

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 1.3.2001

OA 7/2000

Radha Mohan Sharma, EDMC/EDDA, EDBO Jagar, Tehsil Hindaun City, Distt. Karauli (Rajasthan).

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Supdt. of Post Offices, Sawai Madhopur Postal Division, Sawai Madhopur.
4. Sub Divisional Inspector (Postal), Hindaun City (Rajasthan).

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.C.B.Sharma

For the Respondents ... Mr.Hemant Gupta, proxy counsel
for Mr.M.Rafiq

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, applicant makes a prayer to quash and set aside the notice dated 8.12.99 (Ann.A/1) and to direct the respondents not to harass the applicant by reopening his case.

2. In brief, case of the applicant is that he is a duly selected candidate on the post of EDMC/EDDA, Jagar EDBPO, District Sawai Madhopur, in pursuant of advertisement dated 16.6.99, and after selection he was appointed on the post and joined his duty on 26.7.99. It is stated that the applicant is performing his duties with the entire satisfaction of the respondents without any complaint since then. But suddenly without any proper reason a show-cause notice was issued to the applicant on the direction of the

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Superintendent of Post Offices, Sawai Madhopur Division, vide impugned letter dated 8.12.99 for terminating the services of the applicant on expiry of the period of notice. It is stated that the notice contains the ground that the higher authority has found the selection of the applicant as irregular. Therefore, it is stated that on the direction of the higher authority, notice to terminate the services of the applicant is arbitrary, illegal, unjustified and against rules and regulations and the same has been issued malafidely harassing the applicant. Therefore, the applicant has filed this OA for the relief as above.

3. Reply was filed. In the reply it is stated that under Rule-6 of the EDA (Conduct & Service) Rules, 1964, the services of an employee, who has not already rendered more than three years continuous service from the date of appointment, can be terminated at any time by a notice in writing given by the appointing authority. Selection of the applicant was found irregular, therefore, notice to show-cause was given to him and the applicant has come before this Tribunal without availing the remedies available to him under the Act. Therefore, the applicant is not entitled to any relief sought for.

4. Rejoinder has also been filed, which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. Learned counsel for the applicant submits that the notice (Ann.A/1) makes it abundantly clear that it has been issued by the Sub Divisional Inspector (Postal), Hindaun, at the direction of Superintendent of Post Offices, Sawai Madhopur. Therefore, case of the applicant is squarely covered by the orders passed by this Tribunal in OA 268/99, Surendra Singh v. Union of India & Ors., and OA 280/99, Jitendra Kumar Bhargava v. Union of India & Ors.

7. Admittedly, the notice was given to the applicant at the instance/direction of the Superintendent of Post Offices, Sawai Madhopur, which makes it clear that services ,

of the applicant shall stand terminated after 30 days from the date of notice. In Vikram Kumar v. Union of India & Ors, (1990) 14 ATC 367, Patna Bench of the CAT held that power of review in case of appointment is not possessed by higher authority than the appointing authority. In Anirudh Singhji Karshinji Jadeja v. State of Gujarat, (1995) 5 SCC 302, it was held that higher authority has no power to review the appointment of an ED employee. In Tilak Dhari Yadav v. Union of India & Ors, Full Bench of Allahabad CAT took the same view that higher authority has no power to review the appointment order of an ED employee. In Sura Kumar Mohanty v. Union of India & Ors, 2001 (1) ATJ Vol.33 161, Cuttack Bench of the CAT held that termination of service of an EDA under Rule-6 of the Rules cannot be ordered by an appointing authority at the behest or direction of his superior authority. It was also ordered by that Bench that the applicant therein would be entitled to reinstatement and the entire period from the date of termination be treated as duty with all consequential service and financial benefits.

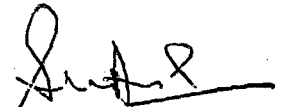
8. In view of the settled legal position and facts and circumstances of this case, we are of the considered opinion that the impugned notice dated 8.12.99 (Ann.A/1) is contrary to law and, therefore, liable to be quashed.

9. We, therefore, allow this OA and quash the impugned notice dated 8.12.99 (Ann.A/1). No order as to costs.



(N.P. NAWANI)

MEMBER (A)



(S.K. AGARWAL)

MEMBER (J)