

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 114/2000

Date of Decision : 14th December 2000

N.P.Jondhale

Applicant.

Shri U.M.Joshi

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents.

Shri V.S.Masurkar

Advocate for the
Respondents.

CORAM :

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

The Hon'ble Smt.Shanta Shastry, Member (A)

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other ~~or~~ Benches of the Tribunal ?

(iii) Library

yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.114/2000

Dated this the 14th day of December 2000.

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

Hon'ble Smt. Shanta Shastri, Member (A)

N.P.Jondhale,
A.B.P.M.,
Bhaur (Deola),
Tal. Kalwan, Dist.Nashik.

... Applicant

By Advocate Shri U.M.Joshi

V/S.

1. Union of India through
Post Master General,
Aurangabad Division,
Aurangabad - 423 002.

2. Superintendent of
Post Offices,
Malegaon Division,
Malegaon.

3. Shri R.N.Garud,
At & Post Baur,
Tal.Kalwan.

... Respondents

By Advocate Shri V.S.Masurkar

ORDER

(Per : Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the declaration that the impugned order of termination of applicant's service and show cause notice dated 19.1.2000 and 15.9.1999 respectively are

illegal and invalid, to quash and set aside the same, order dated 31.12.1998 is for permanent appointment of the applicant which is legal, valid and proper, a further declaration is sought that Respondent No. 3 should not be appointed by terminating the services of the applicant.

2. In the year 1998, Shri A.P.Jondhale was promoted and deputed to the post of Gr.D.A.P.S. from BPM and vacancy of BPM at Bahur Deola did arise. The respondents invited the applications for filling the said vacancy, applicant along with others including Respondent No. 3 applied for the same. After scrutiny and verification, the applicant emerged amongst other candidates as successful for appointment to the said post. A provisional appointment order No. B-19/Appt/BPM/Bhaur/99 dated 25.5.1999 w.e.f. 31.12.1998 was issued by Respondent No. 2 marked as Ex.'A-2'.

3. The said appointment is said to be the provisional one which cannot be issued as provisional in view of the instructions vide letter of D.G.P.& T. No.43-4/77-Pen, dated 18.5.1979, hence the appointment of the applicant is regular one. By way of an amendment, it is stated that Respondent No. 3 is not having any land in the village which could be sufficient for his livelihood. No other source was disclosed which was sufficient for his living, While the applicant has disclosed the agricultural land which could fetch such income which was sufficient for his

1/2/99

livelihood. The applicant was considered and selected in view of fulfilment of all necessary requirements, though Respondent No. 3 was having highest marks which was not the only critaria for selection. The applicant was having a convenient place of business. It is further alleged that the Respondent No. 3 is not in need of service since he is already serving in a private company at Nashik which is far away from the village Bhaur.

4. The respondents issued the show cause notice, i.e. 15.9.1999 to which the applicant filed the reply. Without considering the reply in proper ^{perspective} prospect, the services of the applicant ~~was~~sought to be terminated vide notice dated 19.1.2000, hence this OA. for the above stated relief.

5. The applicant has not arrayed Respondent No. 3 at the beginning at the time of filing the OA. but by way of amendment has added Respondent No.3 who did not appear before the Tribunal inspite of service of notice.

6. The grievance of the applicant is that the show cause notice dated 15.9.1999 which is issued at the behest of Respondent No.1 did not disclose the cause for termination of his appointment. On perusal of the said notice, we are of the considered opinion that the said notice does not disclose the cause for proposed termination of services of the applicant though it can be made out by the notice that Respondent No. 3 Shri R.N.Garud possesses 60.14% marks while the applicant possesses 52.85% marks. A reminder was also issued on 3.11.1999 when reply to the said notice was not received by the respondents

7. The learned counsel for the applicant relied on the decision in OA.NO.106/94, Nand Kishore Prasad vs. Union of India & Ors. decided on 1.12.1997 and the decision in OA.NOs.867/98, 1006/98 & 1010/98 of this Bench and argued that if the show cause notice does not state the reasons or the grounds for termination of the services of the applicant, the order of termination deserves to be quashed. We agree with the submission of the learned counsel for the applicant in view of the said submission and decision of this Bench. As the present case has gone further step hence, to close the matter at this end is not justified.

8. The learned counsel for the applicant relied on Surya Bhan Gupta vs. Union of India & Ors., 1988 (7) ATC 226, and argued that provisional appointment when made by competent authority as per rules, mere mention of 'provisional' will be treated as regular appointment. The question of law decided cannot be disputed. He further relied on 1994 (2) ATJ 632, Dipak Kr.Das vs. Union of India & Ors. which lays down the position that an appointment made after completing of the formalities by the appointing authority, cancellation of appointment by the appointing authority under the orders of superior authority without issuing any show cause notice deserves to be set aside. In this respect, he also relied on 1994 (2) ATJ 485, P.Kalaiyarasi vs. The Senior Superintendent of Post Offices, Virundhunagar & Ors., 1995 (1) ATJ 340, L.Valliamma vs. Union of India, on 1995 (1) ATJ 181, N.Segaran vs. Union of India & Ors. for the proposition that an authority administratively higher than the appointing authority that the appointment is cancelled by the appointing authority.

9. Respondent No. 3 has not appeared before this Tribunal. Hence, the allegations of the applicant that Respondent No. 3 is not in need of the service as he is serving in private company at Nashik City which is far away from village Bhaur stands unrebuted. In view of the fact that though the Respondent No. 3 was having highest marks, the applicant was at second highest, in a changed situation, the cancellation of the appointment of the applicant as BPM, Bhaur is not warranted.

10. In addition, the one of the conditions to the said post is that applicant must be having a separate source of livelihood which Respondent No. 3 was not in possession of.

11. In view of the above facts, the appointment of the applicant when whole selection is not cancelled by the respondents stands valid.

12. In the result, OA. deserves to be allowed and is allowed. The show cause notice and the termination order issued by the respondents dated 15.9.1999/14.10.1999 and 19.1.2000 respectively are now infructuous one. The appointment order dated 31.12.1998 describing the appointment as provisional in favour of the applicant is permanent appointment order. No order as to costs.

Shant Shastray
(SMT. SHANTA SHAstry)

MEMBER (A)

S.L.Jain
(S.L.JAIN)

MEMBER (J)

M.J.