

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 958/98.

Date of Decision : 30.11.1998.

Sudhir Gopalrao Lokhande & 2 Others, ... Petitioner.

Shri S. P. Inamdar, ... Advocate for the Petitioner.

VERSUS

Union Of India & 2 Others, ... Respondents.

Shri V. S. Masurkar, ... Advocate for the Respondents.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

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

- (i) To be referred to the Reporter or not ? *W*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *W*

R. G. Vaidyanatha

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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MUMBAI BENCH

ORIGINAL APPLICATION NO.: 958/98.

Dated this Monday, the 30th day of November, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

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

1. Sudhir Gopalrao Lokhande,
Plot 308, Sanjay, Gandhinagar,
Ayodhyanganagar,
Nagpur - 400 024=
2. Baburuwan Baburao Pillewan,
46, Patel Nagar (Borgaon),
Dr. Ambedkar Road, P.O. Katol
Road, Nagpur - 440 013.
3. Sudhir Ashok Malik,
Bhaldrapura,
Near Chakkereshwar Mandir,
Bhaldrapur,
Nagpur - 440 018.

.... Applicants

(By Advocate Shri S.P. Inamdar)

VERSUS

1. Union Of India through
The Post Master General,
Nagpur Region,
Nagpur - 440 010.
2. Sr. Superintendent,
Post Offices, Nagpur City
Division, Nagpur - 440 010.
3. Sr. Post Master,
Nagpur G.P.O.,
Nagpur - 440 001.

.... Respondents.

(By Advocate Shri V.S. Masurkar)

: OPEN COURT ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed by the applicants challenging the order of termination of their services. Respondents have filed reply opposing the application. We have heard the Learned Counsels appearing on both sides.

Since the point involved is a short legal point, we are disposing of this O.A. at the admission stage itself.

2. The applicants came to be appointed provisionally in the E.D.A. post. The first applicant came to be appointed as E.D. Packer. The second applicant as E.D. Stamp Vendor and the third applicant as E.D.M.C. (Hingana Line). There is a common appointment order issued to the applicants which is dated 04.09.1998 which is found at page 29 of the paper book. Now the respondents have terminated the services of the applicants by order dated 02.11.1998. Being aggrieved by this termination order, the applicants have preferred this application challenging the order of termination on many grounds.

3. The respondents in their reply have justified the action taken against the applicants. They have made out number of grounds on merit to show as to how and why the services of the applicants came to be terminated.

4. After hearing both the sides, we find that it is not a fit case for us to go into the merits of the case at the present stage.

It is brought to our notice that the department itself has issued a circular dated 13.11.1997, which is at page 34 of the paper book. That circular provides the circumstances under which the E.D. Appointments can be cancelled by higher authorities. Among other things, it is clearly provided at page 35 of the paper book as follows :

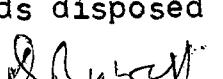
"However, in these cases the principles of natural justice should be complied with by giving the E.D. Agent a show cause notice and opportunity to be heard before passing any order adversely affecting him."

This circular has been issued recently, presumably on the basis of some of the decisions given by Courts and Tribunals. The Learned Counsel for the respondents contended that this circular is not applicable to cases of provisional appointment but it applies only to regular appointments.

5. Though the applicants' appointments are styled as provisional, it is seen that appointments were made after calling for names from the Employment Exchange and a copy of the advertisement had also been sent to the SC/ST Association. Then it is seen that interviews were held before selecting the applicants. Then further, they were subjected to medical examination. Therefore, in these circumstances, the applicants have been appointed to the particular posts, though styled as provisional, after following the prescribed procedure. Their services cannot be terminated arbitrarily by one sentence order without giving them an opportunity to show cause as to why their services should not be terminated. It may be, if the appointments are not in conformity with the rules or if any fraud has been practiced in getting the appointment, then the respondents may have a right to cancel the appointment. But before that, principles of natural justice require that an appointee should be heard before passing any such order, since it is specifically provided in the departmental circular dated 13.11.1997.

6. In the present case, admittedly, no show cause notice has been given to the applicants. Therefore, we hold that the impugned order of termination is illegal and contrary to the principles of natural justice, besides being contrary to the circular of the department dated 13.11.1997. On this short legal ground, the order of termination is liable to be quashed. We are not expressing any opinion on the merits of the case. The arguments, whether appointment can be made even of candidates who were not sponsored by the Employment Exchange, whether an higher authority than the empowered authority can cancel the appointment and such other grounds made in the application or in the reply, are not considered by us for the moment. All these contentions on merits, are left open.

7. In the result, the application is allowed. The impugned order of termination dated 02.11.1998 terminating the services of the applicants is hereby quashed. The respondents are directed to reinstate the applicants forthwith and treat the intervening period as continuity in service. However, this order is issued without prejudice to the rights of the respondents to take appropriate action according to law after issuing a show cause notice to the applicants and giving them an opportunity of representation before the intended action to be taken for cancelling their appointment. All contentions on merits, taken both in the O.A. and reply, are left open. In the circumstances of the case, there will be no order as to costs. The M.P. No. 739/98 also stands disposed of.


(D.S. BAWEJA)

MEMBER(A)


(R.G. VAIDHYANATHA)
VICE-CHAIRMAN.