

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 101/2000

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

Mrs.R.R.Alai \_\_\_\_\_ 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 ~~no~~ 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.101/2000

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

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

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

Mrs.Ratnamala Ramesh Alai,  
ABPM, Khardi (Wakhari)  
(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.

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

3. T.N.Jadhav,  
Residing at Q Post  
Khardi (Wakhari).

... Respondents

By Advocate Shri V.S.Masurkar

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.

*S.L.Jain*  
..2/-

2. In the year 1998 when Shri P.S.Alai retired on 14.7.1998 from his permanent post of BPM and the vacancy for the said post of BPM at Khardi (W) was caused. The respondents had called for certain aspiring candidates according to their procedure. Seven candidates had responded. After scrutiny and verification of the applications, the applicant emerged amongst other candidates as successful for appointment to the post of BPM Khardi (W). The Respondent No. 2 issued the appointment order in favour of the applicant. The applicant was served with a show cause notice on 15.9.1999/14.10.1999 holding that her appointment was irregular. The applicant replied to the show cause notice on 22.10.1999.

3. The applicant claims that though her appointment order specified that appointment is provisional but as the selection was for a regular vacancy, after adopting due selection procedure, she was appointed, hence the appointment is of a permanent nature. Respondent No.3 Shri T.N. Jadhav seems to have highest marks amongst the candidates and the applicant was having the second highest marks, the applicant was selected and appointed. By way of amendment, the applicant states that she owned property and place of business in the midpoint of village Khardi (W) where all villagers/dwellers could easily approach the post office and get their requirement fulfilled. The Respondent No. 3 had not disclosed that he has a separate source of livelihood while the applicant has disclosed the agricultural land which fetches good source of livelihood for her. As Respondent No. 3 was not asked

to produce any material evidence of livelihood, he was not entitled for appointment. The Respondent No. 3 has not made any grievance regarding his non appointment and is not in need of appointment as he is already working in a private company in the city of Nashik which is far away from the village. Hence, this OA. for the above said relief.

4. The learned counsel for the applicant has drawn our attention to page 22 of the OA., the show cause notice dated 15.9.1999. On perusal of the same, we are of the considered opinion that the marks obtained by the candidates in SSC are mentioned, in the next column, property and livelihood is mentioned but there appears no reason on which the respondents arrived to a conclusion that selection of the applicant was irregular one. If we peruse the reply of the applicant dated 22.10.1999 (at pages 23,24,25 of the OA.), in first para it is stated as under :-

" I am surprised with anguished after reading your show cause notice that it is getting difficult for me to know under what reason I am expected to explain to your show cause notice."

On perusal of the same, it is made out that the applicant has brought out to the notice of the authorities that it is getting difficult for her to know under what reason she is expected to explain to the show cause notice.

*AMAN*  
.. 4/-

5. 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, 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 decision of this Bench. As the present case has gone further step hence, to close the matter at this end is not justified.

6. 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 proposition 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.

PL.DK/- 5/-

7. Shri T.N.Jadhav who has been impleaded as Respondent No. 3 by way of amendment has not appeared before the Tribunal inspite of service of the notice. This fact is taken into consideration that he does not want to contest the claim and rebut the fact that he is not in need of the job. He has made no grievance for his non appointment and was not possessed of separate source of livelihood.

8. As the respondents are not cancelling the aforesaid selection in toto, the applicant being the candidate having secured second highest marks, having landed property in her own name, having place of business in the mid of the village, which is not denied even by the respondents, hence, it is not necessary to remit the case to the respondents to allow an opportunity to the applicant to contest show cause notice. The applicant having secured the second highest marks, possessing all the necessary conditions for appointment, though appointment is provisional, such appointment is to be treated when it is after following due selection procedure as permanent, rightly appointed in the changed circumstances brought by way of an amendment.

9. In the result, OA. is allowed. The show cause notice dated 15.9.1999/14.10.1999 and the termination order dated 19.1.2000 are held to be illegal one, quashed and set aside. The applicant's appointment vide order dated 13.5.1999 is legally valid and it is a permanent appointment. No order as to cost.

*Shant Shastray*

(SMT.SHANTA SHAstry)

MEMBER (A)

*Jain*

(S.L.JAIN)

MEMBER (J)

mrj.