

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1180/96

Present : Hon'ble Mr. D.V.R.S.G. Dattatreya, Judicial Member.

Hon'ble Mr. B.P. Singh, Administrative Member.

Sk. Enamul Haque

- v e r s u s -

1. Union of India, Service through the Secretary, Ministry of Communications, Department of Posts Dak Bhawan, New Delhi.
2. Chief Postmaster General, W.B. Circle, Yogayog Bhawan, Calcutta-700012.
3. Superintendent of Post Offices, South Presidency Division, Baruipur, District South 24-Parganas.
4. Sub-Divisional Inspector (Postal) Bishnupur Sub-Divn. P.O. Bishnupur, District South 24-Parganas.

...Respondents.

For the applicant : Mr. N. Bhattacharjee, counsel.

For the respondents : Ms. B. Ray, counsel.

Heard on 11.7.2000

Order on 19.7.2000.

O R D E R

B.P. Singh, AM

Sk. Enamul Haque has filed this application against the non-selection on the post of Extra Departmental Mail Peon (EDMP) Serakole, B.O. and prayed for the following reliefs:-

"8.

- a) The order dated 21.9.96 at Annexure-A/2 be set aside and quashed.
- b) The respondents be directed to allow the applicant continue to work as EDMP, Serakole B.O. in account with Fatepur S.O. until further orders.
- c) The pay and allowances of the applicant as EDMP Serakole B.O. be drawn and disbursed as usual."

2. The fact of the case is that the name of the applicant was sponsored by the Employment Exchange and he was considered the best candidate amongst them. He was appointed by Sub-Divisional Inspector, respondent No.4 Bishnupur Sub-Divn., District-24 Parganas as Mail Peon of Serakole, EDBO on provisional basis till regular appointment is made vide order dated 30.10.95 vide Annexure-A/1. The applicant joined the post on 1.11.95 and continued to work as such. Suddenly, the applicant received memo dated 21.9.96 as per Annexure-A/2 from the Sub-Divisional Inspector terminating his service with immediate effect. No reason was adduced for such abrupt termination of the service of the applicant. Being aggrieved with the above order the applicant filed this O.A. and prayed for the reliefs as quoted above.

3. We have heard Sri N. Bhattacharjee, Id. counsel appearing for the applicant and Ms. B. Ray, Id. counsel for the respondents. We have gone through the O.A., reply to the O.A. and rejoinder to the O.A.

4. The Id. counsel Sri Bhattacharjee for the applicant pleaded that ~~the~~ termination of the service of the applicant without assigning any reason and without giving any reasonable opportunity to the applicant was violative of principles of natural justice as held in O.A. NO. 334/91 decided on 25.3.92 reported in 1992(1) ATJ 611 (Amarjit Singh Vs. Union of India and Ors.). The Id. counsel further submitted that the termination of the appointment of the applicant after following due process of selection violated the doctrine of promissory estoppel as held in Nabahana Bihara -Vs. State of Orissa reported in 1993(1) ATJ 290. The termination order has also violated the judgment of the Hon'ble Apex Court in B.D. Gupta -Vs- State of Haryana reported in SC SLJ Vol.4, 325 decided on 18.9.72 which held that where the order affects the employee financially, it must be passed after an objective consideration and after giving full opportunity to make out his case about that order which was not done in the present case. He submitted that the decision of the respondent No.4 was against the decision of the Hon'ble Principal Bench in the case of Kuldip Kumar Bamania -Vs- Union of India & Ors. reported in 1991 (1) ATJ 46. He further submitted that the order was also against the decision of the Jabalpur Bench in the case of VKS Sagar-Vs.

Union of India and Ors. reported in 1989 (1) ATJ 451 which held that any internal mistake of the Govt. Department cannot be passed on to a Govt. servant. Id. counsel further submitted that the applicant was not informed about the reason for termination for his service and was also not afforded any opportunity to defend his case. Therefore, the action on the part of the respondents is arbitrary, illegal, malafide, unconstitutional and beyond the jurisdiction of the respondents. The Id. counsel further drew our attention to the Allahabad Bench's decision dated 13.9.96 in O.A. No. 1062/94 reported in 1997 (1) Vol.22, page 279 (Govind Singh Vs. Supdt. P&T Office, Pithoragarh & Ors.) which held that higher departmental authority has no power either inherent or otherwise to revise the order of appointment passed by the lower departmental authority or to set aside the same. In view of the above, the Id. counsel pleaded that termination order at Annexure-A/2 should be quashed and reliefs prayed for by the applicant should be granted.

5. The Id. counsel Ms. Ray, appearing for the respondents has submitted that consequent upon falling the post of EDMP Serkole B.O. vacant, the respondent No.4 invited nominations of eligible candidates from local Employment Exchange on 5.9.95. The Employment Exchange sponsored nine candidates including the name of the applicant vide Annexure-R/I and R/II respectively. Actually, vide Annexure-R/II the names of ten candidates and not nine have been sponsored by the Employment Exchange. The candidate securing highest marks at Madhyamik level did not fulfil the conditions of adequate means of livelihood and, therefore, he was not considered for selection and appointment. Therefore, the second man who is the applicant in the O.A. was selected and appointed on 1.11.95. The case of the selection was reviewed by the PMG, Calcutta who did not agree with the view of the Recruiting Authority i.e. respondent No.4 and found that the candidate securing the highest marks was ignored irregularly on the ground of solvency and, therefore, cancelled the selection and directed to appoint the candidate who is eligible as per existing rules vide his order dated 5.8.96 (Annexure-R/III) addressed to respondent No.3. Accordingly the appointment of the applicant was terminated on 21.9.96 vide Annexure-A/2 of the O.A. which the applicant received but did not sign on charge report. However, the applicant was deemed to have been

relieved w.e.f. 21.9.96 from the post of EDMP, Sircole, B.O. The Id. counsel has further submitted that interview for the post was held and applicant was selected according to the percentage of marks and fulfilment of the other conditions such as other means of livelihood, while making selection and appointment of the applicant. The candidate who secured higher marks than the applicant was ignored as respondent No.4 irregularly applied the condition of solvency for the post of EDMP as well. Actually, the condition of solvency is applicable only in the case of Extra Departmental Post Master and Branch Post Master. On this technical ground the entire process of selection was found irregular by the Controlling Authority who cancelled the selection by direction to appoint the best candidate eligible as per existing rules of recruitment on the post of EDMP. Since the irregularity was committed by the respondent No.4 in the selection process and the same was noticed by the Controlling Officer viz. P.M.G., Calcutta, ^{he} cancelled the selection being irregular. The P.M.G. being the controlling authority was within his right to ~~remove~~ ^{review} any selection process with a view to see whether departmental orders and instructions on the subject are being complied with by the Subordinate authority. The Id. counsel further submitted that the PMG has cancelled the selection only as the same was against the rules and departmental guidelines. He directed respondent No.3 to select and appoint the eligible candidate according to the rules and guidelines. In reference to this direction the competent authority viz. respondent No.4 issued the termination order vide Annexure-A/2 within his right. The applicant received the termination order but did not sign on the charge report. Therefore, he was deemed to have been relieved w.e.f. the date, the order was received by him viz. 21.9.96 from the post of EDMP, Sircole. The reason for cancelling the selection process has been intimated by the PMG, Calcutta to respondent No.3 which has been discussed above and, therefore, no ^{further} reason for the termination of the appointment of the applicant was essential to be shown in the order of termination. The order of termination is as per rule 6 of EDAs Conduct & Service Rules, 1964 and the termination was made within one year of the appointment of the applicant. There is no illegality in the acts and omissions on

the part of the respondents. The applicant is not entitled to the reliefs claimed in the O.A. However, as per provision of Rule 6 of EDAs'

Conduct and Service Rules, 1964, one month's allowance in lieu of one month's notice was ~~not~~ disbursed to the applicant through Baruipur H.O. M.O. No. 514 dated 18.10.96 of which intimation was served to the applicant by the office of payment and which the applicant did not receive and, therefore, was returned by the concerned P.O. Under the above circumstances, the application of the applicant is baseless, misleading & misconstrued and, therefore, should be rejected without granting any reliefs prayed for.

6. The Id. counsel Sri Bhattacharjee for the applicant in his rejoinder has submitted that the condition of other means of livelihood was incorporated by respondent No.4 in his notice to the Employment Exchange which is Annexure-R/1 as condition No.2 and, therefore, the selection process and the appointment should be made according to the terms and conditions given in R/1. The applicant fulfilled these conditions. The applicant submits that the ~~order~~ ^{order} of the P.M.G. in this respect ~~as~~ ^{was against the} intimated to respondent No.3 vide Annexure-R/3 ~~as per~~ decision of the Hon'ble Allahabad Bench in the case of Govind Singh Vs. Supdt. P&T Office, Pithoragarh & Ors. reported in 1997 (1) Vol. 22, 279. The said decision lays down that higher departmental authority has no power either inherent or otherwise to revise the order of appointment passed by the lower departmental authority or to set aside the same. The applicant was selected according to the highest percentage of marks and fulfilment of other conditions. The P.M.G., Calcutta has no power to revise the order of the appointment passed by the respondent authorities. He further submitted that the termination order of the applicant was not according to Rule 6 of the EDAs' Conduct and Service Rules, 1964 as there was no mention of one month's notice or payment of one month's allowance in the said order. The termination order also affected the applicant financially, therefore, he should have been given full opportunity to put up his case as per decision of the Hon'ble Apex Court cited by the Id. counsel. In view of the above submissions, Id. counsel again submitted that the termination was bad in law and against the decision of the Hon'ble Tribunal and Hon'ble Apex Court and therefore, should be set aside by granting reliefs prayed for.

7. The fact of the case has not been denied by the respondents. The applicant was found suitable and he was appointed on the post of EDMP. His service was ~~terminated~~^{terminated} by the appointing authority viz. respondent No.4 in reference to the direction of the P.M.G., Calcutta who on review of the selection process, found that the selection was against the rules and, therefore, irregular. He directed the respondent No.3 to make appointment according to the provisions of rule ^{from} amongst the eligible candidates already sponsored by the Employment Exchange. Id. counsel for the applicant has challenged the authority of the P.M.G. to review the case in reference to Allahabad Bench decision in O.A. No. 1062/94 reported in 1997(1) Vol.22 ATJ 279. He has also submitted that termination order was irregular, as no notice was given to the applicant.

8. We have gone through the various decisions quoted by the Id. counsel for the applicant. We find that the facts and circumstances of the cases as cited by the Id. counsel for the applicant ~~are~~ differ from the present case. In the Principal Bench case (1991 (1) ATJ 46) the case related to the regular appointment of a probationer who continued in service after completion of probation period. This order does not appear to apply in the present case as Rule 6 of EDAs' Conduct & Service Rules, 1964 provides that service can be terminated within a period of three years from the date of appointment. ~~xxxxxx~~
In the present case, the applicant's service was terminated within a year of his appointment. He was appointed by an order dated 30.10.95 and his service was terminated vide order dated 21.9.96 i.e. within a year. In the case of Hon'ble CAT Chandigarh Bench reported in 1992 (1) ATJ 611, we again find that the facts of the case differ with the present O.A. The applicant in that O.A. was appointed after following the selection process and he was directed to hand over charge to ~~another~~ another person by the P.M.G. In the present O.A., the P.M.G. has, on review, found that the departmental rules and regulations have not been followed in the selection process and, therefore, he cancelled the selection and directed that eligible candidates should be selected and appointed according

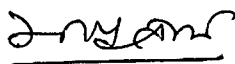
to the rules. P.M.G. being the controlling authority of respondent Nos. 3 and 4 has inherent power to review any administrative decision so as to ensure that rules prescribed and procedures laid down are followed meticulously in the larger interest of administration and justice. The decision of the Hon'ble Apex Court in B.D. Gupta Vs. State of Haryana reported in SC SLJ 1950-1988, 325 decided on 18.9.72, is also not applicable as the facts of the above case decided by the Hon'ble Apex Court materially differ from the present case. The case before the Hon'ble Apex Court dealt with the prolonged and protracted disciplinary case of the appellant and action taken by the respondents. The present case is a simple case where laid down procedures for selection have not been followed and, therefore, selection has been cancelled *and* respondent No.3 has been directed to follow the prescribed rules and regulations for the selection and make selection accordingly. In the Allahabad Bench case, 1997 (1) Vol.22 ATJ 279, the applicant had already put in nearly three years of service when termination notice was served whereas in the present case, the service of the applicant was terminated within a year of his appointment.


9. The selection process was reviewed by the Controlling authority who found the selection irregular as the provisions of the rule as well as procedure laid down by the department were not followed for which the applicant was not responsible in any way. The P.M.G. being the controlling authority of all the offices and officials working under him was within his right to review any administrative decision taken by any of his subordinates suo moto or on being ^{brought} ~~brought~~ to his notice through any means. This is the cardinal principle of administration of any department where hierarchical system exists. The hierarchical system is a control mechanism by which acts and omissions of the subordinates are supervised and controlled in the interest of service rendered by the department and administrative interest of the department keeping in view larger and ultimate public interest. The Controlling Officer is authorised to ensure that departmental rules and regulations as well as principles of natural justice are followed, complied with and not violated by any of the subordinates working under him. If he finds any irregularity or non-compliance of the departmental orders/instructions on the part of any of his subordinates, he has to interfere and, if it is justified he

may modify, rectify or set aside the orders of the subordinate authority or direct him to act according to rules. We are of the view that the higher authorities like P.M.G. in the present case have full power to interfere in any administrative order of the subordinate authorities in the larger interest of public, administration and service. We do not find any fault in the review made by the P.M.G. in the present case about the selection on the post of EDMP, Sirkole which he did in exercise of his general powers of supervision and control over his subordinates and where he found that the rules have not been followed/complied with properly and gave suitable direction about the same..

10. In view of the above discussion, we find that the P.M.G. has only cancelled the selection with the direction to appoint the candidate who is eligible as per the existing rules as per Annexure-R/III. We have been informed by the respondents that due to pendency of the present case, no selection has been made on the post so far. We would, therefore, allow the application to the extent that the respondent authorities may comply with the direction of the P.M.G. given in Annexure-R/III viz. they should consider the appointment of the eligible candidates according to the existing rules from the list of the candidates already sponsored by the Employment Exchange within a period of 8 weeks from the date of communication of this order and appoint the best candidate out of the list.

11. No order is passed as to cost.


(B.P. Singh) 19072022
Member (A)


(D.V.R.S.G. Dattatreya)
Judicial Member.

a.k.c.