

8

**CENTRAL ADMINSTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NOS. 51, 52 AND 53 OF 2004.
Cuttack, this the 14th day of April, 2005.

CORAM:-

**THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.G.SHANTHAPPA, MEMBER(JUDL.)**

DEBENDRA KU.MALLICK & TWO ORS. APPLICANTS.

VERSUS

UNION OF INDIA AND OTHERS RESPONDENTS.

For the Applicants : Mr.D.P.Dhalsamant, Advocate.

For the Respondents : Mr. U.B.Mohapatra, SSC.

2

O R D E R

MR. G. SHANTHAPPA, MEMBER (JUDICIAL)


The facts and issues involved in these three cases being one and the same, although we have heard the matters one after the other, this common order is passed which will govern in these three cases.

2. The above Original Applications are filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8.1. The impugned order dated 08.01.2004, under Annexure-A/7 be quashed;

Any other relief as deemed fit and proper in the circumstances of the case be granted.”

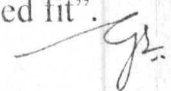
3. The facts in brief, are that the Applicant in OA No. 51 of 2004 was appointed as ED/GDS Packer cum Mail Carrier of Bhimtangi Sub Post Office, Bhubaneswar provisionally on 08.07.1997, Applicant in OA no. 52 of 2004 was appointed on provisional basis as EDDA of Sisupalgarh, Bhubaneswar on 05.06.1998 and Applicant in OA No. 53 of 2004 was similarly appointed on provisional basis as ED/GDS Packer of Aerodrome Area Sub Post Office, Bhubaneswar on 04.04.1998 against regular vacancies. Subsequently, on the basis of the requisition sent to the Employment Exchange, Bhubaneswar dated 18.03.1997 and open notification dated 24.07.1997, all the applicants



10 3

had applied and selected in a due process of selection and were appointed in a regular manner with effect from 30.06.1998. On 10.06.1999 orders were passed by the Respondent No.3 following the provision of Rule 6(B) and Note Below of Rule 6(B) of ED Agents (Conduct and Service) Rules, 1964, terminating their services with direction that they would be entitled to claim a sum equivalent to the basic allowances plus Dearness Allowance for the period of notice at the same rates which they were drawing immediately before passing of the orders. Being aggrieved by the said action of the Respondents, the Applicants filed Original Application Nos. 280/99, 281/99 and 282/1999; which were heard and disposed of on 15th day of March, 2000 with the following directions:-

“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 glove with the then Respondent No.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 Annexure-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”.



4. Pursuant to the said observation and directions of this Tribunal in those OAs, the Respondents have issued notice dated 08.01.2004/12.01.2004 under Annexure A/7 to the applicants, which was replied by each of the Applicants under Annexure-A/8 dated 21.1.2004. It is in this background, apprehending penal action, the applicants have moved this Tribunal on 20.2.2004 in the present OAs challenging the said show cause notice under Annexure-A/7, on the ground that the same is illegal, arbitrary and violative of the constitutional mandates. In support of their case, it has been urged that since they were selected through a due process of selection and for no fault of them, they should not be made to suffer after a long lapse of time. It is their further stand that the show cause notices issued to them do not have the approval of any law or rules, apart from the fact that the Respondents are estopped under law to issue such show cause notice after six years of their appointments. It is their further stand that if at all the Respondents were required to issue notices, those notices ought to have been issued to them within a period of six months from the date of receipt of the orders of this Tribunal in earlier OAs, as any order of the Tribunal is required to be complied with within a maximum period of six months where no time limit has been fixed by the Tribunal and having not done so, they are estopped under law to do so at this belated stage. On these above grounds, the



198

5

Applicants have prayed for quashing of the impugned order under Annexures -A/7.

5. Per contra, the Respondents have filed their counter stating therein that although the Applicants were selected and appointed against the regular vacancies on regular basis, but the same was done without following due procedure of recruitment. It has further been submitted by the Respondents that on examination of the fact, it revealed that the Employment Exchange had sponsored the names of 40 candidates vide letter dated 8.8.1997 (Annexure-A/3). As per rules, the candidates sponsored by the Employment Exchange should have been considered first and in case non availability of any eligible candidate, the vacancy should have been notified in public. But there being no record to show that the above procedure had been followed before appointing the applicants, therefore, the very entry of the Applicants to the posts in question were irregular/illegal and in the circumstances, there was no wrong in issuing show cause notice of termination issued as per the direction of this Tribunal. On the above grounds, the Respondents have prayed that these three OAs are liable to be dismissed being devoid of any merit.

6. We have heard learned counsel for the parties and perused the materials placed on record; including the rejoinders filed by the Applicants.

— G. —

13

7. During the arguments, learned counsel for the parties have reiterated their respective stand in support of their contentions. Over and above the pleadings, to impress this Tribunal, it has been submitted by the learned counsel for the Respondents that for the illegal exercise of power, the selecting authority Shri Sridhar Panda, SSRM 'N' Division, Cuttack has also been proceeded with and he has been awarded the punishment of stoppage of increment for a period of three months from the date of his next increment falling due on 1.8.2004, without cumulative effect and therefore, he reiterated the prayer for dismissal of this Original Application.

8. We have considered the rival submissions made by the parties and have given our anxious thoughts. On a scanning of the records, it is seen that in the earlier round of litigations, the Respondents in their counter filed before this Tribunal had taken the following stand :-

“Shri S.C.Barik, the then Sub Divisional Inspector (Postal), Bhubaneswar (S) Sub Division issued appointment orders dated 30.06.1998 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 files to the Senior Superintendent of Post Offices, Bhubaneswar Division as required under the Rules and that he violated para 14 of the Recruitment Rules with regard to appointment of ED Agents by not sending requisition to the employment exchange to sponsor names. This para lays down that appointment of ED Agents is required to be made through the employment exchange and in case employment exchange fails to



4 7

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 notifications with copies to various authorities like BDO, Bhubaneswar, Block, Tahasildar, Bhubaneswar the concerned sarapanches and so on that 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 order dated 30.06.1998 were issued by the then SDI(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".

But in the present cases, the Respondents have taken the pleas in their counters that it was not incumbent on the part of the recruiting authority to go for public notification without considering the names received from the employment exchange and having not done so, there was gross violation of the rules for which the very entry of the applicants to the posts in question was illegal and accordingly, their services are liable to be terminated. Not a single whisper has been made by the Respondents with regard to any omission or commission on the part of the applicants



15
in so far as their selection and appointment to the posts in question are concerned..

9. On a careful examination of the records, we are constrained to note that being responsible officers of the Government, the Respondents ought not to have taken such inconsistent view without due application of mind. It transpires that the Respondents are not also confident with regard to any omission or commission on their part which impelled them to take action against the Applicants. Due to such mindless exercise of powers, it has not only led to multifarious litigations, but has put the applicants into mental stress and strain, apart from saddling the public exchequer unnecessarily.

10. As regards the plea of the Respondents that when names were available to be considered, there was no need to go ahead with the public notification, this stand cannot lend any support to the Respondents because, by now law is well settled that there is no harm if the zone of consideration is wider amongst which the most meritorious candidate could be selected which would meet the motto behind the recruitment rules and therefore, the plea as taken by the Respondents to terminate the services of the Applicants is not sustainable more so when these applicants have been selected and appointed against the regular posts in a regular manner. Further, as we see there was no fault on the part of the Applicants in the matter of selection nor it is the case of the Respondents

[Signature]

40

that they lack in eligibility conditions as per recruitment rules, it is not desirable on the part of the Respondents to run after these applicants at their whims and fancies. We are, therefore, of the considered view that having no fault on the part of the applicants in the matter of selection their claim should not be thrust aside. This view of ours gains support by the decision of the Hon'ble High Court of Orissa in the case of MAHENDRA TANTY -Vrs.- UNION OF INDIA & OTHERS (OJC NO. 5254/1998 disposed of on 15/11/1999). Relevant portion of the said order of the Hon'ble High Court of Orissa are quoted herein below:-

"4. In the impugned order the Tribunal held that due to the mistake of the department, for which the petitioner was no way responsible, he was placed in the select list as a Scheduled Tribe candidate. By OCCUPYING A POST MEANT FOR Scheduled Tribe community, the petitioner has deprived a scheduled tribe candidate of his rightful position, and as such, he has not acquired a right to hold the post reserved for scheduled tribe. On the basis of the said findings, the tribunal rejected the application.

It is not the case of the department that the petitioner by is representing or playing a foul game got his name included in the Schedule Tribe list. The department has candidly stated that because of error committed by the concerned dealing assistant, the petitioner's name was included in the scheduled tribe list. The aforesaid being the admitted position and the petitioner being in no way responsible for it, he cannot be allowed to suffer, particularly when he has already rendered service for about two years. The Department is clearly estopped from raising such a

C/S.

17
10
plea. On the facts and circumstances, the equity is clearly in favour of the petitioner".

(EMPHASIS SUPPLIED)

In this context, the learned counsel for the Applicants has also taken us through the decision of the Hon'ble Patna High Court rendered in the case of SHAILENDRA KUMAR SINGH vrs. STATE OF BIHAR AND OTHERS reported in 2004 (3)ATT 344; wherein at paragraph 7 and 8 Their Lordships have held as under:-

7. The a counter affidavit has been filed on behalf of the Respondents, the statement made in the writ application with regard to advertisement of the post and calling for the names from the Employment Exchange is not disputed. A bald plea has been taken saying that all the procedures for appointment were not following including that of reservation policy and roster clearance.

8. Learned counsel for the petitioner now submits that the question, which has fallen for consideration in this case has already been considered by this Court in the case of Shri Ravindra Kumar Tiwari v. The State of Bihar and others in CWJC NO.5003 of 1999 and the writ application was allowed and the order of termination was set aside and the order of this court has ultimately been affirmed by the Apex Court".

11. Having regard to what has been discussed above and having regard to the inconsistent stand taken by the Respondents from time to time, and in view of the fact that the applicants being in no way

af

18
11
responsible in the matter of their selection and appointment. the notice of termination issued to them after a long lapse of time by the Respondents does not stand to reason. In the circumstances the impugned notices issued under Annexure-A/7 (in all these three OAs) are quashed. Since the Applicants are still continuing in service by virtue of interim protection granted by this Tribunal, the same is made absolute.

12. In the result, all these three OAs are allowed. No costs.

1 11
Sd/- B. N. Som.
vice-chairman

Sd/- G. Shanthappa
MEMBER (Judicial)