

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:- .4.2001

Registration No. QA-381 of 1996

Manjay Kumar, Son of Raghupat Narain Singh, aged about 26 years), resident of Village and P.O. Karsara, Via Jakhim, District Aurangabad.

.... Applicant

- By Shri R.K.Choubey, Advocate

Versus

1. The Union of India, through the Secretary-cum-D.G., Department of Posts, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Meghdoot Building, G.P.O. Complex, Patna-1.
3. The Postmaster General, Southern Region, Ranchi.
4. The D.P.S. Southern Region, Ranchi.
5. The Superintendent of Post Offices, Aurangabad Division, Aurangabad.
6. The S.D.I. (East Sub-Division), Aurangabad Post Division, Aurangabad.
7. Devendra Prasad Son of Shri Suryadeo Ram, Village Chapuk, P.S. Kurwan, District Aurangabad

... Respondents

- By 1. Shri V.M.K.Sinha, Sr. S.C.

2. Shri J.K.Karn, Advocate

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

Hon'ble Shri L. Hmingliana, Member (Administrative)

O R D E R

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

1. In this application under section 19 of the Administrative Tribunals Act, 1985 (for short, the A.T. Act), the applicant has prayed for quashing

the termination notice issued under Rule 6 of EDA (Conduct and Services) Rules, 1964 without issuing any show cause notice as at Annexure-A-7 read with Annexure-A-5.

2. The applicant was appointed on the post of EDDA, Barahi in pursuance of the Advertisement made by the Respondent Department. He joined the duty on 4.8.95. It is stated that he fulfilled all the conditions for appointment and was selected after verification of certificate/document by the appointing authority i.e. the S.D.I. Sub-Division Aurangabad. The appointment of the applicant was approved by the Superintendent of Post Offices, Aurangabad, as per the Rules. But the services of the applicant have been ordered to be terminated without issuing any show cause notice in a most illegal and unconstitutional manner by the impugned order. The impugned order has been issued on the direction of the Director of Postal Services, Southern Region, Ranchi, through the Superintendent of Post Offices. The termination order has been issued under Rule 6 of the EDA(Conduct and Service) Rules, 1964 which is not applicable in the facts and circumstances of the case.

3. The Respondent Department has filed a written statement. It is stated that the appointing authority after verification of papers found the applicant fit and suitable for appointment amongst all the candidates and he was appointed vide Memo. dated 1.8.95. The applicant, who joined the post after filling up all the formalities, continued on the post till date. However, it is stated that in course of review of appointment file several irregularities were

noticed. Firstly, the applicant, who was selected and appointment, was not a resident of Post Village and he did not obtain residential certificate even after appointment as required under Rule of EDA (Conduct and Service) Rules. Secondly, the appointing authority had not called for necessary papers as required for appointment by different dates from the sponsored candidates by sending to them notices by registered post. Thus, appointing authority has failed to observe correct procedure for appointment. Thirdly, the Director of Postal Services found that 4 points quota of SC and ST candidates were not filled in. The appointing authority should have given preference to SC and ST candidates in term of provisions contained in the Directorate's letter No.43-117/80- Pen dated 8.10.80 in order to give minimum percentage of representation. Accordingly, the Director of Postal Services advised the appointing authority i.e. S.D.I. Sub-Division, Aurangabad for termination of services of the applicant under Rule 6 of the EDA (Conduct and Service) Rules, 1964, as the applicant had not put in three years of continuous services.

4. The Respondent No.7 in his separate written statement has stated that his name was also sponsored by the Employment Exchange along with others. He fulfilled all the required qualifications for appointment as a ~~Scheduled Caste~~ candidate. However, the applicant was appointed on the post ignoring his better claim. He made a representation before the Postmaster General, Ranchi against the appointment of the applicant. The Postmaster General considered his representation and found the appointment of the applicant as irregular and the ordered termination of appointment of the

applicant under Rule 6 of the EDA(Conduct and Service) Rules and further ordered that he (the Respondent No.7) be appointed on the post as at Annexure-A-6. Accordingly, prayer is made to dismiss the OA with a direction upon the official respondents to issue appointment order in favour of the Respondent No.7.

5. Heard Shri R.K.Chaubey, counsel for the applicant, Shri V.M.K.Sinha, counsel for the respondents and Shri J.K.Karn, counsel for priate respondents and perused the record.

6. Admittedly, the impugned termination order as appeared in Annexure-A-7 read with Annexure-A-5 clearly shows that the impugned order has been passed after reviewing the appointment file by the Postmaster General, Southern Region, Ranchi, viz; the Reviewing authority on complaint by the Respondent No.7. The order of termination notice has been passed under Rule 6(b) of EDA (Conduct and Service) Rules, 1964. The learned counsel for the applicant contended that according to the settled law on the point the Reviewing authority could not have directed the appointing authority to issue termination notice in exercise of his revisional power. The learned counsel for the applicant has relied upon a catena of decisions on the point rendered by the different Benches of the CAT and the Hon'ble High Courts.

7. The Keral High Court in Kunhiraman Nair Versus Superintendent of Post Offices, Kannanore & Others, held that services on 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 a specific reason is required to be mentioned under the aforesaid rules.

8. 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 ~~to~~ order for cancellation of appointment in exercise of revisional power on complaint 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.

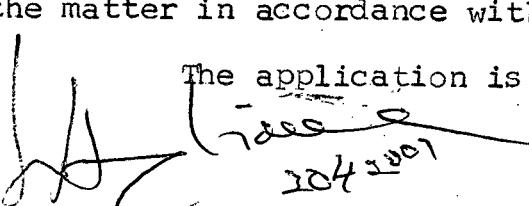
9. The Cuttack Bench of the Central Administrative Tribunal in OA-140 of 1996, decided on 28.1.87, and the Ernakulam Bench of the Tribunal in K. Kuttalingam Versus Special Record Officer, Railway Mail Office and Others, (1986) 34 ATC page 570, held that the higher authority has got no power to review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

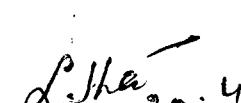
10. The Patna Bench of the Tribunal in OA-66/94 decided on 21.11.97, and in OA-194 of 1994, decided on 4.2.2000, OA-490/95 decided on 17.8.99 and in OA-306/96 decided on 2.2.2001 held the similar view and quashed the termination order.

11. In view of the aforesaid settled legal position we find and hold that the impugned termination notice as at Annexure-A-7 read with Annexure-A-5 is not sustainable and these are accordingly quashed and set aside. The Respondent Department is at liberty to proceed in the matter in accordance with law.

The application is allowed. No costs.

SKS


(L. Hinglana)
Member (A)


D. Jha
(Lakshman Jha)
Member (J)

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20.4.2001