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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 512/97, 674/98 & 299/99
Cuttack this the day day of Oct. 2000

4th

IN O.A. 512/97

Udayanath Mishra ... Applicant(s)

-VERSUS-

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

IN O.A. 674/98

Antaryami Sethi ... Applicant(s)

-VERSUS-

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

IN O.A. 299/99

Sudarsan Behera ... Applicant(s)

-VERSUS-

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

(FOR INSTRUCTIONS)

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

Somnath Som.
(SOMNATH SOM)
VICE-CHIEF JUDGE

4-10-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 512/97, 674/98 & 299/99
Cuttack this the 4th day of Oct. 2000

CORAM:

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

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IN O.A. 512/97

Udayanath Mishra
At : Gopalpur
PO : Champeswar
Via: Kanpur
Dist: Cuttack

...

Applicant

By the Advocates

M/s.D.P.Dhalasamant
D.N.Mishra
S.K.Panda

-VERSUS-

1. Union of India represented through
Chief Post Master General,
Orissa Circle,
Bhubaneswar-751001
2. Sub-Divisional Inspector (P)
Athagarh Sub-Division,
Athagarh, Dist: Cuttack
3. Sudarsan Behera
S/o.Gadahar Behera
Champeswar B.O.
Via : Kanpur
Cuttack

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Respondents

By the Advocates

M/s.B.Das,
Addl.Standing
Counsel (Res.1 & 2)
M/s.P.V.Randas
P.V.B.Rao
(Res. 3)

IN O.A.674/98

Sri Antaryami Sethi, aged about 32 years,
S/o. Gangadhar Sethi, resident of Village:
Champeswar, P.S.Kanpur, Dist: Cuttack

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Applicant

By the Advocates

M/s.J.K.Rout
A.K.Nayak

-VERSUS-

1. Union of India represented by the Chief Post Master General, Orissa, Bhubaneswar, Dist : Khurda
2. Superintendent of Post Offices, South Division, Cuttack At/PO/Dist: Cuttack
3. Sub-Divisional Inspector (Postal) Athagarh Sub-Division, Dist: Cuttack
4. Sri Sudarsan Behera, C/o. Branch Postmaster, Champeswar Post Office, At/PO: Champeswar PS: Kanpur, Dist: Cuttack

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Respondents

By the Advocates

Mr. A.K. Bose
 Sr. Standing Counsel
 (Res. 1 to 3)
 M/s. P.V. Ramdas
 P.V.B.Rao
 (Res. 4)

IN C.A.299/99

...

Sudarsan Behera, 28 years
 S/o. Gadadhar Behera,
 At/PO: Kanpur
 Dist: Cuttack - at present E.D.D.A--cum--
 E.D.M.C., Champeswar B.O.
 VIA: Kanpur S.O.
 Dist: Cuttack

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By the Advocates

M/s. A.K. Mishra
 B.B. Acharya
 J. Sengupta
 D.K. Panda
 P.R. J. Dash

-VERSUS-

1. Union of India represented through Director General of Posts, Department of Posts, Ministry of Communications, Daktar Bhaban, New Delhi
2. Chief Postmaster General, Orissa Circle, Bhubaneswar
3. Superintendent of Post Offices, Cuttack South Division, Cuttack-1
4. Sub-Divisional Inspector (Posts) Athagarh Sub-Division, Athagarh Dist: Cuttack

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By the Advocates

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

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O R D E R

MR .G.NARASIMHAM, MEMBER (JUDICIAL): Sudarsan Behera, applicant in O.A. No.299/99, Respondent No.3 in O.A.512/97 and Respondent No.4 in O.A. 674/98 was selected and appointed as Extra Departmental Delivery Agent-cum-M/C. of Champeswar Branch Office in account with Kanpur S.O. vide order dated 5.4.1997 of Sub-Divisional Inspector (Postal), Athagarh S.O., Athagarh. O.A.Nos.512/97 and 674/98 were filed by the candidates applied for the post challenging selection and appointment of Sudarsan Behera. Shri Behera's appointment was subsequently cancelled and terminated vide order dated 26.6.1999(Annexure-5) on a review being made by the higher authority. On hearing submissions of learned counsels on record in O.A.Nos.512/97 and 674/98, we feel that these two Original Applications have become infructuous and thus disposed of accordingly.

2. The applicant, who was appointed as E.D.D.A--cum-M.C., Champeswar Branch Office in account with Kanpur S.O. by order dated 5.4.1997 of the appointing authority, i.e. S.D.I.(P) (Res.4) challenges cancellation of this appointment by order dated 26.6.1999.

3. Facts not in controversy are that selection to the post in question was made from amongst the candidates sponsored by the Employment Exchange, who applied to the post in response to letter dated 27.1.1997 received from the appointing authority. Ultimately the applicant Sudarsan Behera was selected and appointed. One of the unsuccessful candidates challenged selection and appointment of the applicant in O.A.512/97. As per orders of this Tribunal the applicant was intimated that his selection and appointment should be subject to final result of O.A.512/97. Sometime after the applicant joined the duty, Res.3, who is

higher authority of the appointing authority (Res.4) reviewed the selection and appointment of the applicant and noticed ~~on~~ ^{the} irregularity ~~of~~ ⁱⁿ selection. Accordingly Res.3 directed Res.4, the appointing authority for cancellation of the appointment of the applicant. Respondent No.4, thereupon issued a notice on the applicant to show cause as to why his appointment should not be cancelled (Annexure-3). Representation in response to notice received from the applicant was duly forwarded to Res.3 for consideration by Res.4. Res. 3 considered the representation and ordered cancellation of appointment. Accordingly the impugned order of cancellation was passed.

4. The applicant, while challenging and denying the so called irregularity pointed out in the show cause notice on various grounds takes the stand that cancellation of his appointment is violative of Article 311 of the Constitution on the ground that he has not been afforded reasonable opportunity to defend himself and no charges have been framed against him.

5. The Department in their counter take the stand that the cancellation of the appointment was made because of serious irregularities noticed by the reviewing authority (Res. 3) in the selection process. As per D.G.(Posts) letter dated 13.11.1997 (Annexure-R/6) **authority higher** than the appointing authority is empowered to review the selection made by the appointing authority and is also competent to pass orders if any appointment is found to be in contravention of the existing rules/instructions.

6. Rejoinder filed by the applicant is more or less a reiteration of facts and grounds averred in the Original Application. Further it has been stated that circular dated 13.11.1997 has no retrospective application as the applicant was appointed prior to

30.11.1997 and Respondent No.3, the higher authority could not have reviewed the appointment order and cancelled the same.

7. We have heard Shri A.K.Mishra, learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appearing for the departmental respondents. Also perused the records.

8. The service conditions of the applicant as E.D.Agent are guided under P & T E.D.Aagents (Conduct & Service) Rules, 1964 (in short Rules). Rules 6 and 7 relate to termination/removal from service of E.D.Aagents. Rule-7 relates to removal/dissmissal which can be made only after initiating disciplinary proceedings relating to misconduct after observing the principles of natural justice. There is provision for review under Rule-16 by the higher authority in regard to pnelty awarded under Rule-7. In the case before us there being no disciplinary proceedings, Rules 7 and 16 are not attracted. The other provision is Rule-6, which runs 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 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 his services, or, as the case may be, for the period by which such notice falls short of one month".

Thus Rule-6 is applicable in cases of termination of services of the E.D.Agent, who has not rendered more than three years of continuous service and not on account of any misconduct and such termination can be ordered by the appointing authority.

In the case before us the applicant having not rendered more than three years of service and there being no allegation of misconduct against him and consequent disciplinary proceedings, it can be presumed that the applicant is out of service under this rule on account of termination order in the guise of order of cancellation, passed on the direction of higher authority (Res.3), who reviewed his selection and appointment.

9. Hence the point for consideration is whether such an order issued by the appointing authority on the direction of his superior authority can be sustained under law. In other words, whether a superior authority to the appointing authority has the power to review the selection and appointment of an E.D.Agent.

10. This point came up for determination before this Bench in Original Application No.1/99 disposed of on 12.11.1999. The following decisions were referred to by the Bench.

- 1) Ramesh Ch.Chowdhury vs. Union of India & Ors. reported in 1987 Vol.11, Page-631 (Cuttack D.B.)
- 2) T.G.Gowrikutty v. Supdt. Of Post Offices (Ernakulam D.B.) reported in (1994) 26 A.T.C. 159
- 3) Amar Singh v. Union of India & Ors. (Chandigarh D.B.) reported in 1995 (I) A.T.J. 64
- 4) Binod Kumar Misra v. Union of India & Ors. (Lucknow D.B.) reported in 1996 (I), A.I.S.L.J. C.A.T. 617
- 5) Vishnukanta Sukla v. Union of India & Ors. (Allahabad D.B.) reported in 1997 Vol. I, S.E.J.(CAT) Page 374
- 6) Dharampal Vs. Union of India & Ors. (Allahabad D.B.) reported in 1997 Vol. I, S.E.J.(C.A.T.) 514
- 7) Srikanta Yadav v. Union of India & Ors. (Patna D.B.) reported in A.I.S.L.J. 1997(2)(CAT) 446
- 8) Jagdish Pr.Bishen v. Asst.Suptd.Of Post Offices (Allahabad DB) reported in 1999(2) Administrative Total Judgments, Pg.635
- 9) Tilakdhari Yadav v. Union of India & Ors. (Full Bench of Allahabad C.A.T.) Reported in (1997) 36A.T.C. 539

After referring those decisions we have enumerated the following legal positions emerging out of those decisions.

- a) Service conditions of E.D.Agent are guided under Rules, 1964

- b) Only the appointing authority, ~~under rule~~, has the power to terminate under Rule-6 of the services of an E.D.Agent, who has rendered not more than three years of service for reasons other than misconduct;
- c) Authority higher than the appointing authority has no power to review the selection and appointment of E.D.Agent;
- d) Before terminating the services of an E.D.Agent under Rule-6, the appointing authority must have an opportunity to an E.D.Agent to show cause by issuing a show cause notice containing the relevant particulars necessitating termination of services

Ultimately we held that such termination under Rule-6 cannot be made by the appointing authority on the direction of his superior authority, who has no power of review.

11. As already stated, Res.3, the higher authority derived power to undertake such review and order cancellation pursuant to D.G.(Posts) Circular dated 13.11.1997 (Annexure-R/6). Even this instruction said to have been issued by the D.G.Posts was referred to in our decision in O.A.1/99 holding that this circular cannot override the provisions of the Rules, 1964, because unlike this circular of the D.G.Posts, Rules of 1964 are issued under the authority of Government of India, which necessarily have the force of law.

12. Shri A.K.Mishra, the learned counsel for the applicant even contended that Annexure-R/6, the instructions in letter dated 13.11.1997 could not be termed as circular issued by the D.G.Posts. His contention that this Annexure-R/6 has been signed by the Assistant Director General and there is no mention at all that the same has been issued under the direction/orders of the D.G.Posts. On perusal of Annexure-R/6, we are also clear that there is no mention in this letter dated 13.11.1997 signed by the A.D.G.(P) that this has been issued on the direction/order of the D.G.Posts. Hence it cannot be said that contentions of Shri Mishra are without any force. Even assuming it has been

issued on the direction/order of the D.G.Posts, at best it would amount to an administrative instruction, because, as already stated there is no mention that it has been issued by the authority of Government of India. Perusal of this instruction would reveal that such instructions have been imparted with reference to decisions of various Benches of the Tribunal holding that the authority higher than the appointing authority has no power to review the selection process. In this connection it is better to quote Paras-2 and 3 of this letter containing Annexure-R/6.

Thus "2. In a number of cases of the type referred to above, the affected persons have sought judicial intervention on the grounds that the action ordered by the reviewing authorities is illegal in-as-much-as no such powers have been vested in them as per the P & T E.D.A. Agents (Conduct & Service) Rules, 1964, which are usually invoked in such cases, quite often, the E.D.Agent concerned is also not given an opportunity to represent against his impending termination and to that extent, the principle of natural justice also appears to be jeopardised in such cases. In many of those cases the submissions of the applicants have been accepted by the C.A.T.Benches and the Department had to retain or restore the E.D.A. Agents in the appointments held by them depriving the really deserving candidates of their legitimate right of appointment.

3. The situation arising out of C.A.T. Judgments questioning the validity of the remedial action ordered by reviewing authorities has been deliberated upon thoroughly. It is observed that an authority which is higher than the appointing authority in accordance with established principles, enjoys supervisory powers to revise the administrative orders of the subordinate authorities for good and sufficient reasons and pass appropriate remedial orders after following the procedure indicated below :"

Thus it comes to this, through this administrative instructions, if at all issued under the direction/order of the D.G.Posts, the rulings of various Benches of the C.A.T. including the Full Bench of Allahabad, that higher authority than the appointing authority has no power under the Rules, 1964 to review the selection process has been set at naught.

In fact this particular Circular dated 13.11.1997 has been

dealt by the Division Bench of Ernakulam C.A.T. in C.Sasikala v. Asst.Superintendent of Post Offices, Kochi reported in 2000 (1) A.T. & J. Page 63 and in Para-17 thereof it has been observed by the ~~Ernakulam~~ Bench that in Para-3(2) of the letter dated 13.11.1997 there has been specific mention that there is no need to invoke E.D.Aagents Rules, 1964 while passing final orders in the cases of this Type. L

Law is well settled that subsequent administrative/executive instruction cannot nullify a judicial decision on the point at issue(Vide Full Bench (Hyderabad, C.A.T.) in the case of Smt. Sakku Bai reported in A.T.F.B.Judgments 1991-93 (Kalaras at Page-18)

At Para-18 in Sasikala's case the Ernakulam Bench of C.A.T. quoted the following rulings of Kerla High Court in Postmaster v. Usha reported in 1987(2) KLT 705.

"Hence we have no hesitation in taking a view that the termination of service on any administrative ground contemplated by Rule-6 is a ground or reason that arises after the appointment and that all grounds that have arisen before or in regard to appointment, termination cannot be done under Rule-6".

On the basis of this ruling, the Ernakulam Bench of C.A.T. held that irregular selection and appointment of an E.D.Agent cannot be treated as an administrative reason under Rule-6 of the Rules, 1964. The Bench also agrees in general that the higher authority than the appointing authority has no power to review the selection and appointment of an E.D.Agent. This apart, as earlier stated, our decision in O.A.1/99 was also based on the Full Bench decision of Allahabad C.A.T. in Tilakdhari Yadav v. Union of India reported in (1997) 36 A.T.Cases 539. Shri A.K. Bose, the learned Sr.Standing Counsel submitted that this Full Bench only decided the point as to whether an E.D.Agent is entitled to notice before termination of the services under Rule-6 of the

Rules, 1964. This submission of Shri Bose is not correct, because at Para-4 the Full Bench clearly held that Rule-6 of the Rules does not contemplate termination of such appointment as was passed in the instant case by the P.M.G., Gorakhpur and since the action was initiated on the basis of the order of the P.M.G. pursuant to the complaint made by one Rajkumar Sanka, who was considered for appointment to the said post along with the applicant, the order of the P.M.G. and the complaint formed the foundation and not motif for taking the impugned action and therefore, the impugned order of termination was not sustainable in law.

13 Shri A.K.Mishra, the learned counsel for the applicant even contended that under Article 311(2) of the Constitution, the applicant had the right of being heard in person prior to issue of cancellation order and this opportunity having been denied to the applicant, the impugned order of cancellation cannot be sustained under law. In support of his contention Shri Mishra placed reliance on the Apex Court decision in the case of Ramachandran v. Union of India reported in A.T.R. 1986(2) SC 252. After carefully perusing Article 311 of the Constitution and this Apex Court decision, we are of the view that the same will not be applicable in case of termination of service of an E.D.Agent under Rule-6 of the Rules, 1964. Article 311 read as a whole would clearly imply that it is concerned with cases of dismissal/removal/reduction in rank of persons employed in civil capacities under the Union or of the States arising out of disciplinary proceedings or on the ground of the employees' conduct which led to his conviction on a criminal charge.

The Apex Court decision deals with the duties and responsibility of the appellate authority under the Railway Servants(Discipline &

Appeal) Rules, 1968, in a disciplinary proceedings initiated against a railway employee. Moreover, Article 311 does not speak of termination which is different from dismissal/removal as mentioned under Article 311 of the Constitution vide K.Nagraj v. State of A.P. reported in AIR 1985 SC 551(At Page-564(Para-9)).

14. For the reasons discussed above, we are of the view that the order of cancellation of appointment dated 26.6.1999 (Annexure-5) of the appointment of the applicant cannot be sustained under law.

15. On 30.6.1999 while dealing with the prayer of stay operation of this cancellation order and while expressing our reluctance to stay operation of this order, we made it clear that in case the applicant succeeds in the Original Application he would be entitled to all service benefits. Hence while quashing this impugned order of cancellation under Annexure-5, we direct the respondents to reinstate the applicant forthwith. Since the impugned order has been quashed it is deemed under law that such order was never in existence and the respondents, are therefore, directed to pay the salaries from the date of applicant's relinquishment of the charge as E.D.D.A. till the date of reinstatement within a period of sixty(60) days from the date of receipt of this order.

16. In the result, Original Application, is allowed, but without any order as to costs.

Registry is directed to communicate copies of this order to the parties forthwith.

4.10.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

SOMNATH SOM, VICE-CHAIRMAN

17. I have had the benefit of going through the order just delivered by my learned brother. Though I agree with the conclusions arrived at by him, I would like to set out my reasons on one point separately. Before doing that facts of these cases which have been elaborately recorded in the order of my learned brother can be briefly stated.

18. Subject-matter of these three cases is selection and appointment of Sudasrsan Behera, the applicant in OA No.299 of 1999, to the post of EDDA-cum-EDMC, Champeswar B.O. In O.A.Nos.512/97 and 674/98 the unsuccessful candidates have come up. In OA No.674/98 Antaryami Sethi, a scheduled caste candidate has prayed for quashing the selection of respondent no.4, the applicant in OA No.299/99. In OA No.512/97 applicant Udayanath Mishra, another candidate has prayed for a direction to the departmental authorities to confine/restrict the selection process for the post of EDDA-cum-EDMC, Champeswar B.O. amongst the candidates who reside in or near the place of work. Before proceeding further it is to be noted that requirement regarding residency in the concerned village is no longer an essential qualification. The present instructions provide that the selected candidate must take up residence in case of EDBPM in the post village and in case of EDDA-cum-EDMC, as in the present case, in any of the villages where the mail terminates or originates. The departmental respondents have also pointed this out in paragraph 10 of the counter. In view of this, the prayer of the applicant in OA No. 512/97 is held to be without any merit and is rejected.

SJm

19. In OA No.299/99 applicant Sudarsan Behera is the selected candidate for the post of EDDA-cum-EDMC, Champeswar B.O. The admitted position is that the applicant was selected for the above post and appointment order was issued to him in letter dated 1.8.1997. Subsequently another letter dated 18.10.1997 was issued to him intimating him that his appointment is subject to the result of OANo.512/97. On 18.5.1999 a notice was issued to him indicating that his appointment is irregular on the grounds which were set out in elaborate detail in this notice and therefore he was asked to show cause as to why his appointment should not be cancelled. The applicant submitted his representation on 5.6.1999 and after taking that into consideration, in order dated 26.6.1999 his appointment order was cancelled. Sudarsan Behera, the applicant in OANo.299/99 has challenged such cancellation on various grounds which would be considered subsequently in this order. The departmental respondents have filed counter opposing the prayer of the applicant on grounds which also will be taken note of in the subsequent paragraphs.

20. In OA No. 674/98 applicant Antaryami Sethi, a scheduled caste candidate has prayed for quashing the appointment of Sudarsan Behera (respondent no.4 in that OA) to the post of EDDA-cum-EDMC and has also prayed for giving him appointment to that post. He has stated that he was an applicant for the post and during the process of selection the Sub-Divisional Inspector (Postal) demanded a sum of Rs.50,000/- from him for giving him appointment to the post of EDDA-cum-EDMC, Champeswar B.O. As he refused

to pay the same, Sudarsan Behera was appointed. He made complaints to higher authorities but without any result.

The departmental respondents in that case have filed counter stating that for reasons indicated by them in the counter, the order of appointment of Sudarsan Behera has been cancelled. They have also stated that the applicant is single candidate from SC community in the process of selection and he cannot be appointed straightforward to the post.

21. In OA No. 299/99 applicant Sudarsan Behera, the selected candidate has challenged the order cancelling his appointment and has also prayed for a declaration that he is deemed to be validly continuing in the post. The departmental respondents have opposed the prayers and have stated that the appointment of Sudarsan Behera has been cancelled for the reasons indicated in the counter. The learned counsel for the petitioner Sudarsan Behera has urged many grounds in support of his contention that the order cancelling his appointment is illegal and should be quashed. All these grounds except one have been rejected by my learned brother in his detailed order and I agree with him.

22. My learned brother has allowed OA No. 299/99 accepting the contention of the learned counsel for the petitioner on one point. I agree with him that the OA should be allowed and it is so ordered. But the reasons for allowing the OA are set out separately by me. The point for consideration is whether under Rule 6 of the ED Agents (Conduct & Service) Rules, 1964, appointment of an ED Agent who has not completed three years of continuous service, as in the case here, can be cancelled by the appointing authority at the instance of superior authority.

In an earlier OA No.1 of 1999, decided on 12.9.1999 (Radhashyam Sahoo v. Union of India and others), both of us had taken the view that it is for the appointing authority to take action under Rule 6 and the superior authority cannot direct the appointing authority to take action under Rule 6. This matter again came up before another Bench in Cuttack in which I was a member in OA No. 558 of 1995, decided on 12.7.2000 (Sri Arasada sourya Mouli v. Union of India and others) and this contention urged therein was rejected by us. Before considering this point it is to be noted that ED Agents (Conduct & Service) Rules, 1964 are non-statutory in character and Rule 6 provides that the services of an employee, who has not already rendered three years' continuous service from the date of his appointment, shall be liable for 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 and the period of such notice shall be one month. It is also provided that in lieu of notice salary and allowance for the notice period can be paid. In Tilakdhari Yadav's case (supra), the detailed reference of which is noted in the order of my learned brother, the point decided by the Full Bench as mentioned in paragraph 6 of their order is that Rule 6 does not confer a power on the appointing authority or any authority superior to the appointing authority to cancel the appointment of an ED Agent who has been appointed on regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause. In this decision, therefore, the point decided by the Full Bench is that

before cancelling appointment the concerned employee should be given an opportunity to show cause. It is to be noted here the answer formulated by the Full Bench to the question referred to them, which has been substantially mentioned though not quoted in my order, also mentions not only the appointing authority but any authority superior to the appointing authority. In that case Postmaster General, Gorakhpur terminated the services of the applicant as ED Packer on a complaint filed against him and the Full Bench in paragraph 4 of their order noted that the complaint formed the foundation and not the motive for taking the impugned action. On this ground also it was held that the termination order is not sustainable. In that case apparently no showcause notice was issued to the appointee. In the case of Hari Prakash Misra v. Union of India and others, 2000(2) SLJ (CAT) 89, the Division Bench at Lucknow have quashed such a termination firstly on the ground that no showcause notice was issued and also on the ground that the order of termination was issued by superintendent of Post Offices under the direction of the superior authority. The Tribunal held that if discretion vested in the appointing authority is exercised under the directions or in compliance of the instructions of the higher or superior authority, then it will be a case of failure to exercise discretion altogether. It was held that the discretion in the appointing authority cannot be exercised by the reviewing authority. Exercise of power on the basis of external dictation came up for consideration of the Hon'ble Supreme Court in the case of Anirudhsinhji Karansinhji Jadeja and another v. State of

Gujarat, AIR 1995 SC 2390. That was a case under Terrorists & Disruptive Activities (Prevention) Act, 1987 (TADA). In that case the Hon'ble Supreme Court took note of the case of Commissioner of Police v. Gordhandas Bhanji, AIR 1952 SC 16, where it was held that the Commissioner of Police was bound to take his own and independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass. In that case the concerned authority, the District Superintendent of Police instead of giving approval on his own, sought for permission of Additional Chief Secretary to proceed under TADA. The Hon'ble Supreme Court held that this is a case of exercise of power on the basis of external dictation.

S. Som 23. Before proceeding to the grounds on which Sudarsan Behera's appointment has been terminated, one more decision has to be noted. In C. Sasikala's case (supra) the appointment of one EDDA was terminated under Rule 6. The Division Bench at Ernakulam quashed the termination order on two grounds that no showcause notice was issued to her and that irregular selection cannot be treated as an administrative reason under Rule 6. In support of their second view, they relied on a decision of Hon'ble Kerala High Court in the case of Postmaster v. B Usha, 1988(1) SLR 69, where their Lordships have held that in case of termination of service on administrative grounds under Rule 6 such ground or reason must be one that has come into existence after appointment and which is unconnected with his conduct. Going through this decision closely I find that in paragraph 3 of their order the Hon'ble High Court of Kerala had noted that the

action under Rule 6 pre-supposes that the appointment has been made properly and that a situation has arisen which is purely of an administrative character which requires termination of an employee who is otherwise properly appointed. In the instant case the whole question is whether applicant Sudarsan Behera has been properly appointed or not. Therefore, the law as laid down by the Hon'ble Kerala High Court in the above case would not apply to the case of Sudarsan Behera if it is held that his appointment has not been properly made.

24. Thus, on a review of different judicial decisions, it is clear that action under Rule 6 can be taken against an ED employee if he has not put in three years of continuous service. It is also clear that before taking such action showcause notice has to be issued to him and such action has to be taken by the appointing authority. Going by the decision of the Hon'ble Supreme Court in Anirudhsinhji Karansinhji Jadeja's case(supra), it is also clear that this power exercisable by the appointing authority cannot be exercised merely at the instance or direction of an authority superior to the appointing authority.

25. In the instant case, while calling for names from the Employment Exchange, it was not indicated that preference would be given to OBC candidate. On the contrary it was mentioned that preference would be given to SC/ST candidates. Ultimately there were 23 candidates amongst whom there was no ST candidate. There were two candidates belonging to OBC. One is the applicant Sudarsan Behera and the other one Dandadhar Gadapalla. There were 3 other candidates who have been noted as SEBC, but they cannot be taken as OBC because in

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Government of India appointments there is no reservation for SEBC. The second OBC candidate Dandadhar Gadapalla had not submitted his marksheet. Thus, Sudarsan Behera was the only OBC candidate. There was one SC candidate Antaryami Sethi, the applicant in OA No.674/98. According to the rules there should be at least three persons belonging to a particular community for making a selection. In this case there was no ST candidate and there was only one SC candidate. In the requisition it was not mentioned that any preference would be given to OBC candidates. There were a large number of candidates belong to general category. Many of them have obtained marks higher than the applicant. Notwithstanding that the Sub-Divisional Inspector (Postal) selected the applicant Sudarsan Behera even though he has less marks on the ground that he belongs to OBC. When in the requisition it was not mentioned that preference would be given to OBC candidate and when SC and ST candidates were not there in sufficient number, the post should have been treated as unreserved and should have been filled up by the most meritorious amongst the candidates including the OBC candidates. But this was not done. This is obviously irregular. The respondents have stated that the entire selection was reviewed by the Superintendent of Post Offices, Cuttack South Division, on getting a complaint from Udayanath Mishra, the applicant in OA No.512/97, and the Superintendent of Post Offices directed the Sub-Divisional Inspector (Postal) to initiate action under Rule 6. In pursuance of that the Sub-Divisional Inspector (Postal) issued a notice to Sudarsan Behera indicating in detail the reasons as to why his appointment is irregular. He

also asked Sudarsan Behera to show cause as to why his appointment should not be cancelled. In this order which is at Annexure-3 of OA No. 299/99 it is not mentioned that this order has been issued at the instance of the authority superior to the appointing authority. Just because the Superintendent of Post Offices has directed the Sub-Divisional Inspector (Postal) to take action under Rule 6, there is no reason to hold that the Sub-Divisional Inspector (Postal) will not take his independent decision after getting the showcause from the applicant Sudarsan Behera. But in this case in the impugned order at Annexure-5 the Sub-Divisional Inspector (Postal), the appointing authority has mentioned that the representation of the applicant has been considered judiciously by the "appropriate authority". The departmental respondents in page 4 of their counter have mentioned that the written representation of the petitioner which is at Annexure-4 was sent by respondent no.4, the appointing authority to respondent no.3, Superintendent of Post Offices, Cuttack South Division, the reviewing authority, for consideration. It is further mentioned that respondent no.3 considered the representation and decided to cancel the appointment of the applicant as EDDA-cum-EDMC, Champeswar B.O. because the selection had been made in contravention of the Rules by respondent no.4. From this it is clear that in this case the decision to cancel the appointment of the applicant has been taken by the reviewing authority and not by the appointing authority. If the appointing authority merely acts at the dictate of the superior authority, does not apply his mind and does not consider the explanation judiciously, it must be held that the order has been passed

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on the basis of external dictation and such an order will fall foul of the law as laid down by the Hon'ble Supreme Court in *Anirudhsinhji Karansinhji Jadeja's case (supra)*. If a selection is made and a complaint is received against the selection, obviously an officer superior to the appointing authority has to enquire into the complaint and take appropriate action and in case he finds that the complaint is justified and he asks the appointing authority to take action under Rule 6, it cannot be said that action taken under Rule 6 is void. If this is accepted, then any illegality committed by the appointing authority whereby rights of other persons are adversely affected will be without any remedy at the hands of the departmental authorities. The true test in such case is whether the appointing authority has applied his mind and taken an independent view on the showcause submitted by the appointee even if the asction has been initiated at the instance of higher authority. If he has merely gone through the facade of calling for a showcause and has merely acted on the dictates of the superior authority, then the order will be one entirely based on external dictation. As in this case, from the pleadings of the parties it is cleasr that the appointing authority has merely issued the order of cancellation of appointment at the dictate of the reviewing authority, the action of the departmental authorities in cancelling the appointment of the applicant in OA No.299/99 cannot be legally sustained and is set aside.

SOMNATH SOM
6.10.2000
VICE-CHAIRMAN