

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.240/99

Date of order: 02.7.2001

Nand Kishore Soni, S/o Sh.Ramji Lal Soni, R/o
Village & Post Khawa Raniji, Jamuwa Ramgarh, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt of India, Deptt of Post, Mini.of Communication, Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Supdt. of Post Offices, Jaipur, Mufussil Postal Division, Jaipur.

...Respondents.

Mr.Sourabh Purohit : Counsel for applicant

Mr.Vijay Singh, Proxy of Mr.Bhanwar Bagri for respondents.

CORAM:

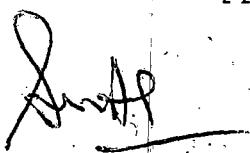
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

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

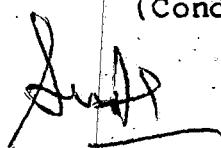
In this O.A, filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order dated 19.4.99 (Annx.A1) and declare the notice dated 30.3.99 as arbitrary and further direct to the respondents to allow the applicant on the post of EDBPM, Khawa Raniji, with all consequential benefits.

2. In brief the case of the applicant as stated by the applicant is that in response to the notification dated 27.10.97 for the post of EDBPM, Khawaraniji, Jaipur, the applicant submitted his application on 17.11.97 alongwith requisite documents. Thereafter, he was selected, approved and appointed for the post by respondent No.3. The applicant



was sent for training. It is stated that a show cause notice was served to the applicant on 30.3.99 and the applicant submitted his representation on 6.4.99 but his services were terminated vide the impugned order dated 19.4.99. It is stated that the order dated 19.4.99 is ex facie illegal, arbitrary and in violation of Articles 14, 16, 21 and 311 of the Constitution as the applicant has not been given any opportunity of placing his defence. It is further stated that the services of the applicant were terminated contrary to the principles of natural justice and in arbitrary manner therefore, the impugned order is liable to be quashed.

3. Reply was filed. In the reply it is stated that the notification dated 27.10.97 makes a mention regarding last date of receipt of the application is 27.11.97 and it was also mentioned in the said advertisement that the applicant should enclose the certificate of income and property held in his own name issued by the competent authority. In pursuance to that advertisement, the applicant submitted his application on 17.11.97 which was without the certificate of income and immovable property issued by the Revenue Authority. Later on the applicant submitted the necessary certificates on 16.12.97 issued by the Tehsildar on 12.12.97 and 15.12.97. Therefore, it is stated that the applicant was inadvertently selected on the post. The irregularity of late submission of the requisite certificates was detected by the competent reviewing authority and in order to rectify this irregularity, a show cause notice was served upon the applicant on 30.3.99 and after considering the representation of the applicant, the services of the applicant were terminated under Rule 6 of the ED Agents (Conduct & Service) Rules, 1964. Therefore, it is stated



that the impugned order is perfectly in order and legal and the applicant cannot claim any right to take him back in service.

4. Rejoinder has also been filed reiterating the facts as stated in the O.A which is on record.

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

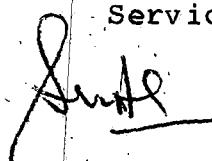
6. It is an undisputed fact that the applicant was selected after following the due process of selection on the post of EDBPM, Khawa Raniji, Distt.Jaipur as he was found more meritorious and in pursuance of his selection he joined and was sent for training. It is also undisputed fact that review of this matter has been done by the authority higher than the appointing authority.

7. In V.K.Sabu Vs. Asstt.Suptd.of Post Offices, (1993) 23 ATC 117, it has been held that termination of ED Agent on the ground of selection being found irregular by the reviewing authority higher than appointing authority, the provisions of Rule 6 cannot be invoked.

8. In T.G.Gowrikutty Vs. Supdt. of Post Offices, Alapuzha & Anr, (1994) 26 ATC 159, it was held that non-approval of selection by higher authority is not a valid ground for termination.

9. In Anirudh Singhji Karshiniji Jadeja Vs. State of Gujrat, (1995) 5 SCC 302, it was held by Hon'ble Supreme Court that higher authority has no power to review the appointment of an ED employee.

10. In Vikaram Kumar Vs. UOI, (1990) 14 ATC 367, it was held by the Patna Bench of the Tribunal that power of review in case of appointment is not possessed by Director, Postal Services.



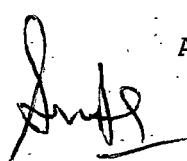
11. In Amar Singh Vs. UOI & Ors, 1995(3) SLJ 354, it was held by the Jodhpur Bench of the Tribunal that an authority administratively higher authorities than the appointing authority has no power of review in the matter of appointment by appointing an authority and termination in pursuance of such power of review is not valid and, therefore, quashed.

12. In Tilak Dhari Yadav Vs. UOI & Ors, (1997) 36 ATC 530, (FB) Allahabad, it was held that termination of services of EDA other than unsatisfactory service by the appointing authority or superior to appointing authority, Rule 6 does not confer power on appointing authority or superior to appointing authority to terminate the services of EDA without giving him an opportunity to show cause. The FB answered the reference in this case as follows:

Rule 6 of Posts and Telegraphs ED Agents (Conduct & Service) Rules, 1964 does not confer a power on the appointing authority or any authority superior to the appointing authority to cancel the appointment of an ED Agent, who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause.

13. In Deo Kumar Pathak Vs. Sub Divisional Inspector of Post Offices & Ors, 2001(2) SLJ CAT 200, the Allahabad Bench of the Tribunal also decided OA No.739/97, it was held that the matter reviewed by authority higher than appointing authority and termination in pursuance thereof is held as illegal.

14. In a recent order passed by the Cuttak Bench of the Tribunal in Suraj Kumar Mohanty Vs. UOI & Ors, 2001(1) ATJ Vol 33 161, it was 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.

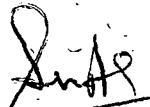
15. Even otherwise also, the applicant has submitted his documents pertaining to his immovable property and income to the competent authority which was considered by the competent authority and on the basis of those documents, the competent authority has approved the candidature of the applicant, selected him, appointed him and sent him for training. In this way, the delay if any in filing those documents in question have been waived by the competent authority.

16. In view of the settled legal position and facts and circumstances of this case, we are of the considered opinion that the impugned order of termination dated 19.4.99 (Annex.A1) is not sustainable in law and liable to be quashed.

17. We, therefore, allow the O.A and quash and set aside the impugned order dated 19.4.99 (Annex.A1) and direct the respondents to take back the applicant in service forthwith with all back wages and other consequential benefits, if any. There shall be no order as to costs.


(A.P.Nagrath)

Member (A).


(S.K.Agarwal)

Member (J).