

*Oct, 17 CT 867/98*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 867 OF 1998.

1006 OF 1998.

1010 OF 1998.

Date of Decision : 14.12.1998.

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

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

Rajendra Pundalik Koli,  
Extra Departmental  
Branch Postmaster,  
Velhale Branch  
Post Office.

Residing at -

Velhale,  
At P.O. Velhale,  
Taluq Bhusawal (Varangaon So),  
Dist. Jalgaon, Pin - 425 305.

*Deptt*  
.. Applicant in  
O.A. No. 867/98.

Anil Ramdas Patil,  
Branch Post Master/  
Extra Deptt.,  
Gate BQ (via. Thorgavan S.O.),  
Dist, Jalgaon - 425 501.

Residing at -

P.O. Gate, Taluk Raver,  
Dist. Jalgaon, Pin - 425 501.

*Deptt*  
.. Applicant in  
O.A. No. 1006/98.

Sanjay Kashinath Koli,  
Extra Departmental Branch Postmaster,  
Melsangvi E.D.B.O.  
(in account with Edlabad, Muktainagar  
S.O.), Edlabad.

Residing at -

Melsangvi,  
Taluka - Edlabad S.O.,  
District. Jalgaon - 425 306.

*Deptt*  
.. Applicant in  
O.A. No. 1010/98.

(By Advocate Shri S.P. Kulkarni)

VERSUS

1. Union Of India through  
Department of Posts,  
Superintendent of Post Offices,  
Bhusawal Division, Bhusawal,  
At. P.O. Bhusawal - 425 201.

*Deptt*  
.. Respondent No. 1  
in all the three  
O.As.

2. Director of Postal Services, Aurangabad Region, O/o. the Postmaster General, Aurangabad Region, At. P.O. Aurangabad - 431 002.	.. Respondent in all the three O.As.
3. The Assistant Superintendent of Post Offices, Bhusawal Sub-Division, At P.O. Bhusawal - 425 201.	.. As Respondent No. 2 in O.A. No. 1006/98 and 1010/98.
4. Postmaster General, Aurangabad Region, At P.O., Aurangabad - 431 002.	.. As Respondent No. 3 in O.A. No. 867/98.

(By Advocate Shri V.S. Masurkar)

: OPEN COURT ORDER :

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

These are three applications filed by the applicants challenging different orders of termination issued by the respondents. The respondents have filed reply opposing all the three applications. We have heard the Learned Counsels appearing on both sides. Since the point involved is a short legal point, we are disposing of these applications at the stage of admission itself.

2. The applicant in O.A. No. 867/98, R. P. Koli, was appointed as an Extra Departmental Branch Postmaster as per order dated 21.03.1997 but working as E.D.B.P.M. from 15.03.1997 at Velhale Branch Post Office, Bhusawal Taluk, Dist. Jalgaon.

A. H. Patil, who is the applicant in O.A. No. 1006/98, was appointed as per order dated 05.02.1998 and working with effect from 21.07.1997 as Extra Departmental Branch Postmaster at Gate BQ under Thorgavan Sub-Office, District Jalgaon.

S. K. Koli, is the applicant in O.A. No. 1010/98. He was appointed as Extra Departmental Branch Postmaster as per order dated 29.12.1997 but w.e.f. 15.05.1997 at Edlabad Taluk, Melsangvi E.D.B.O., Jalgaon District.

Now the respondents have issued the notice of termination dated 23.09.1998 in O.A. No. 867/98. Similar orders of termination of same date are issued in other two cases also.

The applicants being aggrieved by the notices of termination issued by the respondents, have approached this Tribunal. By an interim order, this Tribunal has stayed the impugned order of termination. The applicants are challenging the legality and validity of the termination notice on many grounds.

3. The respondents have filed reply in all these cases justifying the action taken in terminating the services of the applicants due to some irregularities in the recruitment process. They have given reasons as to why the respondents had to <sup>repose</sup> resought to terminate the services of the applicants. The Learned Counsel for the applicants, among other grounds, attacked the validity of the impugned order on the main ground that the action taken is in violation of principles of natural justice. On the other hand, the Learned Counsel for the respondents submitted that in cases of this type, principles of natural justice are not attracted and

even otherwise, the termination notice contains an opportunity given to the applicants to make representations and they did make representations and, therefore, there is substantial compliance of the principles of natural justice.

4. Though the applicants have raised number of grounds in challenging the impugned orders, we find that the impugned orders cannot be sustained on the short ground that action being in violation of principles of natural justice. Therefore, we are not inclined to go to other grounds mentioned in the O.A. and all these grounds are left open. Similarly, whatever contentions the respondents have taken on merits, are also left open.

5. The Learned Counsel for the respondents is right in his submission that if action is taken under Rule 16 of Post & Telegraph E.D. Agents (Conduct & Service) Rules, where simplicitor order of termination is issued, there is no scope for invoking principles of natural justice. There cannot be any dispute on this point. He has also relied on a decision of the Supreme Court reported in Judgement Today | 1998 (7) SC 393 | Superintendent of Post Offices & Others V/s. Kunhiraman Nair Muliyan, where while interpreting the said rule, the Supreme Court has pointed out that no reasons be given for a simplicitor termination in such cases.

But the question is, whether the above Supreme Court judgement and the law laid down therein applies to the facts of the present case. The date of the reported judgement is 10.09.1997. The Supreme Court <sup>ruled</sup> has interpreted Rule 6 and they were ~~were~~ ruling that in case

of simplicitor termination, the question of violation of principles of natural justice is not attracted.

But, after the Supreme Court judgement, the department itself has issued a circular dated 13.11.1997 with which we are now concerned. The circular has been produced at page 61 in the first case, namely - O.A. No. 867/98. This is a circular issued by the Department of Posts & Telegraphs where it is mentioned that in view of number of judgements of Central Administrative Tribunal, it has become necessary to give guidelines to the departmental officers. It is pointed out that if an appointment is irregular, then an officer higher than the Appointing Authority should review the same and he can take action for cancelling the order of appointment.

Then para 4 of that circular reads as follows :-

"While complying with the directions given by the next higher authority, the appointing authority will ensure that a proper show cause notice is issued to the E.D. Agents concerned and his representation, if any, is forwarded to the next higher authority for taking it into account before passing the final orders."

Though Rule 6 does not mention any such condition but the Department itself has given guidelines to the officers as to how a irregular appointment can be cancelled. The condition precedent is, a show cause notice should be issued to the concerned officer and after his representation, final order should be passed by an appropriate authority. In view of this, we hold that if any action is taken contrary to the guidelines, it will be in violation of not only the circular, but also the principles of natural justice, which are mentioned therein.

6. The Learned Counsel for the respondents contended that the impugned order itself contains an enabling provision giving an opportunity to the applicants to make representation and that itself is sufficient to meet the requirements of principles of natural justice.

The impugned order in the first case reads as follows :-

"In pursuance of Rule 6(a) and (b) of the P & T Extra Departmental Agents (Conduct & Service) Rules, 1964, I, B. B. Gangalwar, Superintendent of Post Offices, Bhusawal Division, Bhusawal, hereby give notice to Shri Rajendra Pundlik Koli, E.D.B. P.M., Velhale, B.O. (Varangaon S.O.) that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which the notice is served on or, as the case may be, tendered to him. He may submit his representation, if any, to the undersigned within 10 days from the date of receipt of this notice."

Though the word 'notice' is used, it is virtually an order of termination, to take effect after the expiry of one month. The latter portion of the notice simply shows that the official may send his representation within ten days. Even granting that this latter clause is sufficient to meet the requirement of natural justice, we find that the notice does not give any indication as to, on what ground the appointment order is sought to be cancelled. The show cause notice may show as to, on what material or on what grounds the order is sought to be cancelled. It may be because of misconduct, it may be because the applicant did not belong to SC/ST category,

or it may be because he has not produced a proper medical certificate or proper school certificate or it can be <sup>for</sup> any reason. To meet the requirement of principles of natural justice, on the face of it, the show cause notice must give indication to the applicant as to on what ground his appointment order is sought to be cancelled. Then the official can give proper explanation and meet the grounds mentioned in the show cause notice. Then it is open to the competent authority <sup>all facts & then take decision of</sup> to take into consideration, either confirming the show cause notice or discharging the same. In the present case, the termination notice does not give any indication as to why and for what reasons the appointment orders are sought to be terminated. It may be in compliance with Rule 6 but in view of the departmental circular dated 13.11.1997, the termination notice should have been preceded by a show cause notice to the applicants and then final order to be passed after considering the representations of the officials. It may be that the applicants have given representations to the termination notice and according to the Learned Counsel for the respondents, this shows that the applicants are aware about their termination. If we peruse the representation of the officials, they have given number of reasons justifying their appointment without knowing as to on what ground the order was sought to be cancelled. They have given reasons generally without knowing as to what is in the mind of the competent authority in the intended termination order.

Hence, taking into consideration the facts and circumstances of the case, we are constrained to hold that the action taken by the concerned authorities is contrary to the departmental circular dated 13.11.1997 and thereby violating the principles of natural justice. On this short ground, the impugned orders are liable to be quashed.

7. In the result, all the three O.As. are hereby allowed. The three impugned orders of termination dated 23.09.1998 are hereby quashed. However, this order is without prejudice to the rights of the respondents to issue proper show cause notice to the applicants in terms of the departmental circular dated 13.11.1997 mentioning the grounds on which the appointments are sought to be cancelled and then it is open to the applicants to give their representations to meet these grounds. Then the competent authority, after considering the show cause notice, the reply and other materials and after giving a personal hearing to the applicants, may pass appropriate speaking orders. This order is passed without prejudice to the rights of both sides on merits of the rival contentions. The applicants are entitled to continue in service till such order that may be passed by the competent authority in pursuance of the circular dated 13.11.1997 and in the light of the observations made in this order. In the circumstances of the case, there will be no order as to costs.

MEMBER (A)

VICE-CHAIRMAN.