

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 230/92
XXXXXX

XXXXX

DATE OF DECISION 23.10.1992

Shri C.K. Thankappan _____ Applicant (s)

Shri MR Rajendran Nair _____ Advocate for the Applicant (s)

Versus
Sub Divisional Inspector _____ Respondent (s)
(Postal), Kanjirappally Sub
Division and another.

Shri George CP Tharakan, _____ Advocate for the Respondent (s)
SCGSC

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The short question that arises for consideration in this application filed under Section 19 of the Administrative Tribunals Act by Shri CK Thankappan, who was appointed as ED Messenger, Anikkad with effect from 1.5.1991, is ~~that~~ whether it is open for the appointing authority to terminate the services of an ED Agent who has been working on the post on the basis of a selection and appointment, cancelling the appointment on the ground that there was some irregularities in the matter of

selection without giving him an opportunity to be heard before a decision is taken to cancel the selection. The applicant is a member of the SC, being sponsored by the Employment Exchange, was admitted to a written test and interview for the post of ED Messenger, Anikkad. On the basis of the written test and interview, he was selected and was appointed as ED Messenger, Anikkad by the Sub Divisional Inspector, Kanjirappally vide his order dated 2.5.91. While he was working as ED Messenger, Anikkad, he was served with the impugned order at Annexure I dated 28.1.1992 which reads as follows:-

"Since your selection as ED Messenger, Anikkad has been found irregular on review by higher authority, notice is hereby given that your services as ED Messenger, Anikkad will stand terminated with effect from 29.2.1992."

It is aggrieved by this order that the applicant has filed this application praying that the impugned order at Annexure I may be quashed and that it may be declared that he is entitled to continue as ED Messenger, Anikkad. It has been averred in the application that there has been no irregularity in the matter of selection and that any decision that his selection and appointment is irregular taken behind his back without giving him a notice and an opportunity of being heard is unreasonable, arbitrary and opposed to the principles of natural justice.

2. The respondents in their reply statement have stated that on 25.3.1991 a written test in simple arithmetic and English dictation was conducted for selection to the post of

ED Messenger, Anikkad, in which the applicant who belongs to a Scheduled Caste, Shri Shaji who had passed SSLC examination and others participated and that Shri Thankappan, the applicant who had done well in the test was selected and appointed. But the respondents seek to justify the impugned order on the ground that the Director of Postal Services, Kochi, observed that the selection in this case was made on the basis of a test which was not prescribed, that a candidate with matriculation examination who should have been given preference in accordance with the instructions of the DG, P&T, was not given such preference and that for that reason, the selection and appointment of the applicant being found to be irregular, the PMG ordered that the selection should be cancelled and a fresh selection should be made. It has also been contended that as per Rule 16 of the ED Agents (Conduct & Service) Rules, it is open for the authority superior to the authority passing an order at any time either on his own motion or otherwise review any order made under the Rules and pass such orders as are deemed fit and that in that view of the matter, the impugned order is perfectly justified.

3. In a rejoinder, the applicant has stated that as the qualification prescribed for the post of ED Messenger is sufficient working knowledge of the regional language and simple arithmetic, the selection based on a written test was perfectly in order, that the instructions of the DG, P&T do not require any preference being given to a person who

has passed the SSLC examination and that the authority superior to the appointing authority has no right under the Rules to review the appointment and cancel the appointment order.

4. We have heard the arguments of the counsel on either side and have also carefully perused the pleadings and documents on record. The learned counsel for the respondents invited our attention to a decision of the Patna Bench of this Tribunal in Umesh Rai v. Union of India and others, reported in 1986 ATC 774, wherein it was held that under Rule 16 of the ED Agents (Conduct & Service) Rules, an authority immediately superior to the authority passing an order is at liberty at any time to review any order made under the Rules and pass such orders as it deemed fit and that, therefore, the PMG has ample powers to look into the appointments and to cancel the appointment, if found irregular without giving any notice to the appointee. We are of the view that this ruling of the Patna Bench ~~xxx~~ per incuriam Rule 16 contained in Section II of ED Agents (Conduct & Service) Rules relates to enquiry and disciplinary cases and not to the appointment of EDAs. The method of recruitment and appointment etc are contained in Section III of ED Agents (Conduct & Service) Rules. Rule 16 does not extend to this Section. The very wording of Rule 16 leaves no doubt that it relates to review of orders in enquiries and in disciplinary cases. It is worthwhile to quote the entire Rule 16 below:-

"16. Review of Orders:

Notwithstanding anything contained in these rules,

- (i) the Central Government or
- (ii) the Head of the Circle, or
- (iii) an authority immediately superior to the

authority passing the orders,

may at any time, either on its own motion or otherwise, call for records of any enquiry or disciplinary case and review any order made under these rules, reopen the case and after making such enquiry as it considers necessary, may

- (a) confirm, modify or set aside the order,
or
- (b) pass such orders as it deems fit:

Provided that no case shall be reopened under this rule after the expiry of six months from the date of the order to be reviewed except by the Central Government or by the Head of the Circle and also before the expiry of the time-limit of 3 months prescribed for preferring an appeal;

Provided further that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (ii) and (iii) of Rule 7 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an enquiry in the manner laid down in Rule 8 in case no such enquiry has already been held."

Therefore, we are of the view that the finding of the Patna Bench in the case under citation does not appear to reflect the correct legal position. Further, the facts in the case under citation and the facts of the case on hand are entirely different. In the case before the Patna Bench, selection was made to the post of ED BPM where the marks obtained in the SSLC examination was one of the criteria for selection and ignoring that, a person with lesser marks in the SSLC examination had been selected and appointed. Further, the applicant in that case had filed the application before the Tribunal after another person had been appointed in his place without impleading that person. It was in that circumstances also that the Patna Bench refused to interfere in the matter.

5. In this case, the applicant was selected and appointed as ED Messenger. According to the method of recruitment under Section III, ~~as~~ the ED Agents (Conduct & Service) Rules, the educational qualification prescribed for the categories of EDA including ED Messenger is as follows:-

"Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English."

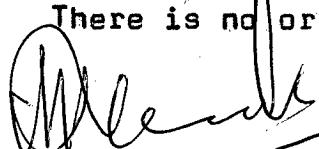
The selection in this case was admittedly made on the basis of a written test in simple arithmetic and a dictation in English and the applicant was, even according to the respondents, selected and appointed as he performed well. Working knowledge of regional language and simple arithmetic and English can be ascertained only on the basis of a written test. Therefore, if the authority who conducted the selection had held a written test and the applicant who had performed well in comparison with others was selected,

~~cannot be regular~~ We are at a loss to understand how can the selection be termed as irregular. Since matriculation or equivalent is a preferable qualification only for the posts of ED BPM, ~~ED~~ SPM and ED Delivery Agent, it appears that there is no basis for the observation that not giving preference to a person who has passed the SSLC examination was irregular. However, if for any reason any authority in the Department suspected any foul play in the matter of selection or detected any irregularity therein, it would be at liberty to rectify the mistake or to undo the irregularity, but only after giving the affected person an opportunity

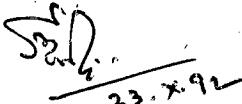
to present his case. The decision taken in this case to cancel the appointment of the applicant without even giving him an opportunity to be heard and to terminate his services, is unreasonable and opposed to the principles of natural justice and equity. We are, therefore, of the view that the impugned order at Annexure I is liable to be quashed.

6. In the result, the application is allowed. The impugned order at Annexure I is quashed. It is made clear that if ~~not~~ for any valid reason the respondents are of the view that the selection and appointment of the applicant are liable to be cancelled, they can do so only after giving the applicant an effective opportunity of being heard.

7. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

23/10/92


(SP MUKERJI)
VICE CHAIRMAN

23.10.1992

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