

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 100/2000

Date of Decision : 14<sup>th</sup> December 2000

B.L.Nikam

Applicant.

Shri S.P.Kulkarni

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 ~~also~~ Benches of the Tribunal ?

(iii) Library Yes

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

mrjk

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.100/2000

Dated this the 14<sup>th</sup> day of December 2000.

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

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

Bhausaheb Laxman Nikam,  
Extra Departmental Branch  
Post-Master Mokbhangi B.O.,  
(Kalwan S.O., Dist. Nashik).

... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

Union of India through

1. Superintendent of Post Offices,  
Malegaon Postal Division,  
At P.O. Malegaon, Dist. Nashik.
2. Director of Postal Services,  
Aurangabad Region,  
Office of the Postmaster General,  
Aurangabad.
3. Postmaster General,  
Aurangabad Region,  
At P.O. Aurangabad.
4. Shri R.K.Shelar,  
At P.O. Mokbhangi,  
(Via Kalwan, Malegaon,  
Dist. Nashik).

... Respondents

By Advocate Shri V.S.Masurkar

PLG/11 2/-

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the declaration and setting aside of the show cause notice and termination order dated 15.9.1999/14.10.1999, 19/20.1.2000 respectively with a declaration that the applicant was properly selected and appointed on regular basis.

2. The respondents placed a requisition to the Employment Exchange and also issued a Notification for the vacancy for the post of Extra Departmental Branch Postmaster Mokbhangi. The candidates were sponsored by the Employment Exchange. The applicant applied in view of Notification displayed in Gram Panchayat Office, Mokbhangi. ~~He was approved and selected and appointed.~~ The applicant was provisionally on temporary basis appointed as EDBPM, Mokbhangi. The applicant was served with a show cause notice on 15.9.1999/14.10.1999 stating that his appointment is irregular. The applicant replied to the show cause notice on 23.10.1999 denying the said allegation.

3. Shri R.K. Shelar, Respondent No.3 is selected and directed to take charge terminating the services of the applicant who is not a better candidate on account of the fact of his lower percentage of marks in S.S.C. Hence, this OA. for the above said relief.

PLD/

4. The learned counsel for the applicant has drawn our attention to page 16 of the OA. by which the applicant was appointed w.e.f. 24.10.1998 on 25.5.1999. On perusal of the said appointment order, we are of the considered view that the said appointment was provisional one, liable to be terminated at any time without assigning any reason or without proper notice.

5. The learned counsel for the applicant has drawn our attention to page 13 of the OA. and on perusal of the same, we are of the considered opinion that the applicant was possessing the highest marks in S.S.C.

6. The learned counsel for the applicant has drawn our attention to page 15 of the OA. which is a reply filed by him in compliance of the show cause notice dated 15.9.1999/14.10.1999 along with show cause notice issued by the respondents. He argued that the show cause notice does not set out the reasons for termination of the appointment. We agree with the learned counsel for the applicant that the show cause notice does not set out grounds on which his appointment was said to be terminated. In our considered view, the said fact is certainly material, had the applicant requested the respondents to state the reasons for terminating his appointment or has shown his inability to reply to the said notice. On perusal of the reply which is at page 15 of the OA., we do not find that the applicant has put any such grievance, hence the said show cause notice though does not set the grounds for terminating the applicant's appointment, is immaterial one.

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 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 a further step hence, to close the matter at this end is not justified.

8. The applicant has after filing the written statement by the respondents filed the rejoinder and in said rejoinder he has stated that the Notification displayed in Gram Panchayat is of less than 30 days when Employment Exchange was given 30 days period to send nominations. Hence, it was fair and proper to allot the same period of 30 days in open Notification displayed in Gram Panchayat. The open Notification in Gram Panchayat provided only 15 days time as the said Notification was published on 25.9.1998. In Sur-rejoinder filed by the respondents in para 5 it is made clear that on 9.9.1998, the Employment Exchange, Nashik was addressed to send nominations. Accordingly, a list of 5 candidates was received from Employment Exchange on 22.9.1998. All the candidates were addressed on 25.9.1998 to submit required documents within 8 days, i.e. 5.10.1998. Meanwhile, it was noticed that orders regarding Notification of vacancies through public advertisements were also

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received. Hence, the local Notification was issued and displayed in Gram Panchayat on 25.9.1998 giving the last date for receipt of the application as 10.10.1998. We have perused the instructions in this respect and the instructions dated 14.8.1998 were received by the respondents on 24.8.1998. On perusal of the said instructions, we are of the considered opinion that it was ordered that in addition to notification, the vacancies shall be simultaneously notified through public advertisement and the candidates nominated by Employment Exchange as also those responded to the open advertisement will be considered. It is true that the said instructions have not been duly complied with but looking to the facts that the Respondent No. 3 received the said instructions on 24.8.1998 and the applicant has not challenged the said selection, <sup>he</sup> is not entitled to get any relief under the said instructions. On the other hand, the applicant claims to be duly selected under the said selection.

9. The applicant has stated that his <sup>representation</sup> appeal is pending with the respondents. In fact, there is no provision for filing statutory appeal. It is <sup>representation</sup> review and when the applicant has come before this Tribunal to agitate the matter, now, he is estopped to say that decision of the appeal/review be awaited.

<sup>Amended vide  
Review order dated  
21.11.01 sign  
M(P)</sup>

10. 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

<sup>DSR</sup>

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 has no power to review. It has no relevance in view of the fact that the appointment is cancelled by the appointing authority.

II. The respondents have brought on record that the application of the applicant was received after the selection was over, Respondent No.4 was approved and name of the applicant was interpolated after the said selection which is made out by Respondent No.3 vide R/3. <sup>Omitted vide Order 21.11.98</sup> ~~Not having this, the name of the applicant was never approved in selection.~~ The applicant applied for the said post much later than on the date for receipt of the applications by the respondents was meant for. The cut off date for receipt of the applications is material which was 10.10.1998 while the application of the applicant was received on 21.10.1998.

In the said circumstances, the applicant who has not challenged the selection but claims to be selected in the said selection, not alleged that notice does not set grounds for the termination of services in reply to the notice, replies to the notice, every fact is now before the Tribunal, hence, to afford further opportunity to the applicant who is continuing on the said post by way of interim order in his favour will be allowing an irregular act to continue. Such a relief in this respect can not be provided to the applicant.

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

Kanta S-  
(SMT.SHANTA SHAstry)  
MEMBER (A)

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.4/2001. in OA.NO.100/2000

Dated this the 21<sup>st</sup> day of November 2001.

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

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

Bhausaheb Laxman Nikam

...Applicant

By Advocate Shri S.P.Kulkarni

vs.

Union of India & Ors.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

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

This is an application under Rule 17 of Central Administrative Tribunal (Procedure) Rules, 1987 for review of the order passed in OA.No.100/2000 dated 14.12.2000.

2. The grounds of the review are as under :-

"(i) The recourse to termination Notice under Section 6 of P&T E.D.A. (C&S) Rules,1964 is held as illegal by this Hon'ble Tribunal and also by several other Judgement and more over the employee concerned is to be given full opportunity of being heard by the Competent authority before passing final order (Not under Rule 6 of ibid) and after giving personal hearing to such an E.D.Employee. This contention of the applicant was not appreciated while passing the Judgement.

JSW

..2/-

(ii) The applicant was duly selected being meritorious and having highest percentage of marks among all the candidates, and was appointed as EDBPM, Mokbhangi. However, this Hon'ble Tribunal in para 3 of the judgement held that the applicant is having lower percentage of marks in S.S.C. This view is taken by the Hon'ble Tribunal appears to be contrary to the fact.

(iii) There was no irregularity apparently in the selection of the applicant. However, the contention of the respondents that the applicant was selected irregularly was upheld by this Hon'ble Tribunal, which appears to be ex-facie arguable point on the basis of law laid down and appears not concluded after going into it specifically.

(iv) -----

(v) In fact, the applicant has not preferred an appeal against the Notice of termination but the applicant has preferred a representation in reply to the show cause notice only which was required to be disposed of before passing final order of termination by the respondents but the same is still pending and the final order passed by the respondents terminating services of the applicant is contrary to the principles laid down and violative of principles of natural justice.

(vi) -----

(vii) -----"

We have heard the parties.

3. The ground raised in para 2 (i), (iii), (iv) & (vii) are nothing but to re-argue the matter in Review. The underlying object of Review is not to enable the Court/Tribunal to write a second judgement. A mere repetition of the old and considered arguments cannot create a good ground for review. As such the above referred grounds cannot be considered in Review Petition.

DX/1 -

4. The ground raised in para (ii), after consideration of the same, we are of the considered view that in para 2 - 6th line of the order instead of "He was duly selected and appointed", "He was approved" ought to have been mentioned.

5. The ground mentioned in para (v), we are of the considered view that in para 9 - 1st line of the order word "appeal" deserves to be substituted by word "representation". Similarly, in para 9 - 3rd and 5th line instead of word "review" and "appeal/review" respectively, the word "representation" deserves to be substituted.

6. The ground mentioned in para (vi) - we are of the considered view that in para 11 - 5th line of the order "not only this, the name of the applicant was never approved in selection" deserves to be omitted. In para 3 - 11th line of the order after the word charge and thereafter applicant coma (,) be added.

7. In the result, review is partly allowed. The necessary substitution, deletion and addition is made in the order dated 14.12.2000. An amended copy of the order be supplied to both the parties.

*Shanta*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

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

mrj.