

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.338 of 1998
CUTTACK THIS THE 18th DAY OF MAY, 2001

T. Kurmachary Peititioner

- Vrs -

Union of India & Others Opp. Parties

For Instructions

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

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *20/5/01*

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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
THE HON'BLE SHRI G. NARASIMHAM, MEMBER (J)

.....

T. Kurmachary,
Aged about 30 years,
S/o. T. Laxminarayan Acharya,
At/Po. Chandili, Via. Kotpad,
Dist-Koraput-764058.

..... Petitioner

By the Advocate(s)

M/s. G. Rath, S.N. Misra,
A.K. Panda & J.K. Prahara

-VERSUS-

1. Union of India, represented through it's
Secretary, Govt. of India,
Ministry of Communication,
Department of Post,
Dak Bhawan, New Delhi - 110001.
2. Post Master General, Orissa,
At/Po. Bhubaneswar, Dist-Khorda.
3. Senior Superintendent Post Office,
Koraput Division, At/Po. Jaypore,
Dist-Koraput.
4. Sub-Divisional Inspector (Postal),
Nawarangpur Sub-Division,
At/Po/Dist-Nawarangpur.

..... Respondents

J. Som
By the Advocate(s)

Mr. B.K. Nayak

Order

SOMNATH SOM, VICE-CHAIRMAN: In this original application the petitioner has prayed for quashing the order dated 15.06.1998 (Annexure-4) terminiting his service as EDDA, Chandili Branch Post Office and the order dated 16.06.1998 (Annexure-5) taking over charge from him. The Second prayer is for a direction to the opposite parties to allow the petitioner to work till the regular selection is held and to direct the opposite parties to consider the case of the petitioner for appointment as EDDA, Chandili Branch Post Office, in a regular manner with consequential benefits. Respondents have filed counter opposing the prayer of the applicant. No rejoinder has been filed.

2. Petitioner has stated that on coming to know that a post of EDDA is lying vacant in Chandili Branch Post Office due to retirement of the original incumbent, he submitted an application to SDIP Navarangpur (Respondent No-4) to appoint him to the post as he is eligible for the same. Accordingly opposite party No.4 appointed him on 15.09.1995 and he joined the post on 15.03.1996. In letter dated 15.03.1996 (Annexure-1) *S Som* he was provisionally appointed to the post from 15.09.1995 to 31.03.1996. Again in order dated 19.12.1996 (Annexure-2) he was provisionally appointed to the post from 01.04.1996 to 31.12.1996. In another order dated 06.05.1997 (Annexure-3)

9

he was appointed to the post from 01.01.1997 but no date for ending the appointment was indicated in this order. For filling up of the post in a regular manner a notification/ advertisement was issued on 15.04.1997 inviting applications and the petitioner applied for the post. Petitioner has stated that amongst all the candidates he was found most meritorious and was issued the order of appointment at (Annexure-3). While the petitioner was continuing as such in letter dated 15.06.1998 (in Annexure-4) his services have been terminated under Rule 6 (b) of ED Agents (Conduct and Service) Rules, 1964. Applicant has stated that without any reasonable grounds his service has been terminated and provisions of Rule 6 (b) have not been complied with. The termination is also in violation of principles of natural justice. In the context of the above the petitioner has come up with the prayers referred to earlier.

3. Respondents have stated in their counter that the Chandili Branch Post Office comprises of one EDBPM and one EDDA-cum-EDMC. For filling up the vacancy in the post of EDDA/MC respondent No-4 placed requisition with Employment Exchange authority at Joypore and 7 names including the name of the applicant were sponsored by Employment Exchange in their letter dated 27.03.1997. Out of the 7, ^{five} candidates

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including the petitioner applied for the post but application of one of them was received after due date and was not considered. Qualification for the post of EDDA/MC is class 8th pass with the stipulation that the preference will be given to matriculates. All the four candidates were below matric. Respondents have pointed out that selection should have been finalised basing on the minimum required educational qualification of 8th pass but respondent No.4 selected the applicant on 06.05.1997 with the observation that though the applicant failed in the Board of Secondary Education he secured 241 and kept compartmental standard. Respondents have pointed out that SDI (P) did not call for the fail marksheets if any from other candidates. Before finalisation of the selection, two other candidates Rammurti Harijan and Samu Bensa, both of whom belong to the reserved community and are also matric failed candidates, submitted their transfer certificates, but their fail marksheets were not taken into consideration. It is further stated that in that recruitment unit there is a shortfall in rerepresentation of SC community. This was not considered but the applicant, a general community candidate was selected. It is further stated that SDI (P) issued two orders of the provisional appointment at (Annexures 1&2). He also obtained an undertaking from the applicant (Annexure R/3) stating that he will have no objection to quit the post if

any suitable candidate was appointed. It was stated that in February, 1998 an enquiry was conducted on an allegation made by one of the unsuccessful candidates, Ramamurti Harijan and illigality in the selection came to light and the service of the applicant was terminated and the charge taken over from him. Respondents have stated that action taken by them is in accordance with the law and principles of natural justice have not been violated and on the above grounds they have opposed the prayer of the applicant.

We have heard Shri S.N. Mishra, Learned Counsel for the petitioner and Shri B.K. Nayak, Learned Additional Standing Counsel for the respondents.

4. The admitted position is that the service of the applicant was terminated under Rule 6 (b) of ED Agents (Conduct and Service) Rule. The provisions of Rule 6 need to be noticed at this stage. Clause (a) of this Rule provides that 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. Clause (b) lays down that period of such notice shall be one month. Provisio to the rule lays down that service of any

such employee may be terminated forthwith and on such termination the employee shall be entitled to claim his allowances for the period of notice i.e. for one month. In the instant case admittedly the applicant has worked in the post for less than three years and therefore his case comes under Clause (a) of Rule 6. In the termination order dated 15.06.1998 at Annexure-4 he has also been ordered to be given one month's salary in lieu of notice in terms of the proviso referred to by us earlier. But before issuing this order at Annexure-4 no show cause notice was issued to the applicant. Respondents have not stated in their counter that any show cause notice was issued to him, Full Bench of the Tribunal in the case of Tilakdhari Yadav Vrs. Union of India (1997) 36 ATC 539 have held as follows:-

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 services or for administrative reasons unconnected with the conduct of the appointee without giving him an opportunity to showcause"

6. Admittedly in the instant case termination of the service of the applicant is not on grounds connected with

with his official work. In view of this, before issuing the impugned order of the termination, departmental authorities should have given him a show cause notice. That has not been done and therefore, the order of termination is not legally sustainable and is accordingly quashed. The applicant should be reinstated in service within a period of 30 days from the date of receipt of a copy of this order, but he will not be entitled to back wages. Departmental authorities will be free to take up a regular process of selection for the post of EDDA/MC following the departmental rule and instructions. The applicant will be obliged to make way for the regularly selected candidate after such regular selection is made.

7. In the result, therefore, the Original Application is disposed of in terms of observation and direction above.

No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN-2001

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