

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 433 OF 2000

Cuttack, this the 13th February, 2002

Ajaya Kumar Sahoo

....

Applicant

Vrs.

Union of India and Others

Respondents

FOR INSTRUCTIONS

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


1. *Canorayn Mohanty*

(M.R.MOHANTY) 13/02/2002
MEMBER (JUDICIAL)

2. *S.A.T.Rizvi*
(S.A.T.RIZVI)
MEMBER (ADMINISTRATIVE)

12
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 433 OF 2000
Cuttack, this the 13th day of February, 2002

CORAM:

HON'BLE SHRI S.A.T.RIZVI, MEMBER(ADMIN.)
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)
.....

Shri Ajaya Kumar Sahoo, aged 24 years,
son of Madhab Sahoo,
At/PO-Lathipada, Via-Mandhatapur, Dist. Nayagarh

..... Applicant

Advocates for applicant - M/s R.K.Sahoo
B.K.Mohanty
N.K.Prahara

vrs.

1. Union of India, represented through the Chief Post Master General, Orissa, Bhubaneswar 751002
2. Director, Postal Services, Headquarters, Bhubaneswar.
3. Senior Superintendent of Post Offices, Puri Division, Puri, At/PO/Dist.Puri.
4. Sub-Divisional Inspector (Postal) Nayagarh East Sub-Division, At/PO-Nayagarh, Dist.Nayagarh
..... Respondents.

Advocate for respondents - Mr.A.K.Bose
Sr.Standing Counsel.

.....
O R D E R
(ORAL)

S.A.T.RIZVI, MEMBER(ADMN.)

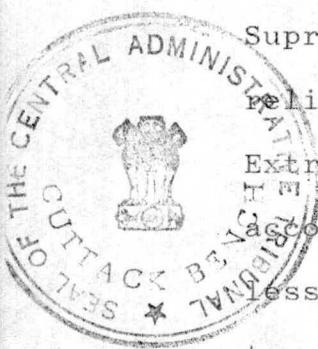
The applicant, who was an aspirant for the post of E.D.B.P.M., Lathipada, was duly appointed to the post in accordance with the prescribed procedure. The period of his appointment was extended time and again. He performed satisfactorily all along. By filing OA No. 334 of 1998, one N.K.Guru challenged his selection for the post inter alia on the ground of merit. That O.A. was disposed of on 24.11.1999 with a direction to the respondents to take such action as deemed proper. It was clarified by the Tribunal in that order that whatever action the respondents proposed to take will

have to be strictly in accordance with law. The Tribunal, while passing the aforesaid order, clearly desisted from expressing any opinion on the merits of the averments made by the parties. The aforesaid order has been followed by a notice issued to the applicant on 2.5.2000 (Annexure 14) for showing cause as to why his selection for the aforesaid post should not be cancelled and his services terminated. The applicant made a detailed representation in the matter on 1.6.2000 (Annexure 15). The matter was thereupon considered by the respondent authorities and by an order passed on 22.8.2000 (Annexure 16) the applicant's selection for the aforesaid post was cancelled by Director, Postal Services. By the same order the Director, Postal Services, also directed that further necessary action to select a candidate purely on merit be taken. Aggrieved by the aforesaid action taken by the respondents, the applicant has filed the present O.A. The prayer made is that the order dated 22.8.2000 (Annexure 16) issued by the Director, Postal Services, be quashed and set aside and consequential service and financial benefits given to the applicant.

2. We have heard Shri B.K.Mohanty, the learned counsel appearing on behalf of the applicant and Shri A.K.Bose, the learned Senior Standing Counsel appearing on behalf of the respondents at length and have also perused the court judgments placed before us during the course of arguments. *d.*



3. The learned counsel appearing on behalf of the applicant submits that the impugned order, dated 22.8.2000, is bad in law as the same has been passed by an authority higher than the appointing authority. The appointing authority in the applicant's case is Senior Superintendent of Post Offices. The Director, Postal Services, who has passed the impugned order, is admittedly placed higher than the S.S.P.O. in the departmental hierarchy. He is also the appellate authority against orders passed by the S.S.P.O. In support of his argument, Shri Mohanty, the learned counsel appearing on behalf of the applicant, relies on the rule position as well as some of the judgments rendered by this Tribunal which in turn placed reliance on certain judgments rendered by the Supreme Court. In-so-far as the rules are concerned, he relies on Rule 6 (a)/(b) of the Posts & Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964. In accordance with this rule, the ~~service~~ ^{appointment} of an E.D.Agent with less than three years of service at his command can be terminated by giving a notice in writing. The period of notice laid down is one month. The learned counsel has stressed that the aforesaid rule clearly provides that such an order of termination can be passed only by the appointing authority and by none else. Thus, it is his contention that the order of termination issued by the Director, Postal Services, is illegal and against the aforesaid rule. The only other rule under which action could have been taken against the applicant is Rule 7 of P&T EDA (Conduct & Service)



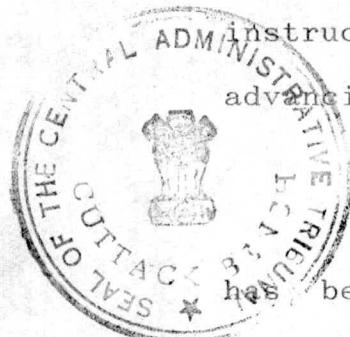
Rules, 1964, which relates to imposition of penalties on those charged with misconduct. The applicant in the present O.A. is admittedly not charged with any misconduct.

4. Shri A.K.Bose, the learned Senior Standing Counsel appearing on behalf of the respondents, has asserted that in terms of the circular/instructions issued by the respondent-authorities on 13.11.1997 (Annexure R/5), the authorities superior to the appointing authorities could proceed to pass orders terminating the services of E.D.Aagents. He has also relied on the decision given by this very Bench in OA No. 558 of 1995 on 12.7.2000.



5. We have carefully perused the aforesaid instructions, dated 13.11.1997, as well as the aforesaid order passed by this Tribunal on 12.7.2000. While perusing the aforesaid instructions, it has not escaped our attention that the same has been issued by the Directorate of Posts and not by the Department/Ministry concerned. To this extent, the validity of these instructions on the ground that these have not been issued by the Government, is open to question. Under Article 73 of the Constitution, ^{*the executive*} power of the Union extends to all matters with respect to which the Parliament has the power to make laws. It is settled that in the exercise of these powers the Government can issue executive/administrative instructions seeking to supplement the rules or otherwise aimed at filling the gaps in such a way that the instructions so issued do not come into conflict with the rules. The

important thing to note, in this context, is that such a power can be exercised by the Government alone and not by any other authority. The aforesaid instructions, dated 13.11.1997, have admittedly been issued by the Directorate of Posts. There is no indication therein that they have been issued with the prior approval of the Government. In the circumstances, in keeping with the constitutional/legal position, the aforesaid instructions, dated 13.11.1997, cannot be relied upon for advancing pleas on behalf of the respondents.



6. Despite the limitation imposed by virtue of what has been observed by us in the previous paragraph, we have cared to peruse the aforesaid instructions, dated 13.11.1997, with a view to finding out for ourselves as to what is really provided therein. These instructions, as we see them, are supposed to be in the nature of comprehensive instructions issued for the guidance of the officials of the Directorate and the field staff. The experience gained by the Directorate over the years in the matter of implementation of P&T EDA(Conduct & Service)Rules, 1964, including appointments to the various posts referred to in the said Rules, and various court judgments, which became available to the Directorate, have clearly formed an important input at the stage of consideration of the matters dealt with in these instructions. Paragraph 3 of the said instructions appears to lay down that whenever a mistake in the appointment made by a lower authority is discovered, appropriate orders can be issued in

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17

the matter by the higher authority. Such orders are to be passed, however, only by the competent authority. The implication seems to be to say that on the discovery of a mistake/fraud, the higher authority discovering such mistake/fraud will issue appropriate instructions to the lower/competent authority for rectifying the mistake. Insofar as the implementation of Rule 6(a)/(b) of the P&T EDA (Conduct & Service) Rules, 1964, is concerned, the aforesaid instructions seem to lay down that it is the appointing authority alone, being competent authority in the matter, who can terminate the services of an ED Agent earlier appointed by the same authority. In the context of the present case, the implication would seem to be that the order terminating the applicant's services could be passed only by the S.S.P.O. and not by the Director, Postal Services. Viewed thus, the impugned order, dated 22.8.2000, passed by the Director, Postal Services, would seem to have been issued in violation of the aforesaid instructions.



7. A word must be said at this very stage about the competence of an authority. Unless the term "competent authority" is clearly defined in the rules, anyone, who has the powers to do a thing, will be said to be the authority competent to do that thing. ~~In~~ In relation to the appointment of an E.D.Agent, the S.S.P.O. has the power to appoint an E.D.Agent. It is he, namely, the S.S.P.O. who will accordingly be termed "competent authority" in matters relating to the appointment of an E.D.Agent. Termination of the services of an E.D.Agent by an authority different from the S.S.P.O. will, therefore, not be in order, as has been pointed out already in the previous paragraph. 2

8. Proceeding next to paragraph 4 of the aforesaid instructions, dated 13.11.1997, the provision made therein reads as under:

"While complying with the directions given by the next higher authority, the appointing authority will ensure that a proper showcause notice is issued to the ED Agents concerned and the representation, if any, is forwarded to the next higher authority for taking it into account before passing the final orders."

The above provision, contrary to what has been laid down in paragraph 3 of the same instructions, and to which reference has already been made by us above, unequivocally provides for issuing of orders by higher authorities, higher than the appointing authorities. Such a provision would seem to justify issuing of the impugned order, dated 22.8.2000, by the Director, Postal Services, who is admittedly, as already stated, an authority higher than the S.S.P.O/appointing authority. Clearly there is a strong element of repugnancy in the aforesaid instructions, dated 13.11.1997, in that while paragraph 3 thereof provides for passing of orders by the competent authorities, the aforesaid paragraph 4 of the same instructions envisages exercise of the same power by an authority higher than the appointing authority/competent authority. In this view of the matter, the aforesaid instructions, dated 13.11.1997, stand vitiated on the ground of repugnancy and internal contradiction.

9. Paragraph 3 of the aforesaid instructions, dated 13.11.1997, in sub-paragraph (ii) thereof, ventures to make a strange provision by laying down that "there is no need to invoke E.D.Aagents (Conduct & Service) Rules, while passing

2

final orders in such cases". This, we find, is wholly contrary to the scheme of things laid down in the aforesaid rules and stares in the face of the rules. The aforesaid Rules provide for only two methods of termination of an E.D.Agent's services. One of the methods is laid down in Rule 6 thereof, and the other in Rule 7 of the Rules to be read with the connected other rules. A valid and legal action outside these provisions is, in our judgment, not possible and taken will stand vitiated. The aforesaid provision made in the said instructions is, therefore, bad in law.

 31.12.1997. Interestingly enough, while various arguments have been made challenging the sanctity of the aforesaid instructions, dated 13.11.1997, the learned counsel appearing on behalf of the applicant has found occasion to refer to the provision made in sub-paragraph (ii) of paragraph 3 thereof, which provides for an opportunity of being heard as well. The contention raised is that no opportunity of being heard was granted to the applicant in the present O.A. despite the aforesaid provision, and for this reason also the action taken against the applicant is untenable and unsustainable.

11. We are considerably pained to find that though the instructions, dated 13.11.1997, are ostensibly at least based *inter alia* on the various judgments rendered by the courts including this Tribunal, they are in actual terms contrary to what the Courts and this Tribunal have held on this subject. The position is ironical indeed. While the Courts/Tribunal had clearly held that an authority higher than the appointing

authority will have no powers to review the selection process of an E.D.Agent, and to pass orders in that regard, the instructions in question clearly and unmistakably stipulate that higher authorities will not only have the powers to review, but will also be able to pass orders overturning the orders of selection passed by the competent lower authorities. This fact was greatly lamented by this Bench of the Tribunal when in the order, dated 16.11.2000, passed in O.A.No. 428 of 1998, an observation as follows was made:

"Thus it comes to this, through this administrative instruction, the rulings of various Benches of the C.A.T. including Full Bench of Allahabad C.A.T. and the Full Bench decision referred in R.M.Gurumurthy case (supra) disposed of by the Division Bench of Bangalore C.A.T. that higher authority than the appointing authority has no power under the Rules to review the selection process has been set at naught."

12. In O.A. No. 558 of 1995, relied upon by the learned Senior Standing Counsel appearing on behalf of the respondents, the applicant's services had been terminated without affording him an opportunity of being heard. Further, in that OA, the higher/reviewing departmental authority had, after noticing an irregularity in appointment, directed the appointing authority occupying a lower rank to act according to the recruitment rules. In other words, the appointing/competent authority had in that case acted at the behest of the higher/reviewing authority. That O.A. was, however, dismissed, thus, holding that there was nothing wrong or illegal if the appointing/competent authority acted at the behest of the higher/reviewing authority. Shri B.K.Mohanty, the learned counsel appearing on behalf of the applicant, in



order to meet the situation arising from the order passed by the Tribunal in OA No. 558 of 1995, proceeded to place reliance on the order passed by this very Bench later on 16.11.2000 in OA No. 428 of 1998. The order passed by this Bench in the aforesaid O.A., being O.A.No.558 of 1995, has been noticed by this Bench in the aforesaid order passed on 16.11.2000. Placing reliance on several judgments rendered by this Tribunal and the Supreme Court, by the aforesaid order passed in OA No. 428 of 1998, the Tribunal has struck down the action taken by the authority higher than the appointing/competent authority. In OA No.1 of 1999, to which a reference has been made in the order passed in OA No. 428 of 1998, this Bench had, after a careful analysis of the decisions taken by the different Benches and the Full Bench of the Tribunal, held that only the appointing authority has the power under Rule 6 of P&T ED Agents (Conduct & Service) Rules, 1964, to terminate the services of an ED Agent who has rendered less than three years of continuous service for reasons other than misconduct, and further that an authority higher than the appointing authority, has no power to review the selection/appointment of an ED Agent. The order of termination issued in that case on the direction of a higher authority was consequently quashed. Needless to add that the rule laid down by this Tribunal in O.A.No. 558 of 1995 has been bypassed in the Tribunal's order, dated 16.11.2000, in the face of better and higher authority on the subject flowing from the judgments rendered by the Full Bench which had ^{then} become available. In the present case, the services of



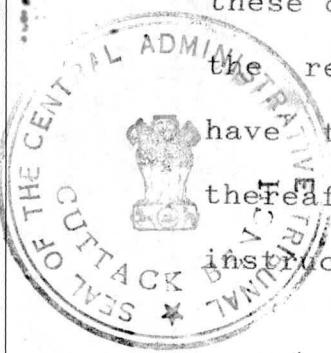
the applicant have been terminated, not on the directions issued by the higher authority, but by the higher authority himself. This position, according to us, is far worse than would be the case otherwise. The order so passed by the higher authority cannot, in the circumstances, be sustained.



13. In the background of the above discussion, the various pleas raised on behalf of the respondents are found to be without merit. The O.A., therefore, succeeds and is allowed. The impugned order, dated 22.8.2000 (Annexure 16) stands quashed and set aside. The respondents are directed accordingly to reinstate the applicant as EDBPM, Lathipada, with immediate effect. The respondents will also pass orders granting consequential financial and service benefits to the applicant within three months.

14. While parting with this order, we feel inclined to make an observation in continuation of what we have already stated in paragraph 11 above. It appears to us that while issuing the aforesaid instructions, dated 13.11.1997, the respondent-authorities were under an impression that by making the aforementioned questionable provisions therein, they would be able to overcome the principles laid down by the courts and by this Tribunal. This has been a serious mistake. If the law laid down by a Court or the principles upheld by it are found to be inconvenient for administrative or other such reasons, the course open to the respondents is to approach a higher court for seeking annulment of the law laid down or the principles upheld by the Courts and the Tribunal. Instead of

following the aforesaid salutary route, the respondents in this case have chosen to stipulate provisions contrary to court rulings by issuing administrative instructions. In these circumstances, we consider it our duty to ~~lay down~~ ^{lay down} that the respondents, on receipt of this order, should proceed to have the matters herein examined at the highest level and thereafter to issue comprehensive and well conceived instructions afresh.



(M.R.MOHANTY)
MEMBER (JUDL.)

AN/PS

(S.A.T.RIZVI)
MEMBER (ADMN.)

(Signature)

*Mohanty
13/02/2002*