CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.280/99, 281/99 & 282/99
Cuttack this the 15th day of March, 2000

IN O.A.280/99

Pradeep Kumar Sahu ... Applicant(s)

-Versus-

Union of India & Ors. ... Respondent(s)

IN O.A.281/99

Debendra Kumar Mallick ... Applicant(s)

-Versus-

Union of India & Ors. ... Respondent(s)

IN O.A.282/99

Santosh Kumar Rout ... Applicant(s)

-Versus-

Union of India & Ors. ... Respondent(s)

(FOR INSTRUCTIONS)

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

(SOMNATH SOM)
VICE-CHAIRMAN
15.3.2000

(G.NARASIMHAM)
MEMBER(JUDICIAL)
15.3.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 280/99, 281/99 & 282/99
Cuttack this the 15th day of March, 2000

CORAM:

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

...

IN O.A. 280/99

Pradeep Kumar Sahu
Village : Panasapatana(Balakati)
PO: Balakati
District : Khurda

... Applicant

1. Union of India represented through Chief Post Master General, Orissa Circle, Bhubaneswar-751001

2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar-751001

3. Sub-Divisional Inspector(Postal), Bhubaneswar South Sub-Division, Bhubaneswar-751002

... Respondents

IN O.A. 281/99

Debendra Kumar Mallick,
Village: Atta, PS: SUkinda
District: Jajpur

... Applicant

-Versus-

1. Union of India represented through Chief Post Master General, Orissa Circle, Bhubaneswar-751001

2. Senior Superintendent of Post Offices, Bhbaneswar Division, Bhubaneswar-751001

3. Sub-Divisional Inspector(Postal), Bhubaneswar south Sub-Division, Bhubaneswar-751002

... Respondents

IN O.A. 282/99

Santosh Kumar Rout
Village: Lingipur,
Bhubaneswar-2, PIN:751002
District: Khurda

-Versus-

1. Union of India represented through Chief Post Master General, Orissa Circle, Bhubaneswar-751001

2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar-751001

3. Sub-Divisional Inspector(Postal), Bhubaneswar South Sub-division, Bhubaneswar-751002

... Respondents

In all the O.As.

For the Applicants
Mr.D.P.Dhalasamant

For the Respondents

Mr.A.K.Bose, Sr.Standing Counsel(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): These three Original Applications having common respondents, though heard separately are being disposed of through this common order as they involve determination of one and the same issue.

2. As against regular vacancies the applicants were at first provisionally appointed as Extra Departmental Delivery Agents during first week of June, 1998 in different Branch Offices under the jurisdiction of Respondent No.3 vide Annexure-1 of the applications. Thereafter vide order dated 30.6.1998, they were appointed on regular basis vide Annexures-2 of the applications. On 10.6.1999 orders were passed by Respondent 3 pursuant to the provision of Rule-6(B) and Note Below of Rule-6(B) of E.D.Agents(Conduct & Service) Rules, 1964 ordering termination of their services with direction that they will be entitled to claim a sum equivalent to the amount of basic allowances + Dearness Allowance for the period of notice at the same rates at

which they were drawing immediately before passing of these orders(Annexure-3). The applicants thereafter preferred these applications challenging these orders dated 10.6.1999.

3. On 23.6.1999 this Tribunal passed interim orders directing respondents to allow the applicants to resume the posts till appointments through regular selection are made or until further orders. It is, however, not clear from the records whether after this interim order was passed the applicants were allowed to resume the posts and whether the selections have since been made.

4. The main ground urged by the applicants is that without giving them opportunity to show cause against the orders of termination, orders of termination passed vide Annexures-3 are liable to be quashed for offending principles of natural justice.

5. The stand of the respondents in their counter is that Shri S.C.Barik, the then Sub-Divisional Inspector(Postal) Bhubaneswar(S) Sub-Division issued appointment orders dated 30.6.1998 on the date he was relieved in view of his transfer to Jatni Sub-Division under Puri Postal Division. He further failed to send the selection file to the Senior Superintendent of Post Offices, Bhubaneswar Division as required under the Rules; he violated Para-14 of the Recruitment Rules with regard to appointment of E.D.Agents by not sending requisition to the employment exchange to sponsor names. This para lays down that appointment of E.D.Agents is required to be made through the employment exhcnage and in case employment exchange fails to sponsor the list of candidates within the specified period or candidates sponsored were not found eligible, then the appointing authority would go for public notification. Without

issuing requisition to the employment exchange he drafted public notification, with copies to various authorities, like, B.D.O., Bhubaneswar, Block, Tahasildar, Bhubaneswar, the concerned Surpanches and so on, without sending the same by Regd.Post. He did not mention whether any preference would be given to reserved community and also did not assess the adequacy or otherwise of the representation of the other community. The selection files do not reveal any other applications barring applications of the applicants. Thus the respondents indirectly take the stand that the appointment orders dated 30.6.1998 were issued by the then S.D.I.(P) Shri S.C.Barik in order to show undue favour to the applicants on the date he was relieved on account of his transfer to Jatni Sub-Division under Puri Postal Division. Respondent No.2, viz., Senior Superintendent of Post Offices, Bhubaneswar Division while dealing with these files came across these clear illegalities pursuant to which impugned orders of termination were issued. At this stage we may note the counters are conspicuously silent as to whether any action has been initiated/taken against Shri Barik, who, according to Respondents, committed these glaring illegalities. We hope, in the interest of clean administration the Department in the meanwhile initiated action against Shri Barik in this regard.

6. Applicants in their rejoinder in a way defended Shri Barik, the then S.D.I.P) by averring that requisitions were issued to the employment exchange for sponsoring names and their selections and appointments were made pursuant to public notifications.

7. We have heard Shri D.P.Dhalasamant, learned counsel

for the applicants and Shri A.K.Bose, learned Senior Standing Counsel appearing for the Department in all these three cases.

After four days of the closure of the arguments, Shri Dhalasamant, learned counsel for the applicants filed a xerox copy of circular dated 13.11.1997 dealing with the power of review of selection and appointment of E.D.Agents by the authority, which forms part of O.A. 280/99. Since these applications can be disposed of on a limited point at issue, the issue as to whether the higher authority than the appointing authority can review selection and appointment of E.D.Agents and consequently issue orders of termination which was not advanced during hearing need not be dealt in this common order.

8. Rule-6 of Service Rules for E.D.Staff rules as 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 liaible 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 his services, or, as the case may be, for the period by which such notice falls short of one month".

Admittedly the applicants have not rendered more than three years of continuous service and there is also no dispute that through the impugned orders the applicants were entitled to claim sums equivalent to the amount of their

basic pay plus Dearness Allowance for the period of notices at the same rates at which they were drawing them immediately before passing of the impugned orders. It is also not the case of the Department that the termination orders were issued because of unsatisfactory performance of the applicant. But the question for consideration is whether before such orders of termination the concerned E.D.Agents have to be issued with notices to show cause as to why their appointments should not be terminated. Shri Dhalasamant, learned counsel for the applicants placed reliance on the Full Bench decision of Allahabad C.A.T. in Tilakdhari Yadav vs. Union of India reported in (1997) 36 A.T.Cases 539. In that case the concerned applicant was appointed as E.D.Packer against the clear vacancy by order dated 9.2.1993. Subsequently by order dated 3.6.1994 his services were terminated. The basis of the termination order was on the complaint made by one Sri Raj Kumar Sonka in regard to certain irregularities committed at the time of appointment of the applicant, which had resulted in persuading the Post Master General to issue orders cancelling the appointment of the applicant by interpreting Rule-6 and relying on the Apex Court decision in Union of India vs. Jaya Kumar Parida reported in 1996 SCC(L&S) 320, S.G.Jaisinghani vs. Union of India & Ors. reported in AIR 1967 SC 1427 and Shrawan Kumar Jha vs. State of Bihar reported in 1991 SCC(L&S) 1078 the Full Bench held that Rule-6 does not confer any power on the appointing authority or any authority superior to the appointing authority to cancel the appointment of E.D. Agent who has been appointed on regular basis in accordance with rules for reasons other than unsatisfactory service or administrative reasons unconnected with the conduct of the

Agent without giving him an opportunity to show cause. Relying on this Full Bench decision, this Bench in Jai Sankar Naik's case (O.A.No.543/93) disposed of on 22.3.1999 quashed the termination order issued under Rule-6 for want of prior notice to show cause.

Admittedly no notices were issued to the applicants to show cause against the orders of termination. It is not the case of the respondents that these applicants were hands in gloves with the then Respondent 3 (Shri S.C.Barik) in obtaining orders of appointment. In this view of the matter, we are of the opinion that in view of the legal position discussed above, the impugned orders of termination cannot be legally sustained. The impugned orders dated 10.6.1999 vide Annexures-3 of the Applications are accordingly quashed. We, however, make it clear that in case the applicants have not been allowed to resume the posts, they be reinstated and thereafter the respondents are at liberty to issue notices giving opportunity to the applicants to show cause, if any, against the proposed orders of termination and after considering the show cause if any, can take appropriate decision in the matter as deemed fit.

In the result, all these three Applications are allowed, but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO//