

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 11/ 2003

Date of decision: this the 9th day of March, 2004

CORAM:

**Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member**

Anjana Devi widow of Shri Jagdish Chandra Sharma, aged 40 years, r/o village and Post Pahuna, District Chittorgarh, Ex-ED MC, Pahuna, District Chittorgarh.

...Applicant.

(Rep. By Mr. Vijay Mehta, counsel for the applicant)

versus

- (1) Union of India through the Secretary, Ministry of Communication, (Dept of Posts), Sanchar Bhawan, New Delhi.
- (2) Superintendent of Post Offices, Chittorgarh.
- (3) Inspector of Post Offices, South Sub-Division, Chittorgarh.

.....Respondents

(Rep. By Mr. B. L. Bishnoi, Adv. Brief Holder for
Mr. Vijay Bishnoi, counsel for the respondents)

ORDER

PER J.K. KAUSHIK, JUDICIAL MEMBER

Smt. Anjana Devi has filed this Original Application assailing her termination order and for claiming all consequential benefits including full back wages.

2. The Original Application was listed today for admission. With the consent of the learned counsel for the parties, we have



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heard the same for final disposal of this case at admission stage and we have bestowed our earnest consideration to the pleadings and the records of this case

3. The material facts necessitating filing of this Original Application are that the applicant is the widow of one Shri Jagdish Chandra Sharma who was employed as ED Employee under the respondents and served in that capacity for over 15 years. Shri Jagdish Chandra Sharma expired on 12.10.1998. The applicant was appointed as an ED Employee on compassionate grounds. She was appointed by the respondent No. 3 as EDMC on 25.01.1999 and the charge thereof was handed over to her on 27.01.1999. She worked without any complaint and all of a sudden on 19.01.2002 charge was taken from her. This charge was taken from her in pursuance with the communication dated 08.11.2001 from respondent No. 2, ordered the respondents No. 3 to immediately terminate the services of the applicant.

4. The further case of the applicant is that as per the Gramin Dak Seveks Rules, 2001, a Gramin Dak Sevek who has not completed three years of service may be terminated by a notice of one month in writing or by making payment of a sum equivalent to the amount of TRCA in lieu of one months' notice. In the instant case, neither any notice in writing nor the said sum has been paid to the applicant.



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5. The Original Application has been filed on diverse grounds mentioned in para 5 and its sub-paras of the Original Application, primarily that she has not been completed three years of service and the action of the respondents is infraction of Article 14 & 16 of the Constitution of India.

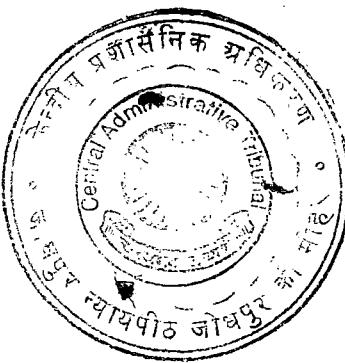
6. The respondents have resisted the claim of the applicant and have filed an exhaustive reply to the Original Application. Certain factual aspect in respect of Shri Jagdish Chandra Sharma has been enunciated. It has been submitted that the applicant was appointed provisionally on the post of EDMC and her candidature for appointment on compassionate ground was being considered. She had given an undertaking that if she will not be selected on the post of ED MC, she will not claim any right on the basis of this provisional appointment. Late Shri Jagdish Chandara Sharma was not an employee of the respondent-department and the applicant is not at all entitled for the appointment on compassionate grounds. The SPOS Chittorgarh was informed by the Office of the PMG Raj. (SR) Ajmer that the application of applicant for appointment on compassionate ground has been rejected vide letter dated 23.10.2002 (Annexure R/6). The grounds raised in the Original Application have generally denied.

7. A short rejoinder has been filed to the reply of the Original Application wherein the terms and conditions on which she was

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appointed have been elaborated and it has been submitted that her appointment was to continue till a regular appointee becomes available. It shall not be out of place that till this date no selection has been held and no regular appointment has been made. Instead of continuing the applicant as per terms and conditions of appointment, her services have been terminated since the respondents were conscious that she will complete three years.



8. The learned counsel for the applicant has reiterated the facts and grounds raised in the pleadings of the applicant and has made us to travel through the Annexure A/4, it is a communication between the higher authorities on 08.11.2001 wherein a decision was taken to terminate the applicant only on the ground that the applicant was going to complete 3 years of service and she was required to be replaced by making some temporary arrangement. The learned counsel for the applicant has further contended that without holding any selection or there being no selected candidates were available, the services of the applicant have been terminated in an arbitrary manner in as much as no written notice or one month's pay was given as contemplated in the rules prior to the issuance of the termination order. He has also contended that even if it was taken as true that the applicant was not eligible for compassionate appointment, still her services could not have been dispensed in an unceremonial manner as have been practiced by the

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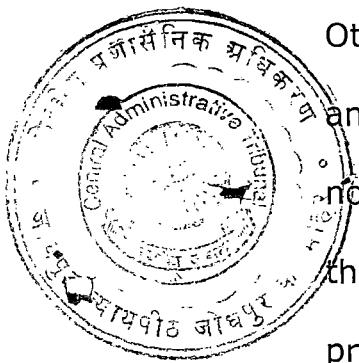
respondents and therefore the impugned order cannot be sustained and the applicant is entitled to continue on the post of EDMC as per the terms and conditions of her appointment order.

9. On the contrary, the learned counsel for the respondents has vehemently opposed the contentions of the learned counsel for the applicant and has submitted that her provisional appointment was only on the condition that in case she does not get appointment on compassionate ground then she will not claim the regular appointment on the said post. In this connection, our attention was drawn to Annexure R/4 and Annexure R/5. Annexure R/4 is the provisional appointment letter and Annexure R/5 is the undertaking. The learned counsel for the respondents next contended that the applicant cannot get any advantage for her working on provisional basis and in this connection he referred to Annexure R/5A i.e. a judgement of Hon'ble High Court of Karnataka at Bangalore. The learned counsel for the respondents has submitted that it is the prerogative of the respondents to terminate the provisional appointment and no formal procedure whatsoever are required to be followed. He has also repeatedly submitted that since the applicant's candidature for compassionate appointment was rejected, the termination order had to be issued as per the undertaking given by her.

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10. We have considered the rival contentions raised on behalf of both the parties. We have been trying to make a close analysis of the facts of the case. Firstly, we find that compassionate appointment application of the applicant was rejected on 23.10.2002 but the termination order has been issued on 19.01.2002. Thus, there seems to be no link between the rejection of compassionate appointment & termination. Otherwise also the plea of the respondents is not supported by any of the respondents documents in as much as Annexure R/4 nor Annexure R/5 no word like compassionate is mentioned and the respondents seems to have been traveling on the basis of a precarious assertion. On the other hand, we are impressed with the submission of the learned counsel for the applicant that the complete basis of the compassionate episode Annexure R/4 since the impugned order has been passed just within one & half months after this communication. The existence of the said communication is admitted. The bare perusal of this order reveals that the respondents intended to terminate the service of the applicant only on the pretext that she will not be allowed complete three months service. This fact is further fortified from the another angle that after terminating the service of the applicant only a temporary arrangements was to be make. The respondents have not been fair enough to deal with the case of the applicant and even if the applicant completes more than three years there is a procedure prescribed for termination that in case she does not find berth in the select panel of the regular



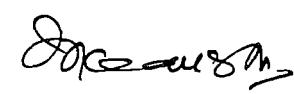
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EDMC then the services can be terminated. But she ought to have been continued in terms of the appointment letter till she is replaced by duly selected candidates. As regards the judgement of Hon'ble High Court of Karnataka at Bangalore (Annexure R/5A) the relevant which have been placed by the learned counsel for the respondents, it is not the case of the applicant that she is claiming any weightage on the post of working on the provisional basis. As per the law available and also settled by the very judgements cited herein, it is very clear that no such weightage is permissible. Hence the same does not support the contention of the respondents.

11. The upshot of the aforesaid discussions is that the Original Application merits acceptance and the same stands allowed. The impugned order dated 19.01.2002 (Annexure A/3) and termination order dated 18.01.2002 indicated in Annexure A/3 stand quashed. The applicant shall be entitled to all consequential benefits as the impugned order was never in existence. This order shall be complied with within a period of three months from the date of receipt a copy of this order. However, there shall be no order as to costs.


(M.K. Misra)
Adm. Member


(J.K. KAUSHIK)
Judl. Member

Kumawat

Part II and III destroyed
in my presence on 23.10.2013
under the supervision of
section officer () as per
order dated 18/10/2013

✓ S.R. *[Signature]* Section officer (Record)

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