

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 132/2004

Date of Decision: 11.04.2005

CORAM:

Hon'ble Mr. Kuldip Singh, Vice Chairman

Hon'ble Mr. Patwardhan, Administrative Member

Chandra Shekhar Parihar son of late Shri Nand Kishore Aged 25 years by caste Nai Ex. Gramin Dak Sewak Mail Peon Nagorigate, Jodhpur, and resident of C/o Shri Babu Lal Sain Gayatri Colony Ganeshpura Ratanada, Jodhpur.

...Applicant.

[Mr. H. .K. Purohit, Counsel for the applicant.]

V E R S U S

1. Union of India, through the Secretary to the Government of India, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
3. The Assistant Superintendent of Post Offices, (East), Sub Division, Jodhpur.

...Respondents

(Mr. Vinit Mathur, Counsel for respondents.)

ORDER

(By Kuldip Singh, Vice Chairman)

In O.A. No. 132/2004, the applicant has assailed an order dated 10.05.2004 at Annexure A/1 vide which the services of the applicant had been terminated and he had been ordered to be relieved from his post immediately by the SPM Nagorigate, Jodhpur, Post Office.

2. The facts as alleged by the applicant in brief are that the applicant was fully qualified to be appointed as Extra Departmental Mail Peon/ ED Mail Carrier. He was initially appointed as Extra Departmental Mail Carrier in short EDMC with

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effect from 21.09.1999 against a clear vacancy at Nagorigate, Post Office by the Sub Post Master, Nagorigate.

3. It is further submitted by the learned counsel for the applicant that the applicant was also apprised of the fact that his services shall be governed by Extra Departmental Agents (Conduct and Service) Rules of 1964.

4. The applicant has been working to the entire satisfaction of his superiors and he continued to discharge his functions quite satisfactorily till last day of his service. By virtue of his excellence performance, he has been regularly appointed EDMC Nagorigate, now known as Gramin Dak Sevak., Mail Packer, in brief GDSMP at Nagorigate Post Office in account with Jodhpur Head Office with effect from 01.11.2002 by the ASPOs (East) as per his Memo No. PF/EDMP/NAGORIGATE, JD dated 31.10.2002 placed at Annexure A/4.

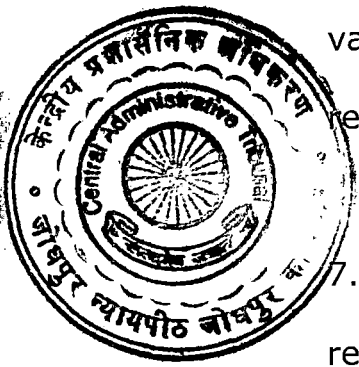


5. It is further submitted that his conduct and employment shall also be governed by the Department of Posts Gramin Dak Sewaks (Conduct & employment) Rules, 2001 which superseded the existing Post and Telegraph Extra Departmental Agent, Rules, 1964. It is further submitted that as per these rules, it was made clear that whatever be the change in nomenclature but it will not affect in any manner the existing terms and conditions of employment of ED agents.

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6. It is further submitted that while the applicant was working smoothly, on one fine morning 30.03.2004, the applicant has been served with a show cause notice by ASPOs (East) vide Annexure A/5 according to which the C.O. Jaipur has observed that the action of the ASPOs (East) Jodhpur giving Shri Chandra Shekhar regular appointment was quite irregular and lead to nepotism. So the applicant was called upon to show cause by making a representation as to why his appointment be not terminated. The applicant submits that the he has submitted a letter (Annexure A/6) calling upon the respondents to supply him various documents/informations enabling him to make representation.



7. It is further submitted that instead of supplying the requisite documents/informations to the applicant, the services of the applicant was terminated by the impugned order dated 10.05.2004 at Annexure A/1. Thus the applicant submits that the application dated 13.04.2004 has been erroneously treated as representation against the proposed show cause notice and termination order of his appointment has been passed by the ASPO (East). Therefore, he has not been given any opportunity to make effective representation against the said show cause notice dated 30.03.2004. The Senior Superintendent of Post Offices, Jodhpur, has committed a serious error of law in disposing of the application dated 13/04/2004 (Annexure A/6) which was not addressed to him but it was addressed to respondent No.3 and as such it could not have been dealt with by him and the action taken is quite improper and invalid. The

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respondent No.2 and 3 both have committed grave error in treating the application (Annexure A/6) requisitioning documents for filing effective representation against the proposed show cause notice as reply/representation, which is wrong ex facie and without jurisdiction. This is against the principles of natural justice and fair play. Thus it is prayed that the impugned order be quashed.

8. The respondents are contesting the O.A. The respondents in their reply pleaded that since the regular status given to the applicant had not been given as per the Rules, the appointment remains to be irregular and the department was within its right to terminate the services as per the services conditions. The respondents submitted that several opportunities were given to the applicant for defending his case and merely non-providing certain copies of the documents/informations does not in any way prejudice the case of the applicant as the relevancy of those documents have not been shown by the applicant.

9. We have heard the learned counsel for the parties and gone through the records.

10. It is not disputed that the applicant was issued a show cause notice vide Annexure A/5 as to why his services should not be terminated. It is also not disputed that the applicant before giving reply vide Annexure A/6 had asked for certain documents/informations so that he may give an effective reply, to the show cause notice. But the contention of the respondents



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that the applicant was given several opportunities and the non-supply of the documents has not prejudiced the case of the applicant has no meaning. Further until and unless the principles of natural justice are complied i.e. the information asked for by the applicant had been supplied to him enabling him to make an effective representation against the show cause notice, the action of the respondents in terminating the services of the applicant is illegal and arbitrary. In this regard the learned counsel for the applicant has also referred to a judgment of the Hon'ble Supreme Court reported in 2002 SCC (L & S) page 1128 [Jaswant Singh and others vs. State of M.P. and others.] wherein it has been held as under: -

"Cancellation of appointment--Legality--Collector coming to a finding that prescribed procedure not followed in appointment--Appointments of appellants cancelled without affording any opportunity of hearing to them--cancellation order by Collector set aside."



11. The learned counsel for the applicant had also referred to another judgement passed by this Bench in O.A. 181/2002 in case of C.P Ameta Vs. Union of India, wherein it has been held: -

"We are also supported in our view from a very recent verdict of Delhi High Court in case of Manjit Singh V. Punjab & Sindh Bank & Ors. [2004(1) SLJ CAT 68] wherein a request was made for making available certain copies of documents for submitting reply to charge sheet but the same was treated as reply to charge sheet and penalty was imposed. However, the same was quashed holding that the same could not be treated as reply to show cause notice. On this count also, the penalty order cannot be sustained."

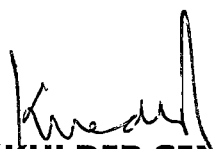
12. Admittedly, in this case also, we find that show cause notice was issued to the applicant on 30.03.2004. The applicant

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vide letter dated 13.04.2004 (Annexure A/6) asked for supply various documents/informations. Though the respondents pleaded that the applicant had been given several opportunities but after 13/04/2004 neither the documents nor the informations has been supplied to the applicant to make an effective reply to the said show cause notice. Further there was no order passed by the respondents rejecting his request for supply of informations/documents. It appears from the impugned letter itself that the Department had taken Annexure A/6 as a reply to the show cause notice. As such the impugned order was passed without supplying him the relevant documents and informations. Thus, the order passed by the respondent is fairly hit by law laid down by this Bench in O.A. 181/2002 as well as law declared by the Supreme Court in case of Jaswant Singh and Ors. (supra). Thus, in our view, the impugned order has been passed without affording any opportunity to the applicant despite the fact that the respondents themselves have called upon the applicant to make a representation against show cause notice. Thus, we are of the considered opinion that the impugned order is liable to be quashed accordingly, we hereby quashed the impugned order and direct the respondents to reinstate the applicant with all consequential benefits. The order shall be complied with within a period of three months from the date of the communication of the order.




(G.R. PATWARDHAN)
 Adm. Member


(KULDIP SINGH)
 Vice Chairman

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Part II and III destroyed
in my presence on 9/11/2014
under the supervision of
section officer () as per
order dated 18/12/2013

Section officer (Regd)
9/11/14