

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No.449 of 1996

DATE OF ORDER 16-11-2000

Sudhir Kumar, son of Shri Awadh Bihari, village Koiri Bigha, PO Kori Bigha, P.S. Belaganj, District Gaya.

... Applicant

-versus-

1. The Union of India, through Chief Postmaster General, Bihar Circle, Patna.
2. The Senior Superintendent of Post Offices, Gaya Division, Gaya.
3. The Inspector of Post Offices, South Sub-Division, Gaya.
4. Md. Maqsud Alam, son of Late Sahbuddin, EDBPM, Chakand, District Gaya.
5. Sri Dinesh Kumar, son of Sri Kameshwar Paswan, village Ranapur, PO Chakand, District Gaya.

.. Respondents

Counsel for the applicant .. Shri S.N.Tiwary.

Counsel for official respondents .. Shri H.P.Singh.

Counsel for respondent no.5 .. Shri N.P.Sinha.

CORAM : Hon'ble Mr. Justice S.Narayan, Vice-Chairman
Hon'ble Mr. L.R.K.Prasad, Member (A)

ORDER

L.R.K.Prasad, Member (A) :-

This application has been moved seeking following reliefs:-

Handwritten signature of L.R.K.Prasad

- (i) To quash the termination order dated 20.6.1996 (Annexure-8) and to direct the respondents to allow the applicant to work as EDBPM, Chakand RS EDBO in terms of appointment letter, as at Annexure-4.
- (ii) The respondents should further be directed to make payment of salary of the applicant for the period he was out of job along with all consequential benefits relating to the said period.

(iii) The respondents be restrained from appointing any other person in his place.

(iv) For quashing of appointment of Sri Maqsood Alam as EDBPM of Chakand R.S. EDBO on compassionate ground ordered vide memo dated 3.2.1998.

2. We have heard the learned counsel for the parties and perused the materials on record.

3. The background of the case is that for ~~post of EDBPM~~, Chakand R.S. EDBO, the District Employment Officer, Gaya, was asked on 11.1.1995 to sponsor the names of candidates. As they failed to sponsor the names within the stipulated period, an open notification was issued on 7.2.1995. Thirteen candidates, including the applicant, applied for the post. They were asked to appear for verification along with certain documents on 12.4.1995. After the process was complete, the applicant was selected provisionally as EDBPM, Chakand R.S. EDBO vide letter dated 16.6.1995 (Annexure-4). Through another letter dated 19.6.1995 (Annexure-5), the applicant was asked to arrange permanent residence at Chakand R.S. before his appointment to the post in question. The applicant is said to have submitted a certificate in this regard, which is at Annexure-6 dated 1.2.1995. He joined the post on 5.7.1995 (Annexure-7). It is alleged by the applicant that all of a sudden he was served with termination order on 20.6.1996 whereby he was informed that in pursuance to the order contained in letter No. Vig./Misc./Gaya-8/95 dated 17.6.1996 of the Chief Postmaster General, Bihar, Circle and in pursuance of the provision of Rule 6(B) of P&T EDA (Conduct and Service) Rules, 1964, the services of the applicant are forthwith terminated. A copy of the termination order dated 20.6.1996 is at Annexure-8 which is reproduced

See also

below:-

"In pursuance of orders contained in the Chief Postmaster General Bihar Circle, Patna letter no. Vig/Misc/Gaya-8/95 dt. 17.6.96 and in further pursuance of the provision to Rule 6(b) and the note below Rule 6(b) of P&T EDAS (Conduct and Service) Rules, 1964, I, B.N. Pandit, Sr. Supdtl of Post Offices, Gaya Dt. Gaya hereby terminate forthwith the services of Sri Sudhir Kumar, EDBPM, Chakand SO under Gaya HO and direct that he shall be entitled to claim a sum equivalent to the amount of his basic allowance plus dearness allowance for the period of notice at the same rates at which he was drawing them immediately before the termination of his services or as the case may be for the period by which such notice falls short of one month. The due amount of basic allowance plus dearness allowance is being remitted in lieu of the notice of one month or for the period by which such notice falls short of one month."

On 21.6.1996, the charge of the post at Chakand was taken over by Overseer Mails, which is clear from letter at Annexure-9. Thereafter, one Shri Maqsood Alam, son of Late Sahabuddin, ex-EDBPM of Sahar Telpe EDBO, was appointed at Chakand R.S. provisionally vide order dated 3.1.1998, on the basis of order contained in letter NO. R&E-76/93/33/ED dated 22.1.1998 of Chief Postmaster General Bihar Circle. It is alleged by the applicant that if Chief Postmaster General, Bihar Circle, was apprised of the termination of services of the applicant and the fact that the matter is sub-judice, he would not have passed order for appointment of one Maqsood Alam to the post at Chakand R.S. EDBO. This fact was, however, suppressed by respondent no. 2. It is further stated that services of the applicant have been terminated without following the prescribed procedure. In addition to this, no show cause notice was issued to him before terminating his services even though his work had been satisfactory. The reason for

terminating his services has not been mentioned in the termination order.

4. The above application has been strongly opposed by the respondents. While it is admitted that the applicant was one of the candidates for the post in question and ~~he~~ was provisionally ~~selected~~ to the said post which he joined on 5.7.1995. The official respondents have stated that after the appointment of the applicant, a complaint was received regarding irregular appointment of the applicant which was looked into by Director of Postal Services, Patna, who decided to cancel the order of appointment of the applicant to the post of EDBPM, Chakand R.S.EDBO, vide his order dated 17.6.1996. In pursuance to the said order, the appointment of the applicant was cancelled vide order dated 20.6.1996 and the applicant was relieved from his post on 21.6.1996. Thereafter, a fresh notification was issued inviting applications from intending candidates through Employment Exchange, Gaya, in order to fill up the vacant post of EDBPM, Chakand R.S.EDBO arising due to termination of the applicant. The District Employment Officer, Gaya, sponsored names of 4 candidates. The documents of the candidates were verified after which the SDI(T) South Sub-Division, Gaya, submitted his report on 22.11.1996. It is stated by the official respondents that the matter is likely to be finalised soon.

5. In reply to para 4.4. and 4.5 of the application, the official respondents have pointed out that the applicant belongs to other than the post village and, as such, he was not eligible for consideration to the post in question as per Directorate letter No.17-108/94-ED & Trg. to be read with Directorate letter No.H1-295/87/PE circulated

C.O. letter No. Staff/ED-1/R1g/Ch-V dated 23.3.1995.

According to the instructions applicable at the relevant time, candidate of other post village was not to be appointed in the first instance. Hence, when the irregularity with regard to appointment of the applicant came to the notice of the DPS, he ordered cancellation of his appointment and, accordingly, the services of the applicant were terminated vide order dated 20.6.1996 (Annexure-8). In the instant case, the Chief Postmaster General, Bihar Circle, is also stated to have observed that the appointment of a candidate belonging to other than the Post village was not regular at the time when the appointment was made. As the applicant did not belong to the Post village, he was not eligible to be considered for the post as ^{per} provisions regarding residence then applicable. Therefore, the services of the applicant were terminated by the respondent concerned as he was wrongly selected to the post as he did not belong to the Post village.

6. We have also gone through the W.S. filed by added respondent no.5, one Dinesh Kumar, who was also considered along with the applicant for the post of EDBPM, Chakand R.S.EDBO in response to notification dated 7.2.1995. When he was not selected to the post in question, respondent no.5 filed O.A. 307/96 which was disposed of on 4.7.1996 with direction upon the Chief Postmaster General, Bihar Circle, to dispose of the representation of the applicant of the said O.A. The order of this Tribunal dated 4.7.1996 in this regard is at Annexure-R-1 attached with W.S. of respondent no.5. In pursuance to the direction of this Tribunal, the ^{Chief} Postmaster General, Bihar Circle, disposed of the representation of th

applicant

in O.A.307/96 vide his order dated 22.8.1996, which is at Annexure-R-2 attached with W.S. of respondent No.5. He passed following order :-

I have gone through the relevant papers, documents submitted in this case by the applicant along with the relevant files and records of this case. The Sr. Supdt. of Post Offices, Gaya Division, Gaya while appointing Shri Sudhir Kumar for the post of EDBPM, Chakand RS failed to act properly to examine the criteria fixed for appointing EDBPM of non-post village as detailed in various communications of the department vide Department of Post letters No.41/295/87-PE.II dated 27.8.87, and 17-108/94-ED & Trg. dated 14.12.94, H-1-295/87-PE circulated vide C.O. No. Staff/ED-1/Rlg./Ch.v dated 23.3.95 "In case no persons from the post village who has applied had additional source of income, the vacancy is required to be re-advertised and then only regular appointment of non-resident of post village (but with income or property) can be done. If the vacancies are re-advertised and no application from post village is received then only there are adequate grounds to appoint an outsider as "DBPM." Hence the order of appointment of Shri Sudhir Kumar by the Sr. Supdt. of Post Offices, Gaya Division was declared irregular by the DPS, Patna vide his Ho.vig./Misc./Gaya-8/95 dated 17.6.96 as per rule cited above. I agree with the aforesaid orders which is supported by the rules and instructions of the department ibid.

AS regards non-appointment of Shri Dinesh Kumar, S/o Shri Kameshwar Paswan, village Ranapur, P.O. Chakand, District Gaya as EDBPM, Chakand RS, I find that Shri Dinesh Kumar is not a candidate of post village like Shri Sudhir Kumar, whose services were terminated on the said ground

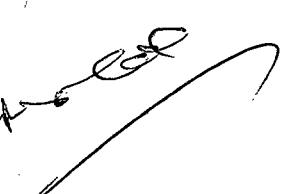
Thus the candidature of Shri Dinesh Kumar for the post of EDBPM, Chakand RS is not regular as he does not belong the post village. I do not find any reason to intercede on his behalf as he does not fulfil the conditions of post village criteria for the post of EDBPM, Chakand RS. I, therefore, reject his representation dated 25.4.96 which has no merit at all."

It would be thus clear from the orders of the Chief Postmaster General, Bihar Circle that he rejected the claim of both the applicant as well as respondent no.5 for the post of EDBPM, Chakand RS, as they did not belong to Post village. In his opinion, the appointment of the applicant to the post in question was irregular as it was against the departmental instructions regarding residence as has been explained in his order.

7. Thus, we find that the case of respondent no.5 was rejected on the ground that he did not belong to Post village. Similarly, the appointment of the applicant was also cancelled on the same ground. It is stated that one of the conditions mentioned in the notification dated 7.2.1995 was that the candidate should be a permanent resident of Chakand R.S. or he should be able to reside at Chakand R.S. after selection. The tabulation sheet, which is attached with the order of the Chief Postmaster General, Bihar, Circle, dated 22.8.1996 indicates the address of the applicant as PO Koaria Bigha, Gaya. While passing the order, the Chief Postmaster General has observed that the Senior Superintendent of Post Offices, Gaya Division, Gaya, while appointing the applicant for the post in question, failed to act properly to examine the criteria fixed for appointing EDBPM of non post village, as detailed in various communications of the Department vide Department of Posts letters No.41/295/87-PE.II dated 27.8.87 and

17-108/94-ED & Trg. dated 14.12.1994, H-1-295/87-PE circulated vide C.O. No. Staff/ED-1/Rlg./Ch.v dated 23.3.1995. As per the aforesaid communication, in case no person from the post village is available, the vacancy is required to be re-advertised and then only a regular appointment of a non-resident post village (but with income or property) can be done. If the vacancies are re-advertised and no application from the post village is received, then only there are adequate grounds to appoint an outsider as EDBPM. In the aforesaid circumstances, the appointment of the applicant, who was selected with reference to first ^{open} advertisement, was cancelled by the DPS as the same was considered irregular. The stand of the DPS was endorsed by the Chief Postmaster General, Bihar Circle.

8. While assailing the stand of the respondents, the applicant has stated that his appointment was in accordance with prescribed rule as he fulfilled all the required conditions and was the most suitable candidate. It is further pointed out that any order passed by the higher authority like DPS/Chief Postmaster General ordering for termination of appointment without giving show cause notice to the applicant is illegal. The services of the applicant were terminated under Rule 6(b) of P&T EDAS (Conduct and Service) Rules, 1964, vide order dated 20.6.1 on the direction of DPS/Chief Postmaster General. It is further pointed out by the applicant that EDA, who has rendered less than 3 years of service can be terminated for unsatisfactory work or on administrative ground. Therefore, the services of the applicant cannot be terminated without giving him show cause notice. While, in the normal circumstances, the situation may be different, but if the appointment to a post is ab initio irregular or not



accordance with rules, there is always scope for interference in the matter by the higher authorities, who are competent to pass appropriate order. If any appointment has been done in accordance with prescribed rules and procedures, the person concerned is required to be given proper opportunity to defend his case if the removal is on account of unsatisfactory service or misconduct on the part of the said person. In the instant case, the services of the applicant were terminated under the orders of the higher authorities purely on the ground that the applicant did not fulfil one of the required condition relating to residence. Even though he was otherwise qualified for the job and had secured highest marks in the Matriculation examination, out of 13 candidates, excepting one Surendra Kumar Jha, who had secured 645 marks.

9. In the light of the above facts and circumstances of the case, the basic issue for consideration is whether as per departmental instruction, it was obligatory to re-advertise the post if no person from the post village was available with reference to first notification. If the same was binding, then it was necessary to re-advertise the post which was not done and in such a situation, the case of the applicant becomes weak. However, if it can be proved that permanent residence in the Post village was not required and there was no need for re-advertisement, perhaps the applicant would stand on better footing. The matter has been accordingly examined.



10. The applicant has drawn our attention to the modified conditions contained in letter No.17-104/93-ED & Trg. dated 6.12.1993 of Department of

Posts as at Annexure-A/12 specially with regard to residence qualification for appointment to the post of E.D. Agents. We have taken note of the instructions contained in Department of Posts letter dated 6.12.1993 (Annexure-A/12) regarding residence qualification. It is stated therewith some of the basic conditions such as that permanent residence in the village in which the Post Office is located, have come under close scrutiny by different Benches of Central Administrative Tribunal and same has not stood judicial scrutiny as being violative of provision in Article 16(2) of the Constitution of India. In the aforesaid context, the matter regarding various qualifications prescribed for E.D. Agents have been reviewed. After careful consideration, the postal Services Board has decided that while making selection for appointment to the E.D. post, permanent residence in the village/delivery jurisdiction of E.D. Post Office need not be insisted upon as pre-condition for appointment. However, it should be laid down as a condition of appointment that any candidate, who is selected, must before appointment to the post, take up his residence in the village/delivery jurisdiction of the E.D. Post Office, as the case may be. On the other hand, it is the stand of the respondents that as the applicant did not fulfil the residence qualification, with reference to first ^{open} notification, his appointment was considered irregular and the same was ordered to be cancelled. Accordingly, his services were terminated vide order dated 20.6.1996 as at Annexure-8.

W.S.C.L.

11. Our attention has also been drawn to the letters dated 14.12.1994 and 13.10.1996, as at Annexures A/13 and A/14. The letter dated 14.12.1994 of DG Posts is a direction upon the concerned authorities to ensure that instructions issued from time to time regarding appointment

of E.D.Agent should be strictly complied with. As a confusion had arisen, the Chief Postmaster General, Bihar Circle, sought clarification from the Directorate vide No.17-124/96-ED & Trg. dated 30.9.1996 (Annexure-A/14). Following clarifications were issued by the Directorate:-

"In the context of your enquiry, it is clarified that since this office had been receiving spate of complaints about ~~alleged~~ irregular appointments to ED Posts, stress was laid through this Office letter No.17-108/94-ED & Trg. dated 14.12.94 upon all concerned for observance of the instructions issued by this office from time to time governing appointments to ED Posts. This is clear from the fact that no mention has been made therein that these supersede the instructions issued earlier vide this office letter No.17-104/93-ED & Trg. dated 6.12.93. The instructions issued in this office letter dated 6.12.93 are on the basis of decision of the Postal Services Board. Hence, the provisions contained in this office letter dated 6.12.93 should be observed meticulously."

12. In the above context, it is observed that the order of DPS and Chief Postmaster General regarding termination of the services of the applicant was based on the understanding that the residence qualification of the post village was an essential condition for appointment to the post in question with reference to first notification. If nobody was available for consideration in the first notification from the post village, the post was required to be re-advertised, as has been stated in the order of the Chief Postmaster General, Bihar Circle, dated 22.8.1996. The confusion appears to have arisen with the issue of DGP&T's letter No.17/108/94-ED & Trg. dated 14.12.1994

Yesh

(Annexure-A/13). However, with the clarification given in the Directorate's letter dated 30.9.1996 (Annexure-A/14), the matter got sorted out. The instructions contained in the letter dated 6.12.1993 was required to be observed meticulously. If the said instruction would have been implemented, the problem and confusion would not have arisen. Moreover, the Chief Postmaster General received the clarification from the Directorate in their letter dated 30.9.1996 which is after he passed his order on 22.8.1996. This explains the gap. Therefore, if the instruction as contained in the letter of Department of Posts dated 6.12.1993 (Annexure-A/12) regarding residence qualification was complied with, perhaps the problem would not have arisen. Moreover, in the order of the Chief Postmaster General, there is no mention of the letter of the Department of Posts dated 6.12.1993, as at Annexure-A/12.

13. So far as residence qualification is concerned, our attention has been drawn to the order of Ernakulam Bench of CAT dated 19.10.92/16.11.92 passed in OA No.1018 of 1990 (1993 24 ATC page 59). The placitum portion of the order of the CAT, Ernakulam Bench in the aforesaid case is reproduced below:-

Weld

"Appointment-Qualifications for appointment Extra Departmental Branch Postmaster-Requirement of being permanent residence of the village concerned- Held, unconstitutional-cannot be read down as a condition subsequent to appointment-Directed to be replaced by a condition of residence simpliciter to be fulfilled subsequent to selection and appointment-DG P&T O.M. dated 30.1.1981-Interpretation of statutes-Doctrine of reading down-Applicability-Constitution of India, Articles 14, 16 and 19(1) (e)-Posts and Telegraphs."

14. During the pendency of the O.A., another development in the matter is that one Sri Maqsood Alam, son of Late Sahabuddin, ex-EDBPM of Shahar Talpe EDBO via Karpi, District Gaya, has been appointed as EDBPM, Chakand, R.S.EDBO provisionally vide Memo dated 3.2.1998 (Annexure-A/1 attached with MA 106/98). ~~said~~
~~SRI Maqsood~~ Alam has been made respondent no.4 in OA 449/96 vide this Tribunal's order dated 28.7.1998 passed in MA 106/98. It appears that Shri Maqsood Alam was appointed to the post of EDBPM, Chakand R.S. EDBO on compassionate ground and on the basis of the order of the Chief Postmaster General dated 22.1.1998 (Annexure-A/10). In this regard, the appointment of Shri Maqsood Alam was made in relaxation of normal rules of recruitment. The prayer of the applicant is that the appointment of Shri Maqsood Alam to the post of EDBPM, Chakand R.S. EDBO be quashed and the applicant should be reinstated in the said post ~~after~~ quashing the termination order relating to the applicant.

15. From the above analysis of the case, one thing is clear that ^{when} the Chief Postmaster General passed his order on 22.8.1996, perhaps he was not aware of the instruction of Department of Posts, Govt. of India, dated 6.12.1993 as at Annexure A/12, which makes it very clear that while making selection for appointment to ED post, permanent residence in the village/delivery jurisdiction of the E.D. Post Office need not be insisted upon as a pre-condition for appointment. However, it should be laid down as a condition of appointment that any candidate, who is selected, must before appointment to the post take up his residence in the village/delivery jurisdiction of the E.D. Post Office,

ED

as the case may be. In the instant case, we find that the applicant was provisionally selected to the post of EDBPM, Chakand R.S.EDBO vide order dated 16.6.1995 (Annexure-4). vide another letter dated 19.6.1995 (Annexure-5), the applicant was asked to arrange permanent residence at Chakand R.S. before his appointment to the post in question as required under rules. It appears that only when the respondent concerned was satisfied that the applicant has been able to arrange permanent residence in the post village, he was allowed to join to the post in question on 5.7.1995.

16. In view of the facts and circumstances of the case, as stated above, we have reached conclusion that termination order dated 20.6.1996 (Annexure-8) is not sustainable. Therefore, the said termination order is quashed. In view of the aforesaid position, we dispose of this O.A. by directing the respondents concerned to reinstate the applicant to the post of EDBPM, Chakand R.S.EDBO but without any back-wages. The present incumbent of the post shri Maqsood Alam (respondent no.4), who was appointed to the ^{say} post on compassionate ground, may be accommodated ~~somewhere else~~. The above exercise should be completed by the concerned respondents by passing appropriate orders in the matter in terms of above directions within a period of two months from the date of communication of this order. No order as to ~~the~~ costs.

lrs
16/11/2000.

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

S.Narayana
16/11/2000
(S.Narayana)
Vice-Chairman