

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A.1021/96

Date of decision: 8.9.1998

Between:

Pattan Abdul Azad Khan

.. Applicant

AND

1. Union of India,
rep. by
Chief Post Master General,
Andhra Pradesh Postal Circle,
Hyderabad.
 2. The Post Master General,
Kurnool Region,
Kurnool.
 3. The Superintendent of Post Office,
Nandyal Postal Division,
Nandyal.
 4. The Sub Divisional Inspector of
Post Offices, Giddalur Sub Division,
Giddalur.
- .. Respondents

Counsel for the applicant: Mr. K.S.R. Anjaneyulu

Counsel for the respondents: Mr. N.R. Devraj

Coram:

Hon'ble Mr. Justice D.H. Nasir, Vice-Chairman

Hon'ble Mr. H. Rajendra Prasad, Member (A) Q. ~~10~~

..2/-

O.A. 1021/96

Date of decision:

JUDGMENT

(Per Hon'ble Mr. H. Rajendra Prasad, M(A))

The post of ED Packer fell vacant at Racherla Sub Post Office due to the resignation of the incumbent on promotion to a departmental post and an eligible person was appointed temporarily to fill the vacancy on a provisional basis which had suddenly arisen thus. The Employment Exchange was addressed thereafter, as per the usual procedure, to sponsor the names of suitable candidates for the said post. Twenty names were sponsored. None was found eligible. An open notification was therefore issued later inviting applications for the post. Nine applications were received in response to it. The certificates/documents submitted by the candidates were verified in the normal course and the applicant was duly selected for the post on 1-8-1996. It is stated that on receipt of a complaint alleging certain irregularities in the selection, a phone message was sent to the appointing authority, i.e., Respondent No.4, (SDIP, Giddalur) not to proceed with the selection. The selection had, however, been finalised by then. The said respondent (SDIP, Giddalur) thereupon issued the impugned order cancelling the earlier selection of the applicant. The cancellation, which is at Annexure-1 (page-7) is the order impugned in this OA.

2. The reason for the cancellation, as given in the impugned order, was that the post was to be filled by an EDSV who was expected to be thrown-out; a letter from Supdt. of Post Office, Nandyal (R.No.3)



was cited as the authority and basis for the impugned action.

3. The applicant is aggrieved by the cancellation of his appointment which had been made on a regular basis. On his representations submitted to Respondent No.1 and 2 eliciting no response, the applicant has filed this OA with a prayer to declare the impugned order as unlawful and further to direct the Respondents to reinstate him to the post of ED Packer from which he was arbitrarily removed.

4. The grounds on which the applicant bases his claim and prayers are as under :

- (a) his selection was cancelled on account of an intervention by Respondent No.3 which is impermissible under the law;
- (b) the impugned cancellation was resorted to without prior notice which is in violation of the principles of natural justice;
- (c) Respondent No.3 was not correct in directing Respondent No.4 to cancel an appointment which had been duly made with regard to rules and approved procedures;
- (d) the services of a regularly selected candidate i.e., the applicant, were then replaced by a provisionally selected candidate, from whom he had earlier taken charge of the post on being regularly and properly selected;
- (e) the reason given for the cancellation of the selection, i.e., to accommodate an EDSV who was expected to be thrown-out at some future date was inadmissible. Even if such a person had to be accommodated, there were several other

[Handwritten signature]

vacant posts in the division available for the purpose elsewhere and there was no particular reason why he alone should have been picked-up for this harsh treatment despite his having been selected on a regular basis.

5. The Respondents state that there were complaints (from a service union, and by the provisionally-selected candidate who had preceded the applicant in the said post) alleging certain irregularities. They do not, however, state categorically that this alone was the reason for ordering the cancellation of the selection made earlier. The reasons, as stated by the Respondents, is that the ^{provision of} Government instructions regarding adequate minimum representation of SC/ST candidates in the appointments to EDA cadre were not followed in the present case by Respondent No.4. Hence the ^{telephonic} directions of R-2 to R-4 not to proceed with the selection of any candidate - instructions which, incidentally, reached the latter (Respondent -4) too late, as the selection had already been made by the time the phone message was received by him. It was under these circumstances that R-4 felt obliged to cancel the appointment of the applicant already made. It is further stated that since there was a shortfall of candidates belonging to each of these (SC/ST) communities, the cancellation of applicant's selection became necessary. It is further stated that nowhere was it mentioned the selection of the applicant was being cancelled to accommodate an about-to-be thrown-out EDA and that the allegation of the applicant in this regard is not correct. They maintain that there was nothing unlawful in

Q/

ordering the cancellation of the appointment of the applicant since the same was done in violation of instructions, and that Respondent No.3, being a reviewing and superior authority to R4(appointing authority), necessary directions was issued by him on valid grounds. It is added that the appointment of applicant was in any case purely provisional, being subject to the verification of his character and antecedents. It is finally stated that the services of EDAs possessing less than three years clear and continuous service can indeed be terminated without notice as per Rule-6 of P&T ED Agents (C&S) Rules, 1964.

6. In a rejoinder to the counter-affidavit the applicant contends that: the plea of shortfall of SC/ST candidates is a mere after-thought since the notification itself did not contain any indication that the post was earmarked for those communities; the so-called complaints of irregularities in selection were untenable and any intervention in such circumstances by Respondent No.3 was totally uncalled for and impermissible without ^{an} inquiry into such vague allegations; moreover his appointment was not in any sense provisional but entirely regular and the appointment order itself contained no indication to the effect that his was a provisional selection and/or appointment.

7. The facts have been examined. The contention of the applicant that the cancellation of his appointment was due to the intervention and directions from Respondent No.3 is not denied by the Respondents and should therefore be held to be correct, as incidentally revealed

by the counter-affidavit itself. The settled legal position in this regard is that, as per the provisions of P&T ED Agents (C&S) Rules, 1964, Respondent No.3 has no jurisdiction to intervene, alter, modify, cancel or even to review the appointments made by a subordinate authority. Such intervention, where made, has, therefore, to be held as impermissible until a suitable and valid provision is made in the relevant rules investing the Divisional Superintendents and officers of higher rank/status/grade with necessary authority duly empowering them to intervene in cases of irregularities committed by the subordinate appointing authorities. The plea regarding shortfall of SC/ST cannot also be accepted in the present instance because the notification issued in this connection did not have any indication of such a shortfall nor was the post earmarked for the reserved groups. While this is so, the impugned order contained a clear indication that the appointment of the applicant was being cancelled in order to accommodate an EDS who was expected to be retrenched shortly. In such a context of facts, the stand of the Respondents taken in the counter-affidavit that the allegation of the applicant in this connection was not correct, cannot be accepted. Similarly, the stand of the Respondents that the applicant's selection and appointment was provisional is not borne out or supported by any evidence or document. On the contrary, the appointment order of the applicant bears a clear indication that he was regularly selected for the post. The contention of the Respondents that the appointment remains provisional

until the verification of character and antecedents is completed is also not reinforced by any supporting evidence since no appointment could have been made on regular basis as was done in this case, until such verification was duly made, - if that in fact was the rigid requirement of the rules and procedures. And, lastly, the assertion that the services of any EDA of less than 3 years' standing can be terminated without notice is also not accepted. Apart from the fact that, even as per departmental instructions, at least a month's notice is the basic requisite in such cases, the very act of abrupt termination of services without an opportunity being afforded to the affected EDA cannot be but a gross violation of principles of natural justice. This has been the consistent view of the Tribunal in all such cases in the past and continues to be so.

8. Thus, on facts as well as on merits the impugned order cannot be sustained in any view of the matter. The impugned action and directions of Respondent No.2 leading to the issue of the termination order are held to be arbitrary and unlawful. The impugned order is, therefore, hereby set aside with a direction to Respondent No.4 to restore the applicant to the post to which he was originally selected, unless the applicant has rendered himself ineligible to hold the post during the intervening period.

9. Before we part with this case, it would be necessary to highlight the apparently uneven and objectionable conduct of R-4 in the whole episode. While the correctness or otherwise of the complaints of nepotism against him in the matter of selection to the post in question are a matter entirely of concern and discretion of Respondents 1 to 3, it has not escaped the attention of this Tribunal that the

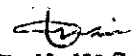
said Respondent i.e. R.No.4, may have been guilty of misrepresentation of facts while issuing the impugned order. The sentence:

"The appointment of Shri Abdul Azad Khan as ED Packer Racherla SO..... has been cancelled as the post is to be filled by the expecting throw-out candidate of EDSV Giddalur..."

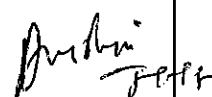
is totally at variance with the officially stated view contained in paras 6 & 7 of the counter-affidavit. The distortion by itself ought to deserve attention of Respondent No.2 with a view to determining the culpability of Respondent No.4 in this regard.

10. Thus the OA is disposed of.


(H. RAJENDRA PRASAD)
Member (A)


(D.H. NASIR)
Vice-Chairman

MD


Deputy Registrar

O.A.1021/96

To

1. The Chief Postmaster General, Union of India,
A.P.Postal Circle, Hyderabad.
2. The Postmaster General, Kurnool Region,
Kurnool.
3. The Superintendent of Post Office,
Nandyal Postal Division, Nandyal.
4. The Sub Divisional Inspector of Post Offices,
Giddakur Sub Division, Giddalur.
5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
7. One copy to HHRP.M.(A) CAT.Hyd.
8. One copy to DR(A) CAT.Hyd.
9. One spare copy.

pvm

23/9/98

I COURT

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

DATED: 8-9-1998.

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No.

1021/96

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

