

(52)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1017/90

Date of Order: 30.11.93

BETWEEN :

R.Venkateswara Rao

.. Applicant

A N D

Union of India rep. by :

1. The Secretary to Govt.,
Dept. of Posts, New Delhi.
2. The Post Master General,
Visakhapatnam.
3. The Senior Superintendent of
Post Offices, Amalapuram.
4. The Asst. Supdt. of Post Offices
Kothapeta Sub Division,
Kothapeta.
5. The Branch Post Master,
Kondukuduru BO, A/v Mukteswaram,
East Godavari District.
6. V.V.S.N.Murthy, Kondukuduru,
Mukteswaram, East Godavari Dist. .. Respondents.

Counsel for the Applicant

.. Mr. K.S.R. Anjaneyulu

Counsel for the Respondents

.. Mr. N.R. Devraj & Co.
with S. Dandekar, M.P.
B.M.L.

CO-CHM:

HON'BLE Mr. JUSTICE V.NEELAKANT RAO : VICE-CHAIRMAN

HON'BLE Mr. K.RANGARAJAN : MEMBER (Admn.)

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Judgement

[As per the Hon'ble Sri V. Neeladri Rao, Vice Chairman]

When a vacancy has arisen in regard to the post of EDDA of Konukuduru of East Godavari district, a requisition was issued by R-4, the appointing authority, to Employment Exchange for sponsoring the names for the said post. The Employment Exchange Officer sent the names of four candidates including those of the applicant and R-6. R-4 appointed the applicant by letter dt.2-3-90 and the applicant assumed charge of the post at Konukuduru on 6-3-90. R-3, Sr. Superintendent of Post Offices, an authority higher than the R-4, set aside the order dated 2-3-90 appointing the applicant as EDDA of the village referred to, and he (R-3) issued order dated 28-8-90 appointing R-6 as EDDA of Konukuduru, and consequently orders were issued to R-5, the then Post Master, Konukuduru to relieve the applicant and permit R-6 to assume charge on 1-9-90. R-2 is Post Master General, Visakhapatnam and by order dated 20-2-90, he confirmed the action taken by R-3. The same is assailed in this O.A.

2. The two fold contentions for the applicant are:

(1) neither R-3 nor R-2 is empowered as per EDA Conduct and Service Rules to revise an order of appointment for the post of EDDA or any other post, and (2) even assuming that R-2 and R-3, have the power to revise the order of appointment, still the orders of R-2 and R-3 have to be held as vitiated as no notice was given to the applicant before order of his appointment is set aside.

Provided that no case shall be reopened under this rule after the expiry of six months from the date of the order to be reviewed except by the Central Govt. or by the Head of the Circle and also before the expiry of the time-limit of 3 months prescribed for preferring an appeal:

Provided further that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (ii) and (iii) of Rule 7 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an enquiry in the manner laid down in Rule 8 in case no such enquiry has already been held."

5. If the only portion of the Rule i.e. 'review any order made under these rules' is looked into, it does indicate that the authorities referred to in the said rule are having the power of revision/review of any order passed under the rules. But, if the entire portion of the relevant rule i.e. 'call for records of any enquiry or disciplinary case and review any order made under these rules' is looked into, it does indicate that the review is only in regard to order made under these rules with respect to any enquiry or disciplinary proceeding. Further, both the provisos, make it clear that it is only in regard to enquiry or disciplinary proceeding.

6. Even DG, PT letter dated 25-4-81 relied upon for respondents, reads as under:

"It has been observed that in a large number of cases services of various categories of ED Agents have been terminated under the cover of Rule 6 of P&T ED Agents (C. & S.) Rules, 1964. The main reason given by the concerned authori-

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3. It is urged for the respondents that R-4 committed irregularity in holding that R-6 had not furnished the proper nativity certificate and it was so done to exclude R-6 who is more meritorious. R-3 looked into the matter on the basis of the complaint of R-6 and in view of irregularities, R-3 set aside the order of the applicant and R-2 being satisfied, confirmed action of R-3. It is also urged for the respondents that whenever irregularities are noticed by higher authorities in regard to the appointments, such higher authorities are empowered to revise the order of appointment in the interest of the institution. It cannot be said that no notice is given as R-3 after setting aside the order of appointment of the applicant, instructed R-4 to issue notice of cancellation to applicant, and when R-4 for reasons best known to him had not complied with the said order, the orders of R-3 cannot be held as vitiated.

4. Rule 16 of E.D.A. Conduct and Service Rules refers to review of orders and it is as under:

"Review of Orders:

Notwithstanding anything contained in these rules,

- i) the Central Govt., or
- ii) the Head of the Circle, or
- iii) an authority immediately superior to the authority passing the orders,

may at any time, either on its own motion or otherwise, call for records of any enquiry or disciplinary case and review any order made under these rules, reopen the case and after making such enquiry as it considers necessary, may

- a) confirm, modify or set aside the order,
or
- b) pass such orders as it deems fit:

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It is held that only the courts are having inherent power and the Tribunals or other quasi-judicial authorities are not having inherent power either to review its own proceeding or to revise the proceeding of the lower authority.

9. It is urged for the respondents that the Extra Departmental Agents' (Conduct & Service) Rules were not formulated under Article 309 and as such the power of revision can be exercised by an higher authority even if it is not specifically conferred. In the absence of the recruitment rules formulated under Article 309, the head of the department ^{as} ~~are~~ the one ^{on} whom the power is delegated can issue necessary instructions and those instructions may also confer powers upon the various authorities. The P&T Board is the head of the department for postal service and also for Extra Departmental staff in postal department. But the respondents had not referred to any instructions or letter of the Director General, Postal Services on behalf of the P&T Board conferring power of revision either of Senior Superintendent or the PMG to revise the order of appointment of the ED Agents. The letter No. 43/82/80-Pen, dated 4.11.1980 does not disclose that such power is conferred on the Regional Director or Senior Superintendent or PMG. The relevant portion therein which is relied upon reads as under:-

"It has, however, been decided that the Regional Directors should carry out a scrutiny of 10% of appointments made to E.D. posts at the time of inspections. They will also have to ensure that 10% of the appointments made in respect of each Sub Division are scrutinised."

contd....

ties is that the recruitment and appointment to the post of ED Agents was done in contravention of the instructions issued by the Directorate from time to time. In other words, the appointments to the posts of ED Agents were made in an irregular manner. This has involved a lot of litigation wherein the aggrieved -- ex-ED Agents---have drawn the Department to a Court of Law thereby entailing unnecessary departmental expenditure, wastage of time and energy. Not only that, the Department has been placed in a very embarrassing position on several occasions. With a view to avoiding unnecessary departmental expenditure, wastage of time and energy. Not only that, the Department has been placed in a very embarrassing position on several occasions. With a view to avoiding unnecessary litigation due care should be taken and recruitment to the posts of ED Agents should be made invariably in conformity with the standing instructions issued by the Directorate from time to time.

Further it is seen that no action is being taken against the officials who commit irregularities in matter of appointments. It will be more appropriate that action should also be taken against such officials responsible for not following the relevant instructions.

These instructions may be brought to the notice of the concerned authorities in your Circle for compliance."

7. It does not indicate that the higher authorities have power to cancel the order of appointment when irregularities are noticed. But, as in such cases the aggrieved may drag the Department to a Court of Law, it is stated that action may be taken against the officials who committed irregularities in matters of appointments.

8. Unless the power of review or revision is conferred, no authority can exercise the power of review or revision, for there is no inherent power to exercise it.

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10. Hence, we are in respectful agreement with the view taken by the Chandigarh Bench in 1992(1) ATJ 612 wherein it was held that Rule 16 of the ED Agents ("conduct & Service) Rules does not extend the power of revising the orders of appointment in respect of the ED Agents. In the above view, the order~~s~~ of the 3rd respondent as confirmed by the 2nd respondent in setting aside the order of appointment of the applicant as Extra Departmental Delivery Agent of Konduku^{du}duru is liable to be set-aside.

11. There is also force in the contention for the applicant that the order of the 3rd respondent in setting-aside the order of appointment of the applicant is vitiated, for no show cause notice was issued to the applicant before it was set-aside. The mere instruction of the 3rd respondent to the 5th respondent to ~~release~~ ^{value} the applicant is not in the nature of show cause notice, for the said instruction was given after the order of appointment to the applicant was set-aside.

12. In the result, the order of the 3rd respondent as confirmed by the 2nd respondent in setting aside the order of appointment of the applicant is set-aside, and the order permitting the 6th respondent to assume charge as ED Delivery Agent of Konduku^{du}duru is also set-aside. The applicant has to be reinstated into service. We do not feel that it is ~~proper~~ a proper case to order back wages, for it is ~~the~~ case where the applicant is having independent source of income. But we direct that the period from the date of removal of the

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It merely states that the Regional Director should carryout scrutiny of 10% appointments made to ED posts at the time of instructions but it does not state that if any irregularities are noticed or that if on the basis of the material on record, the Regional Director feels that some other applicant should have been appointed as ED Agent, he has power to cancel the order of appointment of an ED Agent. Shri N.R.Devaraj, learned Standing Counsel for the official respondents vehemently urged that the power of scrutiny impliedly includes the power to revise. But we cannot accede to the said contention. The power of revision cannot be inferred from the power of instructions. The instruction is generally intended for giving instruction to the lower authorities if any short-coming is noticed or to report to the higher authorities if there are serious lapses on the part of the sub-ordinate authority. The DGP&T letter dated 25.4.1981 referred to ~~in~~ in para-6 of this order is subsequent to the P&T letter dated 4.11.80 which is relied upon for the official respondents, and the DGP&T letter dated 25.4.1981 postulates ~~in~~ disciplinary action against the ~~earlier~~ ^{merely} appointing authority and it ~~also~~ does not speak about revision of the order of appointment made by the appointing authority even if it is vitiated by irregularities. Thus, the contention for the official respondents that the power of revision can be inferred from the letter dated 4.11.1980 is not tenable. For the above reason, there is no need to consider the submission for the 6th respondent that the Senior Superintendent is directed to carry out the scrutiny of appointments made to ED posts, for power ~~is~~ of inspection does not include the power of revision.

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applicant till he is reinstated, counts ~~for~~ for eligibility period for consideration for regular post.

13. The OA is ordered accordingly. No costs.

CERTIFIED TO BE TRUE COPY
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Date..... 21/2/83.
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

Copy to:-

1. The Secretary to Govt., Dept. of Posts, New Delhi.
2. The Post Master General, Visakhapatnam,
3. The Senior Superintendent of Post Offices, Amalapuram.
4. The Asst. Supdt. of Post Offices, Kothapeta Sub Divis Kothapeta.
5. The Branch Post Master, Kondukuduru 20, A/J Mukteswar East Godavari District.
6. One copy to Sri. K.S.R. Anjaneyulu, advocate, CAT, Hyd
7. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
8. ~~One copy to Mr. S. Ravindra Reddy, General Secretary, CAT, Hyd.~~
9. One copy to Library, CAT, Hyd.
10. One spare copy.

Rsm/-

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