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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIFUR BENCH, JAIFUR.

O.A.No.294/93

Dt. of order: 14.9.1995

Kailash Chandra Sharma : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.V.K.Jain : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Kailash Chandra Sharma has prayed that the order dated 15.4.93 (Annex. A-1) passed by respondent No.3 terminating the services of the applicant from the post of Extra Departmental Branch Post Master (EDBPM), Village Sirohi, may be quashed with all consequential benefits. He has also prayed for quashing of order dated 12.4.1993 passed by the respondent No.2 which is the basis of the order passed by the respondent No.3 (Annex.A1).

2. The applicant's case is that in response to an advertisement issued by respondent No.3 for appointment of EDBPM, Sirohi Post Office, 4 names including that of the applicant were forwarded by the Employment Exchange to respondent No.3. The applicant was selected for appointment as EDBPM, Sirohi Post Office, vide order dated 11.2.92 (Annex.A2), passed by respondent No.3. The applicant joined duty on 25.2.92. However, respondent No.3 issued a letter dated 15.4.93 whereby the selection of the applicant on the post of EDBPM was cancelled (Annex.A1). This order was passed by the respondent No.3 in pursuance of the order dated 12.4.93 issued by respondent No.2, which has been filed by the respondents as Annex.1. No reasons have been mentioned in the order

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cancelling the applicant's selection. A copy of the letter dated 12.4.93 was also not made available to the applicant. The action of the respondents in issuing order dated 15.4.93 is illegal and against the principles of natural justice, as no opportunity of being heard was granted to the applicant and no notice was issued to him prior to the passing of the impugned order. The applicant was the most meritorious amongst the persons whose names were forwarded by the Employment Exchange to the department for selection.

3. The respondents in their reply have stated that on receipt of a complaint about the appointment of the applicant in an illegal manner by the respondent No.3, an enquiry was conducted and the result of the enquiry revealed that the applicant had indeed been selected in an irregular manner as he did not possess any immovable property in his own name and also that he was studying at Niwai (Tonk District). Accordingly the Post Master General, vide his letter dated 12.4.1993 (Annex. F1) directed cancellation of the appointment of the applicant and initiation of fresh recruitment process. The applicant was aware about the illegality and irregularity of his appointment and therefore, no notice was required to be given to him. Under Rule 6 of the P & T E.D.As (Conduct & Service) Rules, 1964, no notice was required to be issued to him, and the provisions of Sec. 25 F of the Industrial Disputes Act were also not applicable, as contended by the applicant.

4. During the arguments, the learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in The Supdt. of Post Offices Vs. P.K.Rajamma, AIR 1977 SC 1677, wherein the Hon'ble Supreme Court held that an Extra Departmental Postal Agent holds civil post and his removal from service without complying with the provisions of Article 311(2) is illegal. He also drew our attention to the provisions of circular letter dated 9.8.1962 issued by the

DGP&T, as reproduced at page 61 of the Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department 5th Edition 1992, wherein it has been stated that verification about the qualifications of Extra Departmental Agent should be carried out before ordering appointment and not after appointment. He therefore argued that whatever verification was required had been carried out before the applicant's appointment was ordered as EDBPM on a regular basis and therefore, there was no scope for cancellation of the said order of appointment subsequently.

5. The learned counsel for the respondents cited the judgment of the Bangalore Bench of the Tribunal in Doddasiddaiah Vs. Union of India & Ors. 1993 (6) SLR 474 wherein the Tribunal held that termination of an irregular appointment of an Extra Departmental Postal Agent under Rule 6 of the aforesaid Rules, without assigning any reasons was justified. In the said judgment the Tribunal further held that no notice was required to be issued before terminating such service. He next cited the judgment of the Chandigarh Bench of the Tribunal in Ram Dhulari Vs. Union of India & Ors. (1995) 30 ATC 354, wherein the Tribunal held that termination of an Extra Departmental Postal Agent under Rule 6 of the aforesaid Rules on the ground that she did not possess prescribed educational qualifications, when there was no specific order relaxing condition of educational qualifications in the applicant's favour, was justified. The reliance placed here was on unamended Rule 6 which has subsequently been amended to provide for issue of one month's notice before terminating such an appointment. He finally cited the judgment of Ernakulam Bench of the Tribunal in P.K. Vijayan Nair & Ors. Vs. Asstt. Supdt. of Post Offices & Ors, (1995) 29 ATC 414, wherein the Tribunal held that the

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provisions of Industrial Disputes Act, 1947 are not applicable to Govt. servants governed by Article 309 of the Constitution or the Rules framed thereunder. He, therefore, stated that the respondents were fully justified in terminating the services of the applicant, because his appointment was irregular in as much as he did not possess any property in his name, as stated in Anxx.R1 dated 12.4.1993.

6. We have heard the learned counsel for the parties, have gone through the material on record including the rejoinder filed by the applicant and the judgments cited before us. In this case, the Tribunal had granted an interim stay against operation of order Anxx.Al dated 15.4.93 on 21.5.93 and the said stay is still in operation and the applicant is continuing functioning as EDEPM in pursuance of the said stay order. The reasons given in Anxx.R1, which is the basis of the termination of service of the applicant is, that the applicant does not possess any immovable property in his own name and that he was studying at Niwai, a place other than the place where he had been appointed as EDEPM. The method of recruitment of Extra Departmental Postal Agents is prescribed in Sec.III, "Method of Recruitment". Under the heading "3. Income and ownership of property:" it is stated that

"The person who takes over the agency (ED SPM/ED BPM) must be one who has an adequate means of livelihood. The person selected for the post of ED SPM/ED BPM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business premises, such as shops, etc., may be preferred)." The qualification prescribed under this head requires that the person concerned should have adequate means of livelihood and should be able to offer space for the postal operations. There is a further requirement that the premises should be such as

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will serve as a small postal office with provision for installation of even a PCO. Now it is not on the specific ground that the applicant did not have any adequate means of livelihood that his services were to be terminated. It is not disputed by the respondents that there was property in the name of the applicant's father in the village in which the Post Office was opened. Those premises were offered for the operations of the Post Office and the Post Office is functioning from those premises. The learned counsel for the respondents argued that the requirement of adequate means of livelihood implies that the applicant should himself have sufficient property in the village concerned before his appointment. Then only can he be said to have adequate means of livelihood. In our view this is stretching the matter too far. We have first to look at what is contained in the above provision and what are the reasons given in the order which is the foundation or the basis for termination of the applicant's service. All that is mentioned in the order Annex. Pl, which is the basis for ordering termination is that the applicant did not own immovable property in his own name and that he had been studying at Niwai, which is another place. Studying at another place is not a disqualification for appointment as EDBPM. There is no specific, clear and categorical requirement in the provisions reproduced above that the applicant must necessarily possess property in his own name. We cannot link the means of livelihood with possession of property when no such linkage has been established in the Rules and perhaps cannot be established even otherwise, because a person may possess means of livelihood without owning any property. All that was required was that the applicant should be able to offer premises for running the Post Office which he did with the aid of property owned by his father, which fact is

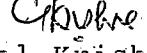
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undisputed. In these circumstances, in our view the ground on which the applicant's services had been terminated after he had been offered appointment on regular basis are not tenable. Various judgments cited by the counsel for the parties will, therefore, in our view have no applicability to the present case, which can be decided on its own peculiar facts.

7. In the circumstances, we quash Annex.A1 dated 15.4.1993 and Annex.P1 dated 12.4.1993 in so far as these relate to the cancellation of the appointment of the applicant to the post of EDBPM, Village Sirohi Post Office. The O.A. is allowed. There shall be no order as to costs.


(O.P. Sharma)

Member (Adm)


(Gopal Krishna)

Vice Chairman.