

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 252 OF 1998.
 Cuttack, this the 8th day of May, 2000.

AKSHYA KUMAR NAYAK.

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APPLICANT.

VRS.

UNION OF INDIA & ORS.

....

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

(G. NARASIMHAM)
 MEMBER (JUDICIAL)

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN

S.S.Q.MO

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 CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 252 OF 1998.
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CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
 A N D
 THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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AKSHYA KUMAR NAYAK,
 Aged about 38 years,
 S/o. Jagabandhu Nayak,
 At/Po: Kulgi,
 Via: Bahalda,
 Dist: Mayurbhanj,
 presently working as EDBPM,
 Kulgi Branch Post Office,
 Kulgi, via. Bahalda,
DIST: MAYURBHANJ.

APPLICANT.

By legal practitioner: M/s. K. P. Mishra, S. Rath, J. K. Khandayatray,
 B. S. Misra, Advocates.

- VERSUS -

1. Union of India represented through its
 Director General (Posts), Dak Bhawan,
 Ashoka Road, New Delhi-1.
2. Superintendent of Post Offices,
 Mayurbhanj Division, Baripada,
 At/Po: Baripada, Dist. Mayurbhanj.
3. Sub-Divisional Inspector (Posts),
 Rairangpur, At/Po: Rairangpur,
 Dist: Mayurbhanj.

... ... RESPONDENTS.

S. Som. By legal practitioner: Mr. Anup Kumar Bose,
 Senior Standing Counsel (Central).

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O R D E R

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MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 2.4.1998, Annexure-3, terminating his services as EDBPM, Kulgi Branch Post Office on payment of notice period emoluments.

2. Applicant's case is that he was duly appointed in a put off duty vacancy, after consideration his case alongwith seven others being sponsored by the Employment Exchange and accordingly order of appointment was issued to him on 10.1.97, at Annexure-2. His grievance is that without affording him any opportunity, his services have been terminated in the order at Annexure-3. In view of this, he has come up in this application with the prayer referred to above.

3. Respondents in their counter have opposed the prayer of applicant. They have stated that after the persons sponsored by the Employment Exchange, they were asked to file application in proper form with necessary documentation. *S. J. S. J. S.* only nine candidates including the applicant filed the petition and seven were eligible. Amongst the seven candidates, applicant did not get the higher percentage of marks but the appointing authority, Supdt. of Post Offices, Mayurbhanja Division, Mayurbhanja decided to give preference to the applicant because he had sufficient income and had landed proper in his own name. The selection and appointment of applicant was reviewed by the Chief Postmaster General and found that the appointment of the applicant even though he has got less marks than the other candidates, was irregular and therefore, ordered cancellation of appointment of applicant. Respondents have stated that the

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Superintendent of Post Offices, accordingly issued the impugned order at Annexure-3 under Rule-6(b) of the EDAs Conduct and Service Rules. Respondents have stated that the action taken by the Supdt. is legal and is according to the Rules and therefore, they have opposed the prayer of applicant.

4. We have heard Mr. K. P. Mishra, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records. It has been submitted by learned counsel for the petitioner that according to the Circular of DG Posts which has been circulated to all Supdts. in Circle Office letter dated 9.12.97, and has been enclosed by the Respondents themselves in Annexure R/5 it has been stated that where services of an ED Agent is to be terminated because of irregularity in his appointment invariably a show cause notice has to be issued to him and his reply in response to the show cause notice should be considered before final orders are passed. In this circular it has also been provided that while issuing the final termination order reference should not be made to Rule 6(b) of the ED Agents (Conduct and Service) Rules but an executive order after considering the representation of the concerned ED Agent should be passed. It is submitted by the learned counsel for the petitioner that the Departmental Authorities have not admittedly followed the above direction of the DG Posts and in the process, the applicant has been prejudiced. In view of this, learned counsel for the petitioner has stated that he does not want to make his submission on the merits of the matter. He also does not want to urge his prayer for quashing the Rule 6(b) for being violative of Arts. 14 and 16 of the Constitution of India. It is submitted by the learned Senior Standing Counsel that even though no notice has been issued to the applicant before issuing the order at

Annexure-3, applicant has not specifically averred in his Original Application that thereby prejudice has been caused to him and therefore non-issuance of the show cause notice by itself will not invalidate the order at Annexure-A/3. It is further stated by learned Senior Standing Counsel that the Tribunal is competent to go into the merits of the matter and in this case in the face of the record, eligible person who was prima facie, more meritorious than the applicant, and applicant had been selected wrongly and therefore, no illegality is involved in the order of termination of his appointment. We have considered the above submission of the learned counsel for both sides carefully. The first point for consideration is whether by not issuing of a show cause notice, applicant has been prejudiced in any way. More so in the absence of any specific averment by the applicant in his petition regarding causing of prejudice. Hon'ble Supreme Court in the case of State Bank of Patiala vrs. S.K. Sharma reported in AIR 1996 SC 1669 have observed that in case of violation of procedural provision the position is this; procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision can not be said to automatically vitiate the enquiry held or order passed. Their Lordships of the Hon'ble Supreme Court have further observed as follows:

"Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively."

From the above it is clear that even though in case of

violation of a procedural requirement, the course/Tribunal should normally call for proof of prejudice but in cases of no notice, no opportunity and no hearing further proof of prejudice need not be called for because violation of such procedure is by itself proof of prejudice. In view of this, it is not possible to accept the contention of the learned Senior Standing Counsel that inspite of the fact that no notice has been issued to the applicant before issuing the order at Annexure-3, the applicant has not specifically proved that thereby prejudice has been cause to him. This Original Application of the applicant has to be allowed on another ground as well. We have in a series of cases decided following a full Bench decision of the Tribunal Allahabad Bench in the case of Bilakdhari Yadav vrs. U.O.I reported in 1997 (36) A. T.C. page 539 that for the irregularity in the appointment, the authorities higher than the Appointing Authority has no power to decide cancellation of the order of appointment. In this case, Respondents have mentioned in Para -4(1) at page-3 of the counter that the Chief Postmaster who is the Authority higher than the Appointing Authority found irregularity in the matter of selection and ordered the Appointing Authority to cancel the selection. This is also no in accordance with the law as laid down in the above Full Bench decision and followed by us in other cases.

5. In view of the above, the order at Annexure-3 is quashed. The Original Application is accordingly allowed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN