

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

R.A. 109/93 in OA 1052/91
and O.A. 833/93
with

Dated: 15.10.96

I. R.A. 109/93 in OA 1052/91

1. Union of India
Rep. by Director of Postal
Services,
Abids, Hyderabad.
2. Supdt. of Post Offices,
Peddapally Division,
Karimnagar District.
3. Sub Divisional Inspector
(Postal),
Peddapally, Karimnagar Dt. ... Applicants =

and

1. K. Rajanna
2. G. Sadasiva Reddy .. Respondents

Shri V. Rajeswara Rao, ACGSC .. Counsel for applicants

Shri K. Vasudeva Reddy .. Counsel for respondents

II. O.A. 833/93

Between

K. Rajanna .. Applicant

and

1. Union of India
Rep. by Director of
Postal Services,
Hyderabad Region,
Dak Sadan, Hyderabad.

2. Superintendent of Post Offices
Peddapalli Division,
Karimnagar Dt. .. Respondents

Shri K. Vasudeva Reddy .. Counsel for applicant

Shri V. Rajeswara Rao for .. Counsel for respondents
Shri N.V. Ramana.

CORAM

Hon'ble Shri Justice M.G. Chaudhuri, Vice Chairman

Hon'ble Shri H. Rajendra Prasad, Member (Admn.) *b/m*

judgement the Bench observed as under:

"... It was contended on behalf of the respondents that the appointment order dated 8.4.91 was only on a provisional basis. We have seen the order No. BPM/Telkunta/4-91 dated 8.4.91 issued by the Sub Divisional Inspector. There is no mention whatsoever in that, about the provisional nature of the appointment. Applications were invited before February 1991 and the applicant was one of them. Two months later when he received an order of appointment without any mention about the provisional nature, it has to be construed that the appointment was on a regular basis. On the same day, namely, 8.4.91, by another letter (No. BPM/Telkunta/4-91 the SDIP, Peddapalli has informed the Superintendent of Post Offices that the applicant, the selected candidate had taken over charge of the BPO after verification of the application and certificates. If the Supdt. of Post Office had any intention that the appointment of the applicant should be only on a provisional basis he ought to have interfered immediately on receipt of the letter dated 8.4.91..."

2.1 The judgement is thus seen ^{to} rely heavily on the letter that was supposed to have been issued by R-3 to R-2, a copy of which was annexed to the OA and reproduced in para 1.4 above.

3. In the instant Review Application, the authenticity of that particular document is questioned. The Review Applicants contest the existence of that document and deny that any such letter was at all issued by R-3 at any time. In support of this plea the review applicants have annexed the copy of a hand written statement of Ishtiaq Jaleel who was holding charge of the office of SDI(P) at the relevant time. In it the said official refutes that any such letter was issued by him at any time. The review applicants further argue that, whereas the applicant had produced xerox copies of various documents as Annexures to his OA, the disputed document is only a typed copy of a presumed document which has no foundation in fact.

3.1 The department seeks a review of the judgement passed in OA 1052/91 on the ground that the applicant misled the Tribunal as regards the facts of the case, with the aid of a manufactured document. They also point out that the very fact Rajanna submitted a regular application offering his service for the said post in response to the open notification, would itself go to prove that his initial appointment was purely provisional and that he was, moreover, fully aware of the fact. They complain that the applicant

0
100

from him. Thereupon a letter was issued by the said Respondent to Rajanna that his failure to hand over charge to the selected candidate reflected an improper attitude and conduct. He was instructed to hand over charge to the selected candidate without any further delay or evasion (Annexure at p.20 of the OA).

1.2 The said applicant, Rajanna, instead of complying with these directions, chose to file an OA (No. 1502/91) on 13th November 1991. When the case came up for admission, a notice was ordered to be issued to the respondents and the date of next hearing was fixed for 22.11.91. It was also directed that status quo as on 13.11.91 shall be maintained until the next date of hearing.

1.3 At the next hearing on 22.11.91 a further direction was issued to the effect that the interim orders earlier passed shall continue till further instructions. In the O.A. the applicant claimed that he had been regularly selected since he fulfilled the requirements of age, educational qualifications, income, ownership of property, residence, etc. Based on these arguments the applicant prayed for a direction for setting aside the impugned order (referred to in para 1.1 above) issued by R-2, and to further declare that his appointment was regular and legal.

1.4 In support of his contentions the applicant annexed a document which was purported to be issued by R-3 (Sub Divisional Inspector, Postal), addressed to R-2 (Annexure at p. 19A of the OA). The said letter (No. BPM-Telkunta/4-91 dated 8.4.91) reads in part as follows:

"As per the direction contained in the letter cited under reference Sri V. Venkataiah had been discharged of his duties on the A/N of 4.4.1991 on attaining the age of 65 years and Sri K. Rajanna the selected candidate had been handed over the charge of the B.O. after verification of the application and certificates.

This is for your kind information and ratification."

2. The case was finally disposed of on 21.1.93. The twin reliefs prayed for by the applicant were granted. In their

Ch/ma

and the fact that he was also looking after his own maintenance and well-being, may be considered for appointment. There are several communications on the file which conclusively establish that the initial appointment of Rajanna was on a provisional basis. This had necessarily to be so, since a perusal of the relevant EDAS Service Rules reveals that an elaborate procedure has been laid down for the selection of suitable regular candidates for the post of EDBPMs. These rules would not permit regular appointments of any candidate without completing the prescribed procedures laid down in this regard. The first requirement is to address the Employment Exchange for a list of candidates. The Department has also issued instructions that provisional appointments should not be resorted to as a matter of routine course specially where a vacancy is clearly anticipated or foreseen. In this case the Department did move in the matter sufficiently in advance of the arising of the vacancy. The delay which occurred was owing to the fact that the Employment Exchange failed to furnish any list, necessitating the issue of an open notification. A ^{set of} whole procedures for the scrutiny of applications and verification of documents is prescribed before anyone can be selected. The applicant could not have been appointed on a regular basis without these procedures being completed. The claim of the applicant that he was regularly selected in the very first instance cannot, therefore, be accepted. The finding and direction of the Tribunal in OA 1052/91 was based on a document produced by the applicant to the effect that his appointment was *ab initio* regular. This document was subsequently proved to be fraudulent. This fact, of course, was not known at that time to this Bench. The fact that the document was a forged one came to light only subsequently.

7. Without going into needless details it would be sufficient to observe that production of a fake document with a view to obtaining undue benefits is an offence, entirely unbecoming of any person aspiring to secure an appointment under the Government. Inasmuch as the Tribunal was misled into arriving at a finding on

Q/SY

was seeking merely to convert his provisional appointment into a regular one on false pretences and forged documents.

4. The applicant Rajanna makes a laboured attempt in his counter affidavit to the R.A., wherein he tries to pick holes in the statement of the SDI(P) (R-3) annexed by the review applicants in the R.A. The entire thrust of the rejoinder is that this Tribunal's judgement was passed after a careful scrutiny of all relevant documents and facts and these do not call for any modification and that the R.A. should be dismissed.

5. The same applicant, Rajanna, who had been continuing as EDBPM on the strength of the judgement referred to above, was served with notice of termination of his services on 24.6.93. The action of the respondents is challenged in OA 833/93. The impugned order in this OA is Memo No. 13/2/TLIK/93 dated 24.6.93 issued by Supdt. of Post Offices. It is an order of termination of services of the applicant under Rule 6 of the P&T EDAs (Conduct and Service) Rules, 1964, with immediate effect. In lieu of a month's notice required for the contemplated termination of services, a month's basic and dearness allowances were remitted to the applicant.

5.1 The applicant attacks this order on the ground that it is illegal, arbitrary and biased, issued only at the behest of some interested persons. He claims that by the impugned action the Department is merely trying to undo the judgement of the Tribunal passed in OA 1052/91 and to deprive him of the gains and rights conferred by the said judgement. He asserts that payment of a month's wages is not by itself sufficient to terminate the services of a 'regular' employee, a status which, according to him, was conferred by the judgement.

6. From a perusal of the concerned file produced by Respondent-2 it is seen that the initial appointment was apparently in consideration of a representation submitted by the then EDBPM, V. Venkataiah, who requested that Rajanna, being his son-in-law,

Q
W

instances of bad performance of his duties by the applicant. Although he has striven to attribute a motive, viz., undoing the judgement delivered in OA 1052/91, we are inclined to reject this argument. When the orders were passed in OA 1052/91, these were duly complied with by the respondents by retaining him in the post for a considerably long period, even though, it is now revealed, his initial appointment itself was provisional and that he succeeded in obtaining orders in his favour in OA 1052/91 on the strength of certain documents and averments of dubious value. If the respondents have felt compelled to initiate a separate and altogether different action against the applicant under the relevant provisions of EDA (D&S) Rules, it was entirely owing to a different set of circumstances necessitating such action. This cannot be termed as a back-door or clandestine attempt to unsettle the judgement of this Tribunal in the earlier OA. The two cases and causes of action are unconnected and have no visible nexus between them.

11. The applicant has made certain tepid and half-hearted attempts to question the validity of Rule 6 of EDA (C&S) Rules. We do not propose to go into this question based on certain passing observations advanced in context of the applicant's self-serving arguments. The vires of any particular rule has to be challenged in a methodical, pointed and meaningful manner in order to enable a proper and indepth judicial scrutiny. Such scrutiny cannot be attempted based merely on certain casual opinions and incidental observations. We are also of the view that as long as the impugned rule continues to be retained in tact, the circumstances of each case have to be examined in relation to the applicability, or otherwise, of the said rule. In the instant case, we are satisfied that the invocation of the rule, as it now stands, was justified by the background of the circumstances which called for the impugned action.

Q/
1/14

the strength of such imaginary document, the request made by the review applicants, i.e., the Departmental respondents for the review of the judgement is justified.

8. As regards the facts of OA 833/93, it is submitted by the respondents that action had to be taken under Rule 6 of EDA (Conduct and Service) Rules owing to the fact that the applicant was seen to have been committed numerous irregularities like, for example, shortage of cash and stamps, delayed payment of money orders, non-submission of monthly statements of EHO for long periods, failure to account for unpaid postal articles, non-collection of default fee in recurring deposit accounts, etc.

8.1 It is contended by the applicant that enquiries were conducted behind his back and therefore he had no opportunity of explaining facts on all these allegations.

8.2 As against this, the respondents reveal that enquiry into the irregularities noticed in the functioning of the post Office, owing to the unsatisfactory performance of duties of the applicant, was fully within his knowledge and carried out with his participation. It is stated that the applicant at one stage also recorded his statement during the course of enquiry.

8.3 Based on their respective arguments, the applicant challenges the termination of his services under Rule 6 of the EDAs (Conduct and Service) Rules, and the respondents, on the other hand, insist that they are within their rights to terminate the services of the applicant owing to his unsatisfactory work.

9. No interim orders restraining the operation of the termination orders were passed and it is disclosed that the impugned order in OA 833/93 has since taken effect and the applicant has since been replaced by another regularly selected candidate.

10. From the details of the facts revealed in OA 833/93 it is seen that the action taken against the applicant under Rule 6 of EDAs (Conduct and Service) Rules was owing to repeated

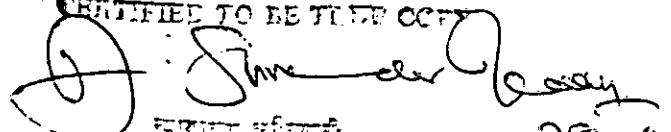
Q.W.M.

12. In the result, we are not inclined to intercede on behalf of the applicant in this case (OA.833/93). The case lacks merit and needs to be disallowed. It is accordingly disallowed.

13. In view of the fact that we have disallowed OA 833/93, it is no longer necessary to pass any orders on RA 109/93 since the official has ceased to be in service and the same has now been upheld while disposing of OA 833/93 in terms of the order passed in para 12 above. The RA is, therefore, disposed of with no orders after noting the contentions of the review applicants and the respondents therein.

ORDER

- (i) O.A. 833/93 is disallowed.
- (ii) R.A. 109/93 in OA 1052/91 is disposed of with no orders thereon.
- (iii) No order as to costs.

દાખલ પત્ર
CERTIFIED TO BE TRUE COPY

 દાખલ અધિકારી
 COUNTY OFFICER
 રાજ્ય અધિકારી, હૈડરાબાદ
 Central Administrative Tribunal
 રાજ્ય અધિકારી
 HYDERABAD BENCH

28/1/96