986 in pursuance of that selection process. It is also not in dispute that the services of the applicant were terminated under Rule-6 of E.D. Agents (Service & Conduct) Rules, 1964, by I.R.M. BG 1st Sub-Division, Berhampur vide his Memo No. PF/P.C. Panigrahi dated 17.7.1986 without any notice. It appears that copy of the termination order was sent at the place of work of the applicant, but that Regd. letter returned back due to absence of the applicant on the place of work.


9. In the counter it has been stated that on a scrutiny it was found that the applicant is not the resident of Keshpur or nearby village and he is the resident of Bipulingi which is 50 kms. away from the place of work of the applicant. It also reveals from the counter that the applicant was selected, as stated in his application, belonging to the resident of Keshpur which on a review was found not true. Therefore, the applicant's selection was held to be irregular and the impugned order of termination was issued under Rule-6 of E.D. Agents (Service & Conduct) Rules, 1964

10. The following are the instructions so far as residential qualifications of E.D.Staffs are concerned: (Swamy's -Service Rules for E.D.Staff)

4. Residence:

- (i) The E.D.BPM/ED SPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which neednot be adapted to suit his convenience or his main avocation.
- (ii) E.D.Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherefrom mails originate/terminate, i.e., they should be permanent residents of the delivery jurisdiction of the post office.
- (iii) E.D.agents of other categories may, as far as possible, reside in or near the place of their work (Letter No.5-9/72-EL Cell, dated 18.8.1973 and No.43-312/78-Pen. dated 20.1.1979, stand modified to this extent).

11. In the instant case the applicant has stated in his application that he is the resident of Keshpur. But on a review it was found that the applicant is the permanent resident of Bipulingi which is 50 kms. away from the place of work. On the perusal of the counter it also appears that the applicant in his written statement dated 4.4.1986 has admitted that he was not the resident of Keshpur or any nearby village and his village is Bipulingi from where he was coming by train to perform the duties. Therefore, on review, the competent authority has rightly held that the applicant obtained the appointment by stating falsehood that



he is the resident of Keshpur. Therefore, we are of the opinion that the appointment of the applicant was held in an irregular manner and that the competent authority has terminated his services under Rule-6 of E.D. Agents (Conduct & Service) Rules, 1964 which provides "if the employee, who has not already rendered more than three years continuous service from the date of his appointment, his services can be terminated by the competent authority at any time under this rule without any notice.

12. Admittedly the applicant has rendered less than three years of service and on review his appointment was found to be irregular.

In *Shankar Dayal Upadhyay and Another v. Union of India & Others* 1993 (30) ATC 18 it was held that a Government servant, it is settled law, has no right to the post held by him unless he is holding a permanent post substantively or he has achieved quasi-permanent status or he is holding a temporary post for a fixed period. In the present case the applicants are holding temporary posts of ED Mailmen terminable at will. Termination of their services at any time will therefore not attract Article 311(2) of the Constitution of India and cannot be deemed to be by way of punishment.

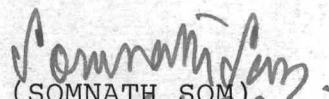
In *Doddasiddaih v. Union of India* (1993) SLR 474 the termination of irregular appointment of E.D. Agents under Rule-6 of E.D. Agents (Conduct & Service) Rules 1964 was held to be valid and it was

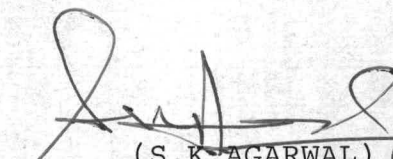
also held that there was no need for giving an opportunity of hearing before the order of termination issued in such cases.

13. On a review by the competent authority the applicant's appointment was found to be irregular. Therefore, the competent authority in exercise of powers under Rule-6 of E.D. Agents (Conduct & Service) Rules 1964, issued the order terminating the services of the applicant with effect from 22.7.1986 which in our considered opinion cannot be held to be illegal. Therefore, there is no basis to interfere with the impugned order terminating the services of the applicant under Rule-6 of E.D. Agents (Conduct & Service) Rules, 1964.

14. However, this order shall not be a bar to consider the candidature of the applicant for appointment of E.D. Agent in any vacancy in future in case the applicant is found to be suitable.

With the observations above, we dismiss the Application ~~filed~~ by the applicant with no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


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

B.K. Sahoo, C.M.