

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

22. 17.07.01

For hearing
18/07/01
Bewer

It is submitted by Mr. P.K. Padhi, that arguing Counsel Mr. M.P.J. Roy has suffered a bereavement.

Adjourned to 13.08.01.

SJM
Vice-chairman
17/7
Member (S)

23. Order dated 13.8.2001

Heard learned counsel for the petitioner and Shri S.B.Jena, learned A.S.C. and perused the records.

In this O.A. the petitioner has come up for quashing orders dated 10.8.1999 vide Annexure-4 and Annexure-6 dated 20.8.1999 with prayer to pass appropriate orders directing Respondent No.5 to allow him to continue in the post of E.D.D.A., Behera B.O. Respondents have filed their counter opposing the prayer of the applicant.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. The vacancy in the post of E.D.D.A. Behera B.O. arose on the regular incumbent being promoted to the post of Postman. Initially the applicant was appointed provisionally till 31.12.1998 or till the regular appointment is made, whichever is shorter. Respondents have stated in Page-1 of their counter that this appointment of the applicant was purely on adhoc basis. Respondents have further stated that subsequently the vacancy was filled up by following the Employment Exchange procedure and the applicant appointed to the said post of EDDA from 22.3.1999. From this, it appears that on being successful in the selection the applicant was regularly appointed to the post of EDDA, Behera. Respondents have stated that subsequently complaints were received that selection of the applicant to the post in question

SJM

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was made by adopting corrupt practice of bribe. This complaint has been annexed at Annexure-4 to the counter. Respondents have further stated that on enquiry it was found that applicant's appointment was not in accordance with rules and instructions of the Department and thereafter orders were issued by Res.4, who was the competent reviewing authority to cancell the selection/appointment of the applicant and to make fresh selection. Accordingly Res. 5 terminated the appointment of the applicant in the impugned order at Annexure-4 and directed him to handover the charge vide Annexure-6 dated 10.8.1999. We note from the averments made by the respondents in their counter that prior to cancelling the selection and issuing the impugned order under Annexure-4, no show cause notice was given to the applicant. It is submitted by Shri S.B.Jena, learned A.S.C. for the respondents that under Rule-6 of E.D. Agents (Conduct & Service) Rules services of an E.D. Agent, who has not completed three years of service can be dispensed with by giving one month's notice ~~and~~ in lieu of one month's salary. It is submitted that in the impugned order under Annexure-4 it has been ordered that the applicant should be paid one month's salary. In view of this it is urged by Shri Jena that order at Annexure-4 is legally sustainable.

The Full Bench of the C.A.T. in the case of Tilakyadhar Yadav vs. Union of India & Ors. reported in O.A.1997(36) A.T.C. 539 F.B. (Allahabad C.A.T.) have laid down that termination of service of E.D.A. ~~for~~ otherthan unsatisfactory service without giving him an opportunity to show cause violates the principles of natural justice. As in this case show cause notice has not been given to the petitioner before terminating his service, the order of termination is not legally sustainable. We, therefore, quash the order of termination under Annexure-4 and direct that the applicant should be reinstated in service within a period of 30 (thirty) days from the date of receipt of copies of this order. We note that the allegation vide Annexure-4 to the counter is serious in nature inter alia stating that some postal authorities including the Union leaders have taken bribe of

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Rs.60,000/- in the matter of appointment of the applicant. Respondents in their counter have stated that this has been enquired into, but made no averment whether the allegation of collection/payment of bribe has been established. They have merely stated that on enquiry it has been found that the appointment of the applicant was not made in accordance with rules and instruction of the Department. They have also not indicated in the counter, so also in the additional counter what are the grounds on which applicant's appointment was not in accordance with rules/instruction of the Department. In any case as the charges brought out under Annexure-4 to the counter are serious in nature, while directing reinstatement of the applicant, ~~we make it clear that~~ ^{we make it clear that} ~~we make it clear that~~ ^{we make it clear that} open for the departmental authorities to proceed against the applicant in accordance with law and rules, ~~if~~ ^{if} they consider necessary. We also direct that after conclusion of the enquiry if it is established that the allegations are true so far as appointment of the applicant to the post in question is concerned, action should also be initiated against the officer and/or officials involved in this matter. In view of the above, we are not inclined to direct payment of emoluments to the applicant during the period of termination till the date of reinstatement in service.

The O.A., as per direction and observations made above is disposed of, but without any order as to costs.

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MEMBER (JUDICIAL)

John Mathew
VICE-CHAIRMAN
13.8.2001

Free copies of final
order dt. 13.8.2001
issued to counsel
for both sides.

Ph. 111
S. 10(5)

DB
17/8/01