

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1198/96

17-9-99

Date of Decision:

B.H. Yengulwar

.. Applicant

Shri S.P. Kulkarni

.. Advocate for
Applicant

-versus-

Sub-Divisional Inspector, Degloor & U. rs Respondent(s)

Shri Karkera for Shri P.M. Pradhan Advocate for
Respondent(s)

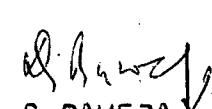
CORAM:

The Hon'ble Shri D.S. Baweja, Member (A)

The Hon'ble Shri S.L. Jain, Member (J)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?


(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1198.96

Dated this the 17/11 day of Sep. 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

Balaji Hulappa Yengulwar,
then working as Extra Departmental
Mail Carrier, Eklara Branch Post
Office in Account with Degloor
S.O.(Dist. Nanded). ... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

1. Sub-Divisional Inspector(Postal),
Degloor Sub-Division,
at P.O.Degloor, Dist.Nanded.
2. Superintendent of Post Offices,
Nanded Division, Nanded-431 602.
3. Postmaster General,
Aurangabad Region,
Aurangabad-431 002.
4. Shri Mansoor Lala-ahmed Shaikh,
Extra Departmental Mail Carrier,
Degloor S.O.(Dist.Nanded-431 717). ... Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

O R D E R

(Per: Shri D.S.Baweja, Member(A)

This application has been filed by the applicant praying
for setting aside the order dated 2.11.1996 through which his
services have been terminated from the post of Extra Departmental
Mail Carrier.

2. The case of the applicant is as follows :- A Notification was displayed on 1.2.1996 calling applications from the candidates for the post of Extra Departmental Mail Carrier, Eklara Branch Office. The applicant applied for the same. The applicant along with other candidates were called to remain present in the office of Sub-Divisional Inspector, Degloor on 23.2.1996. The applicant was selected and he was issued appointment letter dated 1.3.1996 and he joined on the post on the same date. However, thereafter, as per order dated 2.11.1996 the services of the applicant have been terminated/discontinued with immediate effect. Feeling aggrieved by termination of his services, the present OA. has been filed on 3.12.1996.

3. The applicant has advanced the following grounds in challenging the impugned termination order :- (a) The termination is bad in law as it is in violation of Rule 6 of P&T Extra Departmental Agent (Conduct & Service) Rules, 1964 as no notice/ pay has been paid to the applicant. (b) The applicant was regularly appointed after due process of selection. The applicant submits that it appears that his services have been terminated based on some complaints. The termination of services ex-facie is illegal as no show cause notice was given to the applicant. (c) Since the applicant had completed 240 days of continuous service, his services could not be terminated without due notice as provided under Industrial Dispute Act. (d) The services of the applicant have been terminated at the instance of

superior authority and therefore the termination order is bad in law. From the termination order it is clear that the appointing authority has terminated his services at the instance of Respondent No.3, i.e. Postmaster General, Aurangabad Region, Aurangabad.

4. The respondents have opposed the application through the written statement. The respondents submit that there was one complaint against the selection through which the applicant was appointed. The matter was investigated at the appropriate level and the enquiry revealed that the Sub-Divisional Inspector, Degloor had not followed the correct procedure for ~~selection~~ as per the rules laid down for recruitment. The ~~available~~ vacancy which was to be filled became ~~L~~ on account of superannuation of the regular incumbent and therefore the nominations were required to be called for from the Employment Exchange. A requisition dated 24.1.1996 was accordingly sent to the Employment Exchange and the Employment Exchange sponsored 10 names. However, Sub-Divisional Inspector, Degloor at the same time also issued an open Notification inspite of the fact that the names sponsored by the Employment Exchange were available. The applicant had applied against the open Notification. However, the appointing authority ignoring the candidates sponsored by the Employment Exchange as well as those who applied against the open Notification selected the applicant and issued an appointment order. There was a complaint against the selection to the Superintendent of Post Offices, Nanded Division

as well as to the Postmaster General Aurangabad alleging irregularity in the appointment of the applicant. The matter was investigated at the higher level and it was found that the appointment of the applicant was made by the Sub-Divisional Inspector, Degloor in violation of Recruitment Rules. In view of this, the Respondent No. 3 directed Respondent No. 2 to cancel the appointment of the applicant who in turn advised the appointing authority, i.e. Sub-Divisional Inspector. Accordingly, the impugned order dated 2.11.1996 has been issued. With these facts, the respondents contend that action in discontinuing the services of the applicant was in accordance with the rules to rectify the improper selection.

5. The applicant has not filed any rejoinder reply for the written statement of the respondents.

6. We have heard Shri S.P.Kulkarni, learned counsel for the applicant and Shri S.S.Karkera for Shri P.M.Pradhan, learned counsel for the respondents. The private Respondent No. 4 has neither filed any written statement nor made any appearance either in person or through his counsel. The respondents have made available the file containing the particulars of the recruitment for the post against which the applicant had been appointed.

7. Keeping in view the rival contentions, the only short question which needs to be determined is whether the termination of the services of the applicant as per the impugned order dated 2.11.1996 is legally sustainable. The applicant has challenged his termination mainly on four grounds. The ground of challenge based on non-compliance of Industrial Dispute Act was not pressed for by the applicant during the arguments. Out of the other three grounds, the first ground taken is that the services of the applicant have been terminated in violation of the provisions of Rule 6 of Extra Departmental Agent (Conduct & Service) Rules, 1964 as per which one month pay in lieu of notice period was required to be paid to the applicant but nothing has been paid to him. On going through the termination order dated 2.11.1996, we find that the termination of the applicant has not been made under Rule 6 as no reference of this rule has been cited in the order. In view of this, this ground advanced by the applicant is not tenable. The other two grounds are that the services of the applicant had been terminated without show cause notice inspite of the fact that he was regularly appointed after due process of selection and termination of services has been done by the appointing authority on direction of superior authority. Whether the termination order is bad in law on these grounds advanced by the applicant, we find that the matter has been already gone into by the Full Bench in the case of Tilak Dhari Yadav vs. Union of India & Ors., 1997 (36) ATC 539 (FB). In this case, the question of law which was referred to Full Bench was whether Rule 6 of P&T Extra Departmental Agent (Conduct & Services) Rules, 1964 confers power on the appointing authority or any authority superior to the appointing authority to cancel the appointment of Extra Departmental Agent who has been

appointed on regular basis as per rules for the reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause. The Full Bench has answered this issue as under :-

" Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause."

As will be seen from the above, the Full Bench has held that the superior authority could review appointment in case irregularities are noticed in making the appointment and may direct the appointing authority to cancel the appointment. However, such cancellation could not be done under Rule 6 and if at all has to be done, a show cause notice is required to be given to the appointee. In the present case, it is noticed that no show cause notice was issued to the applicant before issuing the impugned termination order. Therefore, in view of what is held by the Full Bench, the impugned termination order passed by the respondents without show cause notice is not legally sustainable and the same deserves to be dismissed.

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8. Though we recorded our findings above that the impugned termination order passed by the respondents without giving show cause notice to the applicant is not legally sustainable, but we restrain ourselves to set aside the impugned order and direct the respondents to reinstate the applicant in service and thereafter issue a show cause notice and then take appropriate action after considering the representation of the applicant. Considering the facts and circumstances of the present OA., we are of the considered opinion that the issue of show cause notice may not serve the purpose. The respondents have disclosed the facts and circumstances under which the appointment of the applicant had been made in violation of the Recruitment Rules. On going through the relevant file as made available by the respondents, we note that the appointing authority had sent notification to the Employment Exchange on 24.1.1996 seeking sponsorship of the candidates to fill up the vacancy arising out of the superannuation of the incumbent on regular basis. The Employment Exchange has sponsored 10 candidates. The appointing authority had sent call letters to all the candidates sponsored by the Employment Exchange. At the same time, the appointing authority has also issued an open Notification calling for applications for the post. 8 candidates responded to this Notification. However, the appointing authority did not issue call letters to any of them except the applicant. The interview was fixed on 23.3.1996 when 5 candidates sponsored by Employment Exchange attended the interview along with the applicant. From the record, it is noted

that the appointing authority ignored the candidature of those sponsored by the Employment Exchange and present for the interview without considering them for selection, selected the applicant and issued an appointment order. As brought out by the respondents, as per the Recruitment Rules then prevailing, the appointing authority was required first to call names from Employment Exchange and in the event of non furnishing or inadequate furnishing of the names by the Employment Exchange calling for application from open market could be resorted to. In the present case, the appointing authority had called for the applications through the open notification inspite of the fact that adequate nominations had been received from the Employment Exchange. Not only this, even against the open notification, the appointing authority did not issue call letters to all those applied and confined it only to the applicant. These facts clearly bring out that the appointing authority had not followed the provisions for recruitment rules in undertaking the selection for which the applicant had been appointed. The procedure followed by the appointing authority had deprived the candidates who had been sponsored by the Employment Exchange or those who ~~had~~ ^{had} applied against open Notification for being considered for selection along with the applicant. With these facts emerging from the relevant file and the written statement, we agree with the contention of the respondents that the appointment of the applicant was illegal as being in violation of Recruitment Rules. In this situation, even if the impugned termination order is set aside and matter remanded to the competent authority for giving a show cause notice to the applicant then pass a suitable order, we are of the view that no useful purpose will be A

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served. The need for show cause notice may arise only where the appointment of the employee has been found irregular based on certain details furnished by him and on enquiry the same have been found not complying with the rules. In such an event, it is not necessary to give ~~an opportunity to the employee~~ to defend his case ~~so that he furnish the required details~~ before the competent authority for consideration in support of his claim. In the present case, the applicant in the event of issue of show cause notice to him will not be able to put up any defence with regard to non-consideration of the candidates sponsored by the Employment Exchange or those who had applied against the open notification. With this background emerging from the written statement and the relevant file made available by the respondents, we are of the considered opinion that setting aside the impugned termination order with the direction to the respondents to issue show cause notice is not called for. In this connection, we refer to what is held by the Hon'ble Supreme Court in the case of M/s.Orissa Cement Ltd. vs. State of Orissa, AIR 1991 SC 1717 as under : -

"It is well-settled proposition that it is open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding. Many situations of this type arise in actual practice. For instance there are cases where a Court comes to the conclusion that the termination of the services of an employee is invalid, yet it refrains from giving him the benefit of "reinstatement" (i.e. continuity in service) Court does result in a person being denied the benefits that should flow to him as a logical consequence of a declaration in his favour."

In view of what is held by the Hon'ble Supreme Court above, we decline to quash the termination order and direct respondents to issue show cause notice as any such order would only restore the appointment which is bad in law being in violation of the Recruitment Rules.

9. Looking the matter from any angle also calls for restraint in setting aside the impugned termination order. The applicant has made Respondent No. 4 Shri Mansoor Lala Ahmed Shaikh as a party respondent who has said to have been appointed on the post after termination of services of the applicant. The applicant has neither impugned the appointment order of Respondent No. 4 nor made any prayer to quash his appointment. In view of this, no adverse order can be passed setting aside the appointment of Respondent No. 4 on the post on which the applicant had been earlier appointed.

10. In the result of the above, the OA. deserves to be dismissed and is accordingly dismissed with no order as to costs.

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(S.L.JAIN)

MEMBER (J)

D.S. Baweja

(D.S. BAWEJA)

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MEMBER (A)

mrj.