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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.01 OF 1999.

Cuttack, this the 12th of November, 1999.

RADHASHYAM SAHOO.

....

APPLICANT.

VRS.

UNION OF INDIA & OTHERS.

RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? ↗..
2. whether it be circulated to all the Benches of the ~~Central~~ Central Administrative Tribunal or not?

Somnath S. S.
(SOMNATH S. S.)
12/11/99
VICE-CHAIRMAN

12/11/99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 01 OF 1999.

Cuttack, this the 12th day of November, 1999.

C O R A M :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

..

Radhashyam Sahoo, Aged about 26 years,
S/o. Sarat Ch. Sahoo, now working as
EDDA Cum EDMC, Kanikapara B.O.,
Dist. Jajpur.

APPLICANT.

By legal practitioner:- M/s. B.B. Patnaik, S.K. Dey,
B. Behera, D.P. Das,
N. Patnaik, Advocates.

-VERSUS-

1. Union of India represented through
Chief Postmaster General, Orissa Circle,
Bhubaneswar.

2. Superintendent of Post Offices,
Cuttack North Division, Cuttack.

3. Assistant Superintendent of Post Offices U/C,
Jajpur Sub Division, Jajpur-755001.

... RESPONDENTS.

By legal practitioner: Mr. A.K. Bose, Senior Standing Counsel
(Central).

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O R D E RMR. G. NARASIMHAM, MEMBER (JUDICIAL):

Applicant, Radhashyam Sahoo, who was appointed as EDDA-Cum-EDMC, Kanikapara Branch Post Office, in account with Mangalpur Sub Post Office, through regular selection prefers this Original Application for quashing the notice dated 22-12-1998 (Annexure-4) issued by the Appointing Authority i.e. Assistant Superintendent of Post Offices, (Respondent No.3) to show cause as to why his appointment shall not be cancelled on account of review of the selection made by the higher authority, and also for quashing of the entire review proceedings.

There was prayer for interim stay of the operation of the show cause notice. By order dated 06.01.1999, it was made clear that in case, applicant's service will be terminated and any other person will be appointed in his place, then such termination or appointment, shall be subject to the result of this application.

2. Facts are not in dispute. Applicant's candidature for the post was considered by the Respondent No.3 alongwith applications/candidatures of other candidates. Respondent No.3, i.e. the Appointing Authority ultimately selected and appointed applicant in Memo dated 04-07-1998. Thereafter, on the complaint of one of the candidates, who was not selected, higher authorities of the Postal Department than Respondent No.3 reviewed the selection and found that Respondent No.3, ignoring the candidature of one Sunakar Dalei

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(SC candidate), who secured 430 marks i.e. highest marks in matriculation amongst all the candidates, appointed the applicant and as such directed Respondent No.3, the appointing Authority to issue notice to ^{the} applicant to show cause why his services shall not be terminated.

3. It has been pleaded by ^{the} applicant that the higher authorities than the appointing authority have no power to review the selection under the Extra Departmental Agents (Service & Conduct) Rules 1964 (in short 'Rules, 1964') and such direction to issue show cause, being without jurisdiction, needs to be quashed. The Department on the other hand, in the counter take the main stand that as per the Director General Circular dated 13-11-1997 (Annexure-R/7) a higher authority than the Appointing Authority has the power to review and cancel the appointments made irregularly/ erroneously. In the rejoinder, the applicant more or less reiterated the averments made in the Original Application.

4. For recruitment of ED Agents (not EDBPM/EDSPM) the minimum educational qualification is 8th standard and preference would be given to the candidates with matriculation qualification and no weightage would be given for any qualification(s) higher than the matriculation. He should have sufficient working knowledge of regional language and simple arithmetic so as to able to discharge his duties satisfactorily. An ED messenger should also have the enough working knowledge of english (Vide sec. IV, method of recruitment,

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page 75 of Swamy's Compilation of Service Rules for Postal ED Staff, 7th edition of 1999). It is, therefore, clear that among the candidates, who passed matriculation, the candidate getting the highest percentage of marks in matriculation, will in the normal circumstance be selected and appointed as ED agent. It is also not in dispute that this applicant secured less marks in matriculation than Sunkar Dalei, who preferred complaint before the higher authority.

Question for consideration, however, is whether the notice under Annexure-4 and the review process made by the higher authorities are liable to be quashed.

5. We have heard Mr. S. K. Dey, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and have also perused the records.

6. Service conditions of ED Agents are guided under the P&T EDAs (Conduct and Service) Rules, 1964. Rules 6 & 7 of the Rules relate to termination/removal of service of an ED Agent. Termination under Rule-7 can be made only after initiating a disciplinary proceeding relating to mis-conduct after observing principle of natural justice. There is a provision of review under Rule 16 by the higher authority as to the penalty awarded under Rule-7. In the case before us, there being no disciplinary proceeding, rule 7 and 16 are not attracted. The other provision is Rule-6 which lays down as

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follows:-

*** 6. 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 them immediately before the termination of the services, or, as the case may be, for the period by which such notice falls short of one month".

Thus, under the procedure rule, this is applicable in cases of termination of service of an ED Agent who has not rendered more than three years of continuous service and not on account of any mis-conduct and this termination can be ordered by the Appointing Authority.

7. Mr. Dey, learned counsel for applicant, contended that under the rules, there is no provision for review of selection and that too, by the higher authority. As already indicated, the stand of the Department is that the DG Posts letter No.19-23/97-ED and TRG dated 13-11-1997 is applicable.

On this point, we feel, the following decisions, some of which have been cited at the bar, are relevant.

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a) RAMESH CH. CHOWDHURY VRS. UNION OF INDIA & ORS.
reported in 1987 Vol.11, page-631 (Cuttack DB)

b) T.G. GOWRI KUTTY - VRS-SUPDT. OF POST OFFICES
(Ernakulam DB) - reported in (1994) 26 ATC 159;

c) AMAR SINGH - VRS.- UNION OF INDIA AND ORS -
(Chandigarh DB) - reported in 1995 (I) ATJ 64.

d) BINOD KUMAR MISRA - VRS. - UNION OF INDIA & ORS -
(Lucknow DB) - Reported 1996 (I) AISLJ CAT 617;

e) VISHNUKANTA SOKLA - VRS.- UNION OF INDIA & ORS-
(Allahabad Bench DB) - Reported in 1997 Vol. I,
SLJ (CAT), page 374;

f) DHARAMPAL - VRS.- UNION OF INDIA & ORS -
(Allabab Bench DB) - reported in 1997, Vol. I
SLJ(CAT) 514;

g) SRIKANTA YADAV - VRS- UNION OF INDIA & Ors -
(Patna DB) - Reported in AISLJ 1997(2)(CAT)
446;

h) JAGDISH PR. BISHEEN - VRS.- ASST. SUPDT. OF POST
OFFICES - (Allabad DB) - Reported in 1999(2)
Administrative Total Judgments, page 635;

i) TILAKDHARI YADAV-VRS.- UNION OF INDIA & ORS -
Full Bench of Allahabad CAT) - Reported in
(1997) 36 ATC 539.

The following legal positions emerged out of

the aforesaid decisions of various CAT Benches:

- i) Service conditions of ED Agents are guided under Rules, 1964;
- ii) Only the Appointing Authority has the power to terminate under Rule-6 of the service of an ED Agent who rendered not more than three years of service for reasons other than misconduct;
- iii) A higher Authority than the Appointing Authority has no power to review the selection and appointment of an ED Agent;
- iv) Before terminating the service of an ED Agent under rule-6, the Appointing Authority must give an opportunity to an ED Agent to show cause by issuing a show cause notice containing the relevant particulars necessitating the termination of his service; .

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In view of this legal position enunciated by various Benches of the Central Administrative Tribunal the stand of the Department that under circular dated 13-11-1997 of the Director General of Posts, the higher authority than the appointing authority has the power to review, cannot be accepted in the absence of any provision/rule to that effect under Rules, 1964 because unlike this circular of the DG, the Rules of 1964 are issued under the authority of Government of India which necessarily have the force of law.

8. In the instant case, the show cause notice under Annexure-4 though signed by the Appointing Authority was issued at the direction of the Higher Authority. It is pertinent to quote the notice as hereunder:

"The case relating to your selection and appointment as EDDA cum EDMC, Kanikapara has been reviewed at a higher level and held as irregular as candidate securing more marks than you in the matriculation examination was ignored on flimsy ground. In view of this your appointment deserves to be cancelled.

However, the Reviewing Authority would consider your representation in the matter before passing final orders in the case.

I am therefore directed to ask you to submit your representation if any in the matter to this office within 7 days of receipt of this letter failing which the matter will be decided *ex parte*.

It would be seen that the applicant was intimated that his representation, if any would be considered by the Reviewing Authority i.e. not by the appointing authority even. Hence this notice being not according to law necessarily needs to be quashed. However, the notice does not

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contain the relevant particulars necessitating the termination of the service of the applicant. All that the notice mentions that candidate securing more marks than him in matriculation was ignored on flimsy ground. Neither the name of candidate nor the marks obtained by him nor the so called flimsy ground, was found mentioned in the notice. The object of issuing such notice is to enable the concerned ED Agent to justify his selection on the basis of the reasons mentioned in the notice. When the notice is silent as to which candidate was meritorious than him and in what way, and on what ground his candidature was rejected, the ED Agent, as in the case of applicant, would certainly be in a dis-advantageous position to effectively represent his case as against the notice of termination. In Shri Kant Yadav's case (supra), the appointed EDBPM was noticed to show cause against termination on the ground that he was inferior than other candidates in respect of matriculation mark-sheet and landed property. The Central Administrative Tribunal, Patna Bench (DB), on perusal of the said notice made the following observations:

It is abundantly clear that the notice does not disclose detailed particulars of marks or landed property of the applicant vis-a-vis the candidate who is considered by the Post Master General as superior. Even the name of the incumbent is not indicated. Once a notice to show cause is given, it is expected that relevant particulars are indicated unambiguously so that the other party can meet points adequately in his reply. In our considered opinion, the notice is vague and it lacks essential information. The order of termination is, therefore, liable to be dismissed for violation of the Principles of natural justice.

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As already stated, in the instant case, the notice does not contain the relevant particulars. As such notice under Annexure-4 can also be quashed on this ground also.

9. For reasons discussed above, we quash the Review of Selection and Appointment of the applicant made by the higher authority and also the notice to show cause under Annexure-4 and direct that if in the meanwhile, the services of applicant have been terminated, then he shall be re-instated forthwith, with all backwages.

10. Before closing we express our anxiety that Rules, 1964 do not provide any provision to meet a contingency where an appointing authority deliberately selects a less meritorious candidate, through favouritism. It can not be said that such contingency is not likely to arise in these hard days of un-employment. In the absence of any provision under the Rules, 1964 to meet such contingency and in view of the legal position enunciated above, we hope the Director General of Posts will consider this aspect and take suitable steps to amend the Rules, 1964 to meet such contingency in future as the Circular issued by the Director General of Posts on 13.11.1997 can not over ride the Rules, 1964 which have been issued under the authority of the Government of India.

11. In the result, the original Application is allowed. No costs.

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A copy of the judgment be sent to the
Director General of Posts, New Delhi for necessary action
in the matter.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.11.99

12.11.99
(G. NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.