

obj
has been filed
has pointed out many
26 are in Marathi but no
English translation is given.
Despite time being granted, the
applicant has not taken care
to remove the objections. As
none is present on behalf
of applicant, we are dismissing
the O.A. for want of
prosecution without going
into objections at this
stage. O.A. dismissed accordingly.

B. Bahadur

B. Bahadur

(B.N. Bahadur) (Birendra Dikshit)
MCA V/c.

B

Order/Judgment despatched
to Appellant's respondent (s)
on 21/11/01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

760/2001

ORIGINAL APPLIATION NO OF 2001.

Shree S.V. Khairnar.

Applicant.

V/S

Union of India and Others.

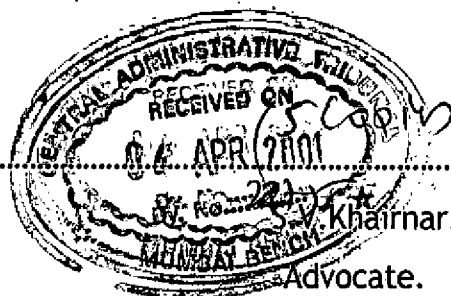
Respondents.

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Received M.D. 3/10
NU 44234 4/112
dw 29-3-01.

U.M. Joshi



Advocate for the applicant.

9, Arunachal Society, Bodhale Nagar,

Near Vijay Mamta Talkies, Nashik-pune road,

Nashik-11. Ph. 95 253- 411802.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

Original Application No. 768 Of 2001.

Sharad Vishwanath Khairnar
 Terminated BPM at Bhutyane,
 Residing at Bhutyane, Tal. Chandwad,
 Dist. Nashik. Applicant.

V/S.

Union of India through,
 1) Post Master General,
 Aurangabad Region,
 Aurangabad. pin: 431002.
 2) Superintendent of Post,
 Malegaon Division, Malegaon
 Dist. Nashik.
 3) Shree B.S. Aher,
 Present BPM at Bhutyane,
 Tal. Malegaon, Dist. Nashik. Respondents.

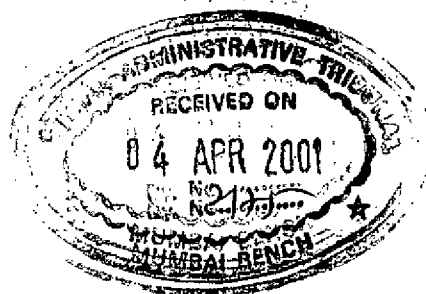
DETAIL OF THE APPLICATION

1) PARTICULARS OF ORDER AGAINST WHICH THE APPLICATION IS MADE

Termination Notice NO 19/PF/BPM/Bhutyane/2000/Malegaon/dated 19-1-2000 issued to the Applicant and expiry of the period of the notice the applicant is terminated and the Respondent no-3 is appointed on the post. Copy of order of termination is enclosed and marked as "Exhibit-A-1".

Grievance of the Applicant is that he was selected and appointed on the post of BPM at Bhutyane, Tal. Chandwad, Dist. Nashik by the order

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No.2 Applicant was initially provisionally appointed on retirement of one shree P.M. Aher dtd.21.8.98. The Respondent then after geared up the recruitment process for filling the said post permanently since the post was vacant due to retirement. The respondent had advertised the recruitment process in the local area as per the provision of recruitment and appointment for EDA and also called from the applications through Employment Exchange as per provisions for the recruitment for the EDAs. Being resident at local area and registered member in employment Exchange for employment, the applicant responded the recruitment drive of the Respondent and applied for that post. Some other aspirant candidates including the Respondent No.3. had also applied. Amongst four persons including the applicant and the Respondent No.3, the applicant was selected and appointed permanently by the respondent by their order dated 28.4.99.

However, due to internal trouble between the Respondents offices, the applicant became victim of the undue intervention of the Respondent No.1 in the decision of the appointing authority and the Respondent No.1 seems to have forced to take action to drive out the applicant from the service at the behest of the Respondent NO.1.

2) JURISDICTION OF THE TRIBUNAL

Applicant declare that the subject matter for which the applicant is seeking redressal is within the jurisdiction area of the Hon,ble tribunal.

3) LIMITATION

The applicant declares that the matter is well within the limitation period as the impugned order is passed on 28.1.2000 and the applicant is relieved on 20.2.2000. The respondent was not knowing the reason about the termination and therefore he pursued the respondent for knowing the reason about the termination. The respondent had communicated the applicant that he was terminated because there was candidate of highest No. of marks and therefore his service is terminated. Being aggrieved by the reason the applicant finally decided to agitate the his cancellation and termination of his services. Therefore applicant states and submit that the application is well within the limitation. However, there is any delay in filing the application the same deserves to be condoned considering the facts and circumstances of the case of the applicant. Applicant is filing separate miscellaneous application for condonation of delay.

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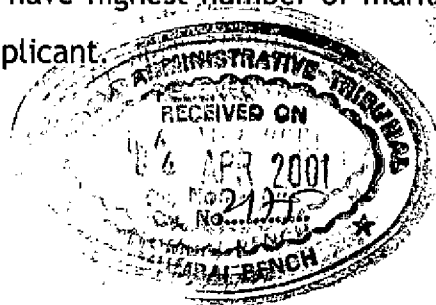
4) FACT OF THE CASE .

4.1) Applicant states that he had secured 55.42% marks in S.S.C.examination. He is permanent resident of village Bhutyane. Applicant states that he having adequate source of livelihood and the property which are requirements for selection for BPM post.

4.2) The Applicant states and submits that in the one shree P.M.Aher was to retire on 21.8.98 as BPM and it was urgent need to carry the functions of the respondents at village Bhutyane in the wake of retirement of Shree P.M.Aher. The respondent found the applicant a suitable person to carry the functions as BPM temporarily as he possessed the qualification of SSC and had place of Business to carry out the functions of the Respondents. The Respondents had appointed temporarily / provisionally the applicant on the said post on 21.8.2000 on the retirement of the said P.M. Aher for taking charge from him and running the business of the Respondents. Copy of the said provisional appointment order is herewith enclosed and marked as "Exhibit-A-2. "

4.3) The Respondent was in great need of appointing permanently a suitable candidate on said post .The Applicant had there initiated the recruitment drive by issuing advertisement in local area as per the mode of recruitment rules and communicated the employment exchange for providing suitable candidate for recruitment . Being the registered nominee in employment exchange and the local resident and actually working on the said post provisionally, the applicant had also applied for the said post. It seems that four persons had responded for recruitment including Respondent-3. The applicant states that the applicant had been selected and appointed on the said post, as he emerged as successful suitable candidate for the said post. Applicant states that he had second highest marks in SSC amongst the candidates and the Respondent No.3 seemed to have highest number of marks by one percent higher than the applicant. However, in other considerations for appointment and selection as per the guidelines for recruitment of ED Agents, the appointing authority seemed to have found the applicant most suitable candidates amongst the candidates inspite of one candidate had have highest number of marks in SSC by one percent more than the applicant.

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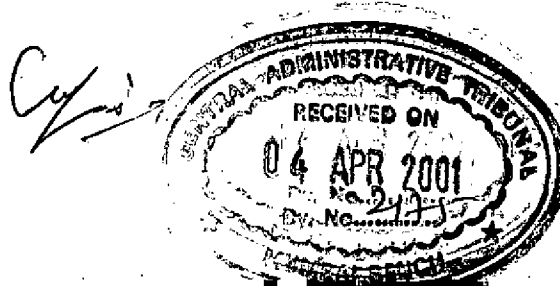


The respondent had issued permanent appointment order of the Applicant to the said post of BPM at Bhutyane on 28.4.99. Copy of the said order of permanent appointment is enclosed and marked as "Exhibit-A-3." The applicant was made permanent on the said post w.e.f. 21.8.98. The applicant had remitted first instalment of premium to postal co-operative credit society Ltd. Malegaon vide Chandwad C/f Memo No19 dtd 21.8.98 who were guranteers w.e.f 21.8.98 for his honesty and faithful accounting for all money orders and stamps and other property.

The Applicant states and submits that he was initially appointed provisionally and afterword he was appointment came to be as permanent one because he was selected in the process of selection and appointment after the vacancy caused by the retirement of one shree P.M. Aher. Under method of recruitment of BPM, the appointment of the post should be made regular if the vacancy is caused by the retirement .It seems that the Appointing authority had honoured the instructions in DGP&T letter NO. 43-4/77-pen dated 18th May 1979 that as far as possible the provisional appointment should be avoided and the provisional appointment should not be made if the vacancy is caused by retirement.

v) Applicant states that the appointing authority had also considered the experience he gained on the work of BPM. The applicant states that no complaint was made about his work or appointment after his appointment by any party including the Respondent-3. The applicant states that no person had ever approached to this Hon,ble Tribunal for quashing his alleged irregularity in appointment. This also proves that the selection of the applicant was proper, right and legal.

Vi) The applicant states that after 18 months of his service, the respondent had came out from their slumber and suddenly realised that the appointment of the Applicant was irregular. Therefore, they had issued the Show cause notice dated 14-10-99 to the applicant calling upon him to give reasons why his services should not be terminated as his appointment found irregular. The copy of such show cause notice is herewith annexed and marked as "Exhibit -A-4". The applicant states that the letter does not indicate or substantiate the irregularity in appointment. The Notice was completely bald on the reason of irregularity. The applicant became handicapped and unable to give proper reply about this irregularity. The applicant was and still



under impression that his selection and appointment was made through proper process of selection adopted by the competent appointment authority. Therefore, the applicant could not give any reply to the Respondents.

Applicant states that the showcause notice gives the impression that the higher authority of the appointing authority seemed to have intervened the decision of the appointing authority whom had full power to appointment of the post like BPM. The applicant states and submits that the entire selection process was carried out in accordance with the methods of recruitment of ED Agents and the appointment was made by the appointment was made by the appointing authority with is power and under his discretion. No irregularity is done in the process of selection and appointment. The decision of the appointing authority to appoint the applicant was just, right and proper and no rule was violated by the appointing authority.

viii)The applicant was finally served the impugned order of termination at the behest of the Respondent N01. The applicant was so inert financially to contest the show cause notice and the termination order that he preferred to choose to sit down coolly. But the applicant thought that he must find out the reason behind his termination so that he may seek justice from the court at the appropriate time. The applicant had sent series of letters about knowing reasons of termination. Copies his letters are herewith annexed and marked as "exhibit-A-5." Applicant states that finally the respondents had come out with the reason of termination that at the selection there was higher marks holder than the applicant and therefore his termination was necessary to facilitate the appointment of such higher earner mark holder. Copy of reply letter dated 15-3-2000 and 17-11-2000. are enclosed and marked as "Exhibit-A-6." The applicant had thought that the reason put forward was unjust, improper and illegal and decided to agitate the reason of termination before the Honourable Tribunal.

Appliant states that the respondent had terminated the services only on the reason that there was higher earner mark holder and he should have been appointed to the post instead of the applicant. The higher earner may have a chance of selection and appointment but other factor should be considered for selection. The applicant states that the ownership of property and source of livelihood and offering the space of business suitable to villager is also the other factor to be seen before



appointment and after the selection. The applicant states that the Respondent-3 had hardly one percent more marks in SSC as compared to the marks of the applicant. But the applicant had fulfilled the other conditions which the Respondent-no-3 could not do. The appointing authority therefore had appointed the applicant considering his past experience and fulfillment of condition before appointment and after the selection for the post.

5) GROUND FOR RELIEF WITH LEGAL PROVISIONS

Being aggrieved by the termination order and reasons put forward of the termination, the applicant approaches this Hon,ble Tribunal on the following grounds which are without prejudiced with each other.

a) It is rule issued by the DGP&T dated 18th May, 1979 that the provisional appointment should not be made to fill the vacancy caused by the retirement of ED Agent. The Respondents have violated these directives / rules and terminated the applicant illegally without following due process of law and principal of natural justice as the respondents had appointed the applicant permanently to the post.

b) Appointment of the applicant was permanent one, therefore invoking rule 6(a) (conduct and service) rules, 1964 is illegal and unjust.

Even otherwise in this case such invoking is illegal unjust and violative to the provisions of the constitution of India.

e) If the termination order passed without any reason the same is liable to be quashed. In the case of applicant his termination order does not give any reasons , hence the said termination order is liable to be quashed and set aside.

f) The procedural irregularity in the appointment of EDA cannot be ground for invoking rule 6 of EDA (conduct and service) rules. In the case of the applicant the respondents have invoked the rule 6 on the ground of procedural irregularity. Hence, impugned order of termination of services of the applicant is liable to be quashed and set aside.

g) Experience gained as provisional Extra Departmental Agent is entitled to weightage .The applicant has gained more than 18 months and therefore he is entitled to be regularized and reinstated to the post.



h) Bald show cause Notice compelling the person to reply is nothing but denial of natural justice. The Applicant was asked to reply such Bald Show cause notice which does not give any reason to counter the same by the applicant. This of method show cause notice is nothing an eye wash to show that the Respondents have provided opportunity of hearing. The whole exercise renders the denial of natural justice to the applicant. The show cause notice and termination should be quashed on this ground alone.

i) Right to live is fundamental right. The Respondents are denying the right of life of applicant by cutting source of livelihood through the device of termination of his service. The Respondents have violated the fundamental rights enshrined in the constitution of India.

f) Having higher percent of marks may have a chance of selection and appointment but this criteria is not sole criteria for selection and appointment as there are other factors are to be considered for selection and appointment like providing place of business for catering the services of the respondents in the village, providing certificate of having adequate source of income, certificate of his own property before the appointment and after selection. The applicant had hardly one percent less marks in SSC and had complied with other conditions of which the others not complied with as per the rule. Therefore, the appointment of the applicant was just, proper and legal. There was no irregularity in the process of selection and appointment. In the light of this background the termination of applicant and appointment of the Respondent No.1 is illegal, unjust and void and needs to be quashed and set aside.

g) The Respondent no.1, if felt should have approached the Honorable tribunal for quashing the order of appointment of the applicant. Somoto cancellation of the appointment which was already done by them selves is illegal.

6) DETAIL OF REMEDIES EXHAUSTED

The Applicant states and declares that he has exhausted all departmental remedies and statutory remedies available was exhausted by the applicant under the relevant rule.

7) MATTERS PREVIOUSLY NOT FILED OR PENDING BEFORE THE TRIBUNAL AND ANY OTHER COURT.

Applicant states and submits that the subject matter is not filed



previously or pending before this Hon,ble Tribunal or no writ, suit pending or filed in any other court in India.

8) RELIEF WITH PRAYERS.

- a) This Hon,ble tribunal be pleased to call for the records of the case from the Respondents and after examining its propriety, legality and constitutional validity , direct the respondent Nos.1st and 2nd to reinstate and regularise the services of applicant.
- b) This Hon,ble tribunal be pleased to declared that the impugned order of termination of applicant's services and show cause are illegal and invalid and bad in law.
- c) This Hon,ble tribunal be pleased to quashed and set aside the impugned order of termination applicant's services.
- d) This Hon,ble tribunal be please declare that the appointment of respondent NO-3 in the place of applicant is illegal and Bad in law and be quashed and set aside.
- e) This Hon,ble Tribunal be pleased to declare that the appointment order dated 28-4-99 w.e.f.21.8.98 is for permanent appointment of the applicant.
- f) Cost of this original Application be provided for.
- g) Any other and further order as this Hon,ble Tribunal may deem fit and proper in the interest of justice.

9) INTERIM RELIEF.

No interim relief is prayed for.

10) IN EVENT APPLICATION IS BEING SENT BY THE REGISTERED POST.

This application is being filed by the Advocate of the Applicant.

11) PARTICULARS OF BANK DRAFT/POSTAL ORDER.

Bank Draft/ Postal Order NO 46 234662
Dated 29/3/2001 For Rs. 50/-


12) LIST OF DOCUMENTS.

List of document are as per Index.



VERIFICATION

I, shree Sharad Vishwanath Khairnar, terminated BPM at Bhutyane , resident of Bhutyane, tal. Chandwad of Nashik district, do hereby verify that the contents of paragraphs 4.1 to 4.viii are true to personal knowledge and paragraph 5 to 12 believed to be true on legal advice and that I have not suppressed any material fact.


Advocate of the Applicant
Mumbai

dated. 4th April 2001.

SIGNATURE OF THE APPLICANT.

