

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:- 2.2.2001

Registration No. QA-306 of 1996

Ashok Kumar Pandey, Son of Shri Brijnandan Pandey, resident of village Kahuara, P.S. Nardiganj, District Nawada, at present posted as E.D.B.P.M. of Kahuara E.D.B.O. in a/c with Nardiganj S.O. in Gaya Postal Division

.... Applicant

- By Shri J.K.Karn, Advocate

Versus

1. The Union of India, through the Secretary-cum-Director General, Department of Posts, Dak Bhawan, New Delhi
2. The Chief Postmaster General, Bihar Circle, Patna
3. The Director, Postal Services, O/O the C.P.M.G., Patna.
4. The Sr. Superintendent of Post Offices, Gaya Division, Gaya.
5. The Sub-divisional Inspector, East Sub-Division, Gaya

.... Respondents

- By Shri S.C.Jha, Additional Standing Counsel

Coram:- Hon'ble Shri L.R.K. Prasad, Member (Administrative)
Hon'ble Shri Lakshman Jha, Member (Judicial)

O R D E R

Hon'ble Shri Lakshman Jha, Member (J):-

1. This is an application under section 19 of the Administrative Tribunals Act (Hereinafter to be referred as "the A.T.Act) for quashing Memo No.PF/EDBPM/ Kahuara, District Gaya, dated 20.6.96 issued by the

Respondent No.4 (Sr. Superintendent of Post Offices, Gaya Division, Gaya) as at Annexure-A-10, whereby the services of the applicant as EDBPM of Kahiara EDBO in a/c with Nardiganj S.O. (Gaya Postal Division) had been terminated pursuant to the direction of the Chief Postmaster General, Bihar Circle, Patna (Respondent No.2) vide letter No.Vig/Misc./Gaya-4/94 dated 17.6.96.

2. The Employment Exchange, Nawada, sponsored the name of the applicant, along with others, for appointment to the post of EDBPM, Kahiara. The applicant was found the most suitable candidate and after selection he was offered appointment by the Respondent No.4, vide Annexure-A-1 dated 1.2.94. Thereafter, he was allowed to join the post by the Sub-Divisional Inspector (Postal), East Sub-division, Gaya as at Annexure-A-2, and a direction was also issued for handing over charge of the post to him on 2.3.1994 as at Annexure-A-3. It is stated that the applicant, accordingly, joined on the post on 4.3.94, but a second appointment letter was also issued on 13.4.94 vide Annexure-A-4. However, it is alleged that the Respondents began to harass him since after he joined the post by illegal reduction in his remuneration and ultimately, the aforesaid impugned order of termination purported to have been passed in exercise of power under Rule 6 of EDA (Conduct and Service) Rules, 1964 was ^{issued} _{passed}. It is further stated that the applicant was served with a show cause notice for cancellation of his appointment on 15.12.94, as at Annexure-A-5 and he (the applicant) submitted his reply to the show cause on 6.1.95, vide Annexure-A-6. He (the applicant) submitted income certificate and mutation receipt along with his

show cause. But, after the applicant performed his duty for 1½ years to the best satisfaction of the department, his services had been terminated illegally. He had already submitted the income certificate (and) the mutation paper in support of landed property in his name at the time of initial appointment and the same were again submitted herewith as at Annexure-A_8 and Annexure-A_9. It is stated that by typing mistake in the income certificate (Annexure-A-9) it was shown that the annual income of Rs.23,000/- (Twenty three thousand only) was in the name of his father, which should not have been accepted. But, subsequently, the corrected income certificate was filed, but of no avail.

3. The Respondents in their counter have stated that the complaints were filed by some candidates to the Respondent No.4 in respect of the appointment of the applicant. The complaint petitions were sent to the Sub-Divisional Inspector (Postal), East Sub-Division, Gaya for inquiry and report. The inquiry report of the SDI (Postal) revealed that the income certificate furnished by the applicant was in the name of his father. The complaint Inspector, Gaya Division, who had also been asked to submit inquiry report, confirmed that the applicant and some other candidates as mentioned in para 4 (II) of the W.S. had furnished the income certificate in the names of their fathers/husbands. The complaint Inspector had also submitted his report regarding the landed property of the candidates. The Superintendent of Post Offices found that the applicant, Ashok Kumar Pandey, had secured the highest marks in the Matriculation Examination and also possessed 1.04 acres of land in his exclusive name. The Screening Committee found the appointment of the applicant in

order and ~~approved~~ proved the same. The appointment Memo dated 13.4.94 was accordingly issued. It is stated that thereafter, C.O. ~~issued~~ issued a letter No. Vig/Misc/Gaya-4/94 dated 17.6.96, containing cancellation order of appointment of the applicant pursuant to which the impugned termination order dated 20.6.96 was passed. It is stated that the applicant refused to receive the termination order and could not hand over the charge of EDBPM. Therefore, the SDI (Postal) was asked to arrange for opening of a parallel post office and to report to ~~his~~ ^{the public} colleague. The SDI (Postal) reported the case to the Police on 2.7.96 and parallel B.O. was also opened, in which one Shri Manohar Prasad, EDBPM/MC of Punthar, Riula B.O. was ordered to work as EDBPM, Kohiara, in addition to his own duty. Subsequently, the applicant made over the charge of EDBPM on 30.7.96. The long and short of the case of the Respondents is that the appointment of the applicant was examined at Circle Officer level on receipt of the complaint received from other complainant. The matter was examined and it was found that the income certificate furnished by the applicant was not in the name of the applicant rather it had been issued in the name of his father. Accordingly, pursuant to the order issued and contained in C.O. letter ~~No.~~ Vig/Misc./Gaya/494 dated 17.6.96, the impugned order was passed.

4. Heard Shri J.K.Karn, the learned counsel for the applicant and Shri S.C.Jha, the learned counsel for the respondents and perused the record.

5. Admittedly, the applicant had the highest marks among all the candidates whose names were sponsored by the Employment Exchange for the appointment.

It is also admitted position that the applicant had fulfilled the landed property criteria and his appointment was approved by the Screening Committee. It is also admitted that he worked on the post for ~~for~~ ^{from} a ~~term~~ ^{term} about 1½ years when the impugned ~~transfer~~ ^{transfer} order dated 20.6.96, as at Annexure-A-10, was passed. It appears from the pleadings of the parties that the appointment of the applicant was reviewed by the Chief Postmaster General and it was found that the income certificate furnished by the applicant was not in his name rather it was in the name of his father. The photo-copy of the income certificate is as at Annexure-A-1. It shows that the father of the applicant had annual income of Rs. 23,000/- . The learned counsel for the applicant contended that, in fact, this income certificate relates to the applicant as the word 'Ke' has been written in the certificate inadvertently. It should not have been issued as 'Ashok Kumar Pandey Ke Pita Bijnandan Pandey' rather it should have been issued as Ashok Kumar Pandey Pita Bijnandan Pandey. The word 'Ke' before the word 'Pita' has been wrongly and inadvertently written. The corrected certificate was also obtained and filed to the Respondents. The learned counsel for the applicant further contended that the Respondents had admitted this fact that the applicant had 1.04 acres of landed property in his exclusive name. Therefore, he fulfilled the property criteria and there was no occasion for the respondents to cancel his appointment. The contention of the learned counsel for the applicant appears acceptable. In the next place, the learned counsel for the applicant referred to the cancellation order as at Annexure-A-10, and contended that on the direction of the Chief Postmaster General, Bihar Circle,

vide his letter dated 17.6.96, after reviewing the matter on complaint, the impugned termination order has been passed under Rule 6(b) of EDA (Conduct and Service) Rules, 1964. He contended that according to the settled law on the point the reviewing authority could not have passed the order of cancellation of appointment of the applicant in exercise of his revisional power. Moreover, admittedly, the impugned order of termination was passed on complaint and no reason has been assigned in the impugned termination order as required under Rule 6(b) of EDA (Conduct and Service) Rules, 1964. The learned counsel for the applicant is fortified in view of a catena of decisions on the point rendered by the Hon'ble Apex Court, the High Courts and also, by the decisions of different Benches of the CAT. We may usefully refer some of the decisions as hereunder:-

(1) The Hon'ble Kerala High Court in Kunhiraman Nair Versus Superintendent of Post Offices, Kannanore & Others, held that services ~~are~~ being terminated on administrative ground under the provision of Rule 6 of the Extra Departmental Agents (Conduct and Service) Rules, 1964 does not amount to assigning a reason and specific reason is required to be mentioned under the aforesaid rules;

(2) The Full Bench of the Central Administrative Tribunal, Allahabad Bench, as reported in (1997) 36 ATC page 359, held that the Rule 6 of the EDAs (Conduct and Service) Rules, 1964 cannot confer a power on the

appointing authority to cancel the appointment of an Extra Departmental Agent, who has been appointed on regular basis in accordance with the Rules for the reasons other than unsatisfactory services or any administrative reason unconnected with conduct of the appointee without giving him an opportunity to show cause. The Full Bench relied upon a decision of the Hon'ble Supreme Court in the Union of India Versus Jai Kumar Purida as reported in 1996 SCC (L&S) 320;

(3) The Cuttack Bench of the Central Administrative Tribunal in OA-140 of 1996, decided on 28.1.87, and the Ernakulam Bench of the Tribunal in K. Kuttalingam Versus Special Record Officer, Railway Mail Office and Others, (1986) 34 ATC page 570, held that the higher authority has got no authority to review the record relating to the recruitment made by the Sub-ordinate Authority;

(4) This Patna Bench of the Tribunal in OA-66/94, decided on 21.11.97, OA-194 of 1994, decided on 4.2.2000, and in OA-490 of 1995 decided on 17.8.99, and some other OAs held the similar view and quashed the termination order.

6. In view of the aforesaid settled position of law, and in the facts and circumstances of the case, we find and hold that the impugned termination order dated 20.6.96, as at Annexure-A-10, is not sustainable, and, it is, accordingly, set aside. The Respondents are directed to pass appropriate order within three months from the date of receipt of a copy of this order. The application is allowed. No costs.

D.L.Jh. 2.2.2001
(Lakshman Jha)
Member (J)

L.P.P.
(L.R.K. Prasad)
Member (A)