

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.137/98

Date of order: 27/4/1998

Naresh Kumar Saini, S/o Rameshwarlal, R/o village & Post  
Chhoti Belod, Distt.Sikar, working as EDBPM, Chhoti Balod.

...Applicant.

Vs.

1. Union of India through the Secretary, Deptt.of Posts,  
Min. of Communications, New Delhi.
2. Postmaster General Rajasthan Western Region, Jodhpur.
3. Director Postal Services Rajasthan Western Region, Jodhpur.
4. Supdt.of Post Offices, Sikar Division, Sikar.

...Respondents.

Mr.K.L.Thawani - Counsel for the applicant

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

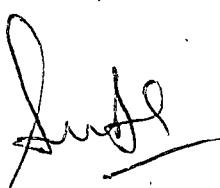
PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant has challenged the show cause notice, Anxx.A1 and prayed to quash and set aside the show cause notice being illegal, unconstitutional and capricious.

2. Facts of the case as stated by the applicant are that he is a duly selected candidate on regular basis for the post of EDBPM Chhoti Balod in pursuance of public notice issued by respondent No.4 on 24.7.95 and was appointed on the post of EDBPM vide office order dated 28.2.96. Since then he is working on the post satisfactorily but all of a sudden, respondent No.4 issued the impugned show cause notice on the ground that (i) the applicant does not reside in village Chhoti Balodi and (ii) the applicant has no independent source of income. It is stated by the applicant that both these allegations are false. It is further stated that notice to show cause for termination of the services of the applicant was issued without any basis and if any enquiry has been behind the back of the applicant, he is not bound by such enquiry. It is also stated that he was not given any opportunity to show cause before issuing such notice, therefore, the impugned notice at Anxx.A1 is illegal and in violation of Article 311(2) of the Constitution of India and liable to be quashed. Therefore, the applicant has filed this O.A for the relief as mentioned above.

3. This Tribunal after filing the C.A issued interim order on 21.4.98 which is reproduced below:

In view of this, a short notice Dasti be issued to respondents Nos.2,3 & 4 returnable on 5.5.98, till then



the impugned order dated 24.3.98 shall remain inoperative. and the interim order was continuously extended from time to time.

3. Reply was filed. It is stated in the reply that the applicant did not submit the certificate of income and property in his own name as contained in D.G Posts letter dated 6.12.93 but only submitted a 'Hassiat Certificate'. It is also stated that the applicant has not taken his residence in the village Chhoti Balodi where the post office is situated but he was participating his father's Grocery shop at Mandawa village. Therefore, notice to show cause was issued to the applicant before terminating his services under Rule 6 of the E.D Agents (Conduct & Service) Rules, 1964. It is further stated that there is no provision in these rules to provide an opportunity to show cause before issuing the notice of termination. Therefore, the applicant has no case and this O.A. is devoid of any merits is liable to be dismissed.

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

5. The first ground in the impugned notice at Anxx.A1 is that the applicant does not reside in village Chhoti Balodi where the Post Office is situated. Rule 3. of the E.D Recruitment Rules provides 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 small postal office with provision for installation of even a PCO (Business premises, such as shops, etc may be preferred).

6. According to the rules framed for recruitment of ED Agents, it is apparently clear that there is no requirement for ED Agents/ED BPM to be a resident of the locality where the Post Office is situated. What is required is that the person selected for the post of EDBPM/ED Agents must be able to offer space to serve as the agency premises for postal operation. The premises must be such as will serve as small postal office with provision for installation of even a PCO. In the way the person who takes offer as EDBPM/ED Agents must be one who has an adequate means of livelihood. In the instant case, the applicant has filed Hassiat certificate which reveals that the applicant was having adequate means of livelihood. Therefore, on these two counts, the appointment of the applicant cannot be held to be irregular and notice issued by respondent No.4 terminating the services of the applicant appears to be without any basis.

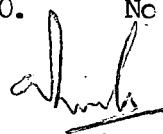
7. Ordinarily, a show cause notice would not be entertained

in Writ Petition/O.A as the person can challenge the order passed by the departmental authorities after considering the explanation of the applicant. but in the instant case, the applicant has approached this Tribunal to avert an impending termination from service. If, the respondents as proposed would terminate the services of the applicant, the applicant would have to remain unemployed and fight the litigation.

9. In view of the above legal position and facts and circumstances of the case, we are of the considered opinion that the impugned notice to the show cause issued to the applicant is without any basis and liable to be quashed.

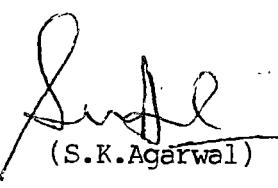
9. We, therefore, allow the O.A and quash the impugned notice at Annx.A1.

10. No order as to costs.



(N.P. Nawani)

Member (A).



(S.K. Agarwal)

Member (J).