

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. 243/03

THURSDAY...THIS THE 10TH DAY OF NOVEMBER, 2006

CORAM

HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.Baiju, S/o Mathew J
aged 33 years, Gramin Dak Sevak Stamp Vendor,
Contonment PO
Kollam residing at Jeravas Villa,
Vadakkumbhagam, Eravipuram,
Kollam.Applicant

(By Advocate Mr.M..R.Rajendran Nair (Sr)
and MR Hariraj)

V.

- 1 Union of India, represented by the
Secretary to the Government of India,
Ministry of Communications,
Department of Posts,
New Delhi.
- 2 Chief Postmaster General,
Kerala Postal Circle,
Trivandrum.
- 3 Superintendent of Post Offices,
Kollam Division, Kollam.
- 4 Assistant Superintendent of Post Offices,
Kollam South Sub Division,
Contonment PO, Kollam.Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC)

The application having been heard on 28.9.2005, the Tribunal on 10.
11.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The Applicant in this O.A. has challenged the Annexure.A1 notice of termination dated 7.3.2003 on the ground that it was passed by the 4th respondent without any jurisdiction. He has also submitted that the said impugned order is vague and passed in violation of the principles of natural justice without affording any opportunity to defend his case.

2. The brief facts of the case are that the applicant is a disabled ex-serviceman and the 4th respondent notified the post of Extra Departmental Stamp Vendor (EDSV) Kollam Cantonment PO for appointment on provisional basis. The applicant applied for the post and he was appointed as EDSV, Kollam Cantonment PO vide Annexure.A.4 order dated 18.6.2001 of the 4th respondent which reads as follows:

"Whereas the post of EDSV, Kollam Cantonment has become vacant and it is not possible to make regular appointment to the said post immediately the undersigned has decided to make provisional appointment to the said post till regular appointment is made.

Sri.M.Baiju, Jeravas Villas, Eravipuram is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

The undersigned also reserves the right to terminate the provisional appointment at any time before the period mentioned in para 1 above without notice and without assigning any reason.

Shri M.Baiju will be governed by the E.D.Aagents & C&S) Rules, 1964 as amended from time to time and all other rules and orders applicable to EDAs.

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In case the above conditions are acceptable to Sri M.Baiju he should sign the duplicate copy of this memo and return the same to the undersigned.

The appointment is w.e.f. 18.6.2001.

Sd/- Asst.Superintendent
of Post Offices, Kollam
South Sub Division,
Kollam.

The applicant has been working as EDSV since then. While so, the Respondent No.4 itself has issued the impugned Annexure.A.1 notice dated 7.3.03 to the Applicant to show cause as to why his selection should not be quashed stating in the notice that on review of the selection file, it was revealed that the procedure adopted for selection was irregular. The applicant made Annexure.A5 representation dated 15.3.2003 to the 4th respondent. Apprehending that he will be removed from service based on Annexure.A.1 notice, the applicant has filed this O.A.

3. The Applicant's counsel has relied upon the following judgments in support of his arguments:

- (i) JT 1990 (2) SC 169 (The District Collector & Chairman Vizianagaram (Social Welfare Residential School Society) Vizianagaram & Anr V. M.Tripura Sundari Devi)
- (ii) JT 2000(8) SC 258 (Jaswant Singh and Others Vs. State of Madhya Pradesh and others).
- (iii) JT 2002(3) SC 438 (Bibhudatta Mohanty V. Union of India and others.)



3. The third respondent, namely, the Superintendent of Post Offices, Kollam Division has filed a reply statement denying all the averments and allegations in the Original Application. It was stated in the reply that the show cause notice was issued to the applicant on 7.3.03 as per Rule 8 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001 which stipulates that service of an employee who has not already rendered more than three years continuous service from the date of his appointment shall be liable to be terminated at any time by a notice in writing, given either by the employee to the appointing authority or by the appointing authority to the employee. It was further submitted that the selection of the Applicant was procedurally irregular. Out of the 20 candidates attended the interview, the applicant was selected and appointed provisionally by the ASP, Kollam (S) Sub division on the ground that the Applicant is a disabled ex-serviceman even though the post was not reserved for ex-servicemen. The Applicant's score in the selection list was much lower than the most meritorious candidate. On a review of the selection, it was noticed that the ASP, Kollam made the selection ignoring all other meritorious candidates on the ground that the applicant is a disabled ex-serviceman, whereas the application was not invited specifically calling for disabled candidates for appointment. Since the applicant was not appointed on regular basis and his appointment being provisional, his services can be

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terminated and hence Annexure.A1 notice was issued to him in accordance with the instructions contained in the Annexure.R.1 letter dated 13.11.97 issued by the Respondent No.1 to deal with the cases of irregular appointments. In the said letter it was stated that an authority which is higher than the Appointing Authority enjoys supervisory powers to revise the administrative orders of the subordinate authorities for good and sufficient reasons and pass appropriate remedial orders after following the procedure:-

- (i)The question whether appointment of a particular ED Agent to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing appointments.
- (ii)In regard to appointment which was made in contravention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/instructions whether statutory or administrative/executive, as otherwise, it would amount to perpetuation of the mistake and would be detrimental to the larger interests of Government. However, in these cases the principles of natural justice should be complied with by giving the ED Agent a show cause notice and opportunity to be heard before passing any order adversely affecting him. There is no need to invoke ED Agents (Conduct and Service) Rules while passing final orders in such cases.
- (iii)Cases of erroneous appointments should be viewed with serious concern and suitable disciplinary action should be taken against the officials and staff responsible for such erroneous appointments.



While complying with the direction given by the next higher authority, the appointing authority will ensure that a proper show-cause notice is issued to the ED Agents concerned and his representation, if any, is forwarded to the next higher authority for taking it into account before passing the final orders."

4. We have heard the counsels for both the parties and have gone through the pleadings. We have also gone through the Department file relating to the Selection and Appointment to the post of GDS, Kollam Cantonment. It was seen that the Senior Superintendent of Post Offices, Kollam Division had called for the selection file of GDSSV, Kollam Cantonment and observed that in the first instance there is no quota for disabled ex-servicemen and even if any appointment had to be made under any specified quota, the application should have been invited specifying that the post is reserved to that category. In the present case, since there was no quota to the ex-servicemen and no such conditions have been indicated in the notice inviting applications, preference given to the Applicant as an ex-serviceman ignoring the better claims of more meritorious candidates was irregular. Therefore, the Senior Superintendent of Post Offices, Kollam had instructed the respondent No.4, namely, the Assistant Superintendent of Post Offices, Kollam South Sub Division to change the provisional appointment made in favour of the Applicant and to select the suitable candidate from the panel of candidates already interviewed.



5. We have also gone through the judgments of the Hon'ble Supreme Court relied upon by the counsel for the Applicant. The Apex Court in the case of The District Collector & Chairman Vizianagaram (Social Welfare Residential School Society) Vizianagaram & Anr. (Supra) directed the petitioner to appoint the respondent therein considering the fact that she had acquired the requisite qualification and many who were unqualified were appointed to the post earlier. The decision in this judgment is not applicable in the present case as the Hon'ble Supreme Court has also made the following observations in the same judgment:

"It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

6. In the case of Jaswant Singh and others (Supra) also, facts are different. The Apex Court has allowed the petition relying upon its earlier judgment in the case of Excise Superintendent, Malkapatanam, Krishna District A.P. Vs. Visweswara Rao and others (JT 1987(1) SC 182) holding that the cancellation of the order of



appointment on the ground that the prescribed procedure of calling for the candidates from the employment exchange was not correct. In the said judgment, the Apex Court has also observed that the appointment was cancelled without granting an opportunity to the appellant.

7. The judgment of the Apex Court in Bibhudatta Mohanty (supra) will also not come to the rescue of the Applicant. In that case there was no mention of preference to higher qualifications in the requisition sent to the employment exchange. The candidate was appointed on merits and being senior in age. The Hon'ble High Court of Orissa at Cuttack has set aside the appointment on the ground that persons with higher qualifications was not considered and appointment was on extraneous consideration of seniority in age. The Apex Court has held that setting aside of appointment on this ground was bad in law considering the fact that the appointment was on merits and not merely on grounds of seniority in age. Therefore, the orders of the High Court was set aside and the petitioner was ordered to be reinstated with continuity in service.

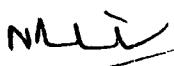
8. In the above facts and circumstances of the case, we do not find any infirmity in the action of the Respondents. On the contrary, if the Respondents had not done so, they would have been liable to be accused of arbitrariness and violating Article 14 of the Constitution. There is no doubt that persons appointed in violation of the Rules

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should be replaced by the persons entitled to be recruited in accordance with the Rules. In the present case, as the appointment of the Applicant was found to be irregular by the authority next higher than the appointing authority, the appointing authority gave a mandatory show cause notice to him in accordance with the laid down procedure. After considering the reply to the show cause notice submitted by the Applicant, the Respondents cannot be prevented from taking appropriate action in the matter. The O.A. is, therefore, devoid of any merit and it is dismissed with no order as to costs.

Dated this the 10th day of November, 2005


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

S.