

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 14 September, 2001

OA No.207/1999

OA No. 263/2001 with MA No.225/2001

Kailash Chand Sharma s/o Shri Johri Lal Sharma r/o village and post  
Angai, District Dholpur.

..Applicant

Versus

1. Union of India through the Secretary, Department of  
Posts, Ministry of Communications, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Dholpur Division,  
Dholpur
4. Inspector, Post Office, Bari, Dholpur

.. Respondents

Mr. Manish Bhandari & Mr P.N.Jati, counsel for the applicant

Mr. Bhanwar Bagri and Mr. B.N.Sandu, counsel for the respondents

CORAM:

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

Hon'ble Mr.S.A.T.Rizvi, Administrative Member

ORDER

Per Hon'ble Mr. S.A.T.Rizvi, Administrative Member

Both these OAs have been filed by one and the same person namely Shri Kailash Chandra Sharma s/o Shri Johri Lal Sharma and in respect of the same post of Extra Departmental Branch Post Master (EDBPM), Angai, District Dholpur. Further, similar issues have been raised in both these OAs. Accordingly, we take up these two OAs together for passing this common order.

2. OA No.207/99 seeks to impugn the respondents' letter dated 20.4.1999 (Ann.A1) by which a public notice has been issued

inviting applications from eligible persons for appointment in the post of EDBPM, Angai, indicating therein that the post stands reserved for Scheduled Tribes (ST) community candidate.

3. OA No.263/2001 seeks to impugn, on the other hand, the respondents' order dated 18.6.2001 (Ann.A1) by which the applicant's service as provisional EDBPM, Angai has been terminated by giving one month's notice.

4. The relevant facts of these OAs, briefly stated, are that another Shri K.C.Sharma s/o Shri Ram Gopal who stood regularly appointed on the post of EDBPM, Angai and had been working as such, was found guilty of fraud etc. and accordingly he was removed from service by the respondents. Since making of a regular appointment in place of the aforesaid Shri K.C.Sharma s/o Shri Ram Gopal was to take sometime, the respondents proceeded to appoint Shri K.C.Sharma s/o Shri Johri Lal, who is the applicant in these OAs, as EDBPM, Angai on provisional basis. Pending appointment of a regular EDBPM, the applicant's appointment as provisional EDBPM was continued from time to time. The applicant is still continuing as provisional EDBPM by virtue of an interim order of stay granted by this Tribunal on 1.6.99 in OA No. 207/99. It appears that on account of continuance of the said stay order the respondents have not proceeded to go through the motions for appointment of a regular EDBPM for Angai. Meanwhile, the aforesaid Shri K.C.Sharma s/o Shri Ram Gopal, who had been removed from service, has been exonerated by the competent court of criminal jurisdiction by its order dated 19th May, 2000 (Ann.R2), in consequence of which the respondent authority decided to initiate disciplinary proceedings against him de-novo by their order dated 5th June, 2000 (Ann.R3). <sup>In due course</sup> ~~At the same time~~, the aforesaid Shri K.C.Sharma s/o Shri Ram Gopal was required to be reinstated in the same post of

EDBPM, Angai. It appears that the applicant in the present OAs, who had been continuing as provisional EDBPM on the strength of the aforesaid stay order, refused to vacate the post, thus, compelling the respondent authority to make arrangements for a parallel Branch Post Office at Angai to be run by the aforesaid Shri K.C.Sharma s/o Shri Ram Gopal (Ann.R7). The present status, therefore, is that while the applicant in the present OAs continues to work as provisional EDBPM, Angai, the aforesaid Shri K.C.Sharma s/o Shri Ram Gopal is running a parallel Branch Post Office at the same place in accordance with the arrangements made by the respondent authorities.

5. The ground taken by the applicant is that since he had been continuing as provisional EDBPM and his work and conduct had been satisfactory, there was no basis for issuing the public notice dated 20th April, 1999. He is also aggrieved by the post of EDBPM, Angai being declared as reserved for ST community candidate by the aforesaid public notice dated 20th April, 1999. Insofar as the reservation of the aforesaid post is concerned, the applicant has proposed to place reliance on certain judgments rendered by the Supreme Court by holding that <sup>a</sup>single vacancy cannot be treated as reserved. The citations etc. of the aforesaid Supreme Court judgment has not been given, however. Insofar as, termination of his services by the impugned order dated 18th June, 2001 is concerned, the contention raised on behalf of the applicant is that since he has served as EDBPM for more than 3 years, his services could not be terminated by applying the provisions of Rule 8(2) of the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001 (for short, Rules of 2001). According to him, under the proviso to the aforesaid rule the services of only those EDBPMs could be terminated who had served for less than 3 years.

6. We have considered the pleadings of the parties placed

on record and have heard the learned counsel on either side at length and find no merit in the present OAs.

7. The applicant was appointed as provisional EDBPM w.e.f. 8.10.1997 by a letter which clearly stated that his appointment was provisional and it is made as a stop gap arrangement until the appointment of a regular EDBPM. On being appointed as such the applicant gave a written undertaking (Ann.R1) to the effect that he will have no objection in handing over the charge of the post to anyone who is regularly appointed as EDBPM, Angai nor will he prefer any claim for the said post. The conditions stipulated in the letters of his appointment together with the written undertaking he has given make it abundantly clear that the applicant has no legal right to stand in the way of anyone who is appointed by the respondents as EDBPM, Angai on a regular basis. We also find that the applicant has been appointed as provisional EDBPM not by one single letter, but by several letters issued from time to time, each stipulating <sup>u</sup>limited period for which he was allowed to work as a provisional EDBPM. Each such letter of appointment also contained a condition to the effect that the provisional appointment given to him could be terminated at any time without notice. In view of tacit <sup>\* acceptance \*</sup> of this condition as well by the applicant, the respondent authority was, according to us, well within his rights to terminate the applicant's services as provisional EDBPM even <sup>\* when \*</sup> ~~then~~ someone, other than a regular appointee, appointed in consequence of the aforesaid public notice dated 20th April, 1999, was to take the place of the applicant. In the circumstances of this case, what had happened is that before the respondents could conclude the proceedings initiated by them for inducting a regular EDBPM, they have been required, in consequence of the aforesaid order passed by the court of competent criminal jurisdiction, to reinstall the aforesaid Shri K.C.Sharma s/o Shri Ram Gopal as EDBPM, Angari. This is what

precisely has happened and, as stated, due to the applicant's continuance as provisional EDBPM by virtue of this Tribunal's <sup>stay</sup> order, the respondents have had to arrange for a parallel Branch Post Office at Angai for relocating/reinstating the aforesaid Shri K.C.Sharma s/o Shri Ram Gopal.

8. The applicant's submission that his services could not be terminated under the proviso to rule 8(2) of the Rules of 2001 is also, in our view, without any substance. The aforesaid rule 8(2) would apply, in our judgment, only to those who have been regularly appointed as EDBPM. For reaching this conclusion, we have placed reliance on the definition of term "sevak" given in the Rules of 2001. The term "Sevak", according to the definition given in Rule 3(i) of the aforesaid rules, mean a person working as a Gramin Dak Sevak and as per <sup>the</sup> provisions of aforesaid rule 3(c), the term "Gramin Dak Sevak" means a Gramin Dak Sevak Sub Postmaster etc. etc. Note: I placed in the aforesaid Rules below rule 3(j) further provides as follows:-

"The persons holding the post of Extra-Departmental Agents under the Posts at Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 on regular basis on the date of commencement of these rules shall be deemed to have been appointed to and hold the posts of Gramin Dak Sevaks in accordance with the provisions of these rules."

The applicant, having been only provisionally appointed as EDBPM before the aforesaid Rules of 2001 came into force, and can, therefore, be not treated as Gramin Dak Sevak and he cannot be deemed to have been appointed to hold the post of Gramin Dak Sevak. Not being a regular Gramin Dak Sevak, his services could not be terminated by

passing an order under the proviso to rule 8 of the aforesaid Rules of 2001. The respondents have, in our view, incorrectly proceeded to terminate the applicant's services by their order of 18.6.2001 by invoking the provisions of rule 8 of the aforesaid Rules of 2001. The applicant's services could have been terminated, on the other hand, by orders simpliciter passed in terms of the appointment letters issued to him from time to time. The respondents' failure to terminate the applicant's services in a proper manner cannot, however, bestow on him any right to continue to hold the post of EDBPM, even on a provisional basis. He has been continuing after 1.6.99 not under the authority of the respondents, but by virtue of the orders of this Tribunal. His further continuance as provisional EDBPM will, therefore, depend on the orders to be passed by this Tribunal in this case, irrespective of the illegality or otherwise of the action taken by the respondent authority by terminating his services by invoking the rule 8 of the aforesaid Rules of 2001. In the peculiar circumstances aforesaid, it is as if the impugned order dated 18.6.2001 has failed to take effect and there is no need, therefore for us to get involved with issues concerning its legality and to render a decision thereon. This matter is thus left as it is and we revert in the following to other issues.

9. Another contention raised on behalf of the applicant is, with regard to reservation of the post of EDBPM, Angai, which, according to the applicant, has taken away his right to be considered for appointment as EDBPM, Angai on a regular basis. We have considered this issue in the background of the stand taken by the respondents, who in turn have relied on the policy circular issued by the respondent authority on 27.11.1997 (Ann.R2). The aforesaid policy circular make, inter alia, following provisions:-

"Firm decision should be taken before-hand whether the post falling vacant is to be filled up by a reserved

category candidate and if so a specific mention to this effect and the particulars of the community should be made in the notification while notifying the vacancy to the Employment Exchange or calling for applications from the open market...."

It is thus clear to us that the respondents do have the authority to reserve the post of EDBPM, Angai or for that matter any other similar post for this or that community in the light of the detailed provisions made in the aforesaid circular of 27.11.1997, which deals with the appointment of candidates belonging to SC, ST, OBC etc. categories on various ED Posts by following the post-based reservation policy laid down by the Government. The contention raised on behalf of the applicant that a single post cannot be reserved cannot find acceptance for the simple reason that reservations are required to be made on the basis of vacancies available in the various recruitment units and not on the basis of a single vacancy arising as in the present case. The respondents have considered the matter in the light of the vacancies available in a recruitment unit and have proceeded to reserve the post of EDBPM located at Angai in favour of ST community candidate. We cannot find fault with the discretion exercised by the respondents authority in this regard.

10. The learned counsel appearing on behalf of applicant has placed before us the provisions made in D.G.P. & T.'s letter dated 18th May, 1979 and circular dated 30th December, 1999 in regard to the provisional appointment of ED Agents. We have perused the same and find that the aforesaid instructions, inter alia, deal with the question of finding alternative employment for the ED Agents who may have continued as a provisional ED Agent for more than 3 years. The applicant in the present OAs was appointed on 8.10.1997. From 1.6.1999

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he has continued under the stay orders passed by this Tribunal and is supposed to be working as provisional EDBPM, even at present. Thus, for one reason or the other, he has succeeded in completing more than 3 years as provisional EDBPM and, therefore, technically speaking he is liable to be considered for alternative employment in accordance with the aforesaid circular instructions. The relevant provision made in the said instructions reads as under:-

"Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than 3 years' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G.P. & T. Letter No. 43-4/77-Pen., dated 23.2.1979".

Since the learned counsel for the applicant has made earnest submissions in this regard, we have after some consideration thought it proper to provide by this order that the applicant will be considered for alternative employment in accordance with the aforesaid provisions.

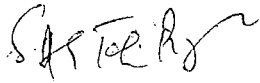
11. In the background of the detailed discussions contained in the preceding paragraphs, we find absolutely no force in any of the pleas advanced on behalf of the applicant and accordingly we are not able to persuade ourselves to grant any relief sought by the applicant. On the question of providing alternative employment, we are, however inclined to direct the respondents to consider the matter in terms of the observations made by us in paragraph No.10. Having

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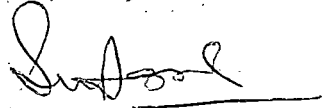
said this, we proceed to dismiss both the OAs with no order as to costs. The ad-interim order in question will stand vacated.

12. In view of the order passed in these OAs, Misc. Application No. 225/2001 stands disposed of.



(S.A.T. RIZVI)

Adm. Member



(S.K. AGARWAL)

Judl. Member