

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Jaipur, the 18th day of January, 2005

ORIGINAL APPLICATION No. 304/2003

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMV.)

Jagdish Prasad Jogi
s/o Shri Badrinath Jogi
aged about 26 years
r/o Village Deogaon, Tehsil Bassi,
presently terminated as Gramin
Dak Sevak Branch Postmaster,
Deogaon (Bassi)

By Advocate : Shri P.N.Jatti

.. Applicant

Versus

- 1.Union of India
through the Secretary to the Govt. of India,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi.
- 2.Chief Postmaster General,
Rajasthan Circle, Jaipur
- 3.Superintendent, Post Offices (Gramin),
Jaipur Dn. Sastri Nagar, Jaipur.

By Advocate: Shri N.C.Goyal

.. Respondents

ORDER

Per Hon'ble Mr. M.L.Chauhan.

Pursuant to open advertisement issued vide letter dated 7.2.2001 by the respondents thereby calling applications from eligible candidates of OBC community to fill up the vacant post Gramin Dak Sevak Branch Post Master (GDSBPM for short), Deogaon in account with Bassi

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Sub Post Office under Dausa Head Office, 16 applications of OBC candidates including the applicant were received upto last date of receipt of application i.e. 8.3.2001. Thereafter a comparative chart of these candidates were prepared by the respondents as per the marks obtained by the candidates in the Secondary Examination with other required conditions. The appointing authority approved the applicant for the post of GDSBPM, Deogaon vide letter dated 30.4.2001/2.5.2001 (Ann.A3). The applicant joined on the said post on 14.5.2001. However, the appointing authority issued appointment order of the applicant vide memo dated 12.12.2001 (Ann.A5). Subsequently, a complaint was received from Shri Laxmi Narayan Goswami, who was also one of the candidate for the post of GDSBPM, Deogaon addressed to the Chief Postmaster General, Rajasthan Circle, Jaipur thereby alleging that his selection on the said post was ignored in spite of having the higher percentage of marks in the Secondary Examination with the other eligibility conditions than that of the candidate who is selected and appointed. The matter was reviewed by the competent authority. On reviewing, it was found that as per comparative chart, the applicant was having 42.18% marks in the Secondary Examination with other required condition and whereas Shri Laxmi Narayan Goswami who was at Sl.No.2 in the comparative chart has 47.27% marks in the Secondary Examination with other required conditions and the appointing authority has approved the applicant for the said post of GDSBPM, Deogaon ignoring the claim of

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the complainant, who was having higher percentage of marks in the Secondary Examination with that of the applicant with other eligibility conditions. Thus, the appointment of the applicant was found irregular. Accordingly, the Superintendent of Post Offices, Moffussil Division, Jaipur was directed to issue show-cause notice to the applicant who has been regularly appointed giving him 30 days time to explain as to why his regular appointment should not be cancelled. Copy of such letter dated 23.8.2002 has been annexed by the respondents with the reply as Ann.R3. In pursuance of the directions of the reviewing authority, a show-cause notice was served upon the applicant vide Superintendent of Post Office, Moffusil Division, Jaipur memo dated 2.9.2002 (Ann.A6) with a request to submit representation, if any, within 30 days from the date of receipt of the show-cause notice. The applicant submitted his representation dated 24.9.2002 which was received in the office of Superintendent of Post Offices, Moffusil Division, Jaipur on 25.9.2002 (Ann.R4). The respondent No.3 forwarded the representation of the applicant to the competent authority for consideration vide order dated 3.10.2002. While considering the representation of the applicant, it was found that the reasons of irregular appointment and issue of show-cause notice as pointed out by the applicant were not mentioned in the show-cause notice issued by respondent No.3. Accordingly, the respondent No.3 was again directed to intimate reasons of irregular appointment to the applicant by issuing another

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show-cause notice so that the applicant can make effective representation. Accordingly, respondent No.3 intimated the reasons of irregular appointment to the applicant and issued a show-cause notice vide letter dated 16.12.2002 with a request to submit representation, if any, within 30 days from the date of receipt of show-cause notice. Copy of such show-cause notice dated 16.12.2002 has been placed on record as Ann.R6. The applicant submitted representation dated 16.1.2003 stating that the representation submitted by him on 24.9.2002 should be treated as his final reply to the show-cause notice. Copy of the reply has been placed by the respondents with the reply as Ann.R7. The respondent No.3 forwarded the representation of the applicant dated 16.1.2003 to the competent authority vide letter dated 24.1.2003. The competent reviewing authority directed the Superintendent of Post Offices, Moffusil Divison, Jaipur vide letter dated 8.5.2003 to terminate the services of the applicant. Copy of the letter dated 8.5.2003 has been placed on record as Ann.R8. Accordingly, the respondent No.3 after considering the representation of the applicant terminated the services of the applicant vide letter dated 19.5.2003 (Ann.A1). Thereafter the applicant submitted representation dated 12.6.2003 (Ann.A8) to the Chief Post Master General, Rajasthan Circle, Jaipur against the order passed by respondent No.3 dated 19.5.2003. No order was passed on his representation dated 19.5.2003. In the meanwhile, the applicant filed OA in this Tribunal thereby

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praying for quashing the impugned order dated 19.5.2003 (Ann.A1) passed by respondent No.3. However, during the pendency of this OA ~~The~~ representation dated 12.6.2003 of the applicant ^{was rejected and accordingly it} the applicant amended the OA and in the amended OA, he has also challenged the order dated 25.9.2003 whereby representation of the applicant was rejected. Copy of the order dated 25.9.2003 has been annexed with this OA ad Ann.A1/a. It is these two orders which are under challenge in this OA and the applicant has prayed for quashing both these orders with further directions to the respondents to grant him all consequential benefits alongwith costs.

2.1 The contention which has been putforth by the applicant in this OA for quashing termination order is that there is no mistake on the part of the applicant and the applicant was appointed by the competent authority, it is not permissible for them to terminate his services again. ~~More~~ More particularly, when there is no complaint against his conduct and behaviour during the period during which he has discharged duties of GDSBPM.

3. The respondents have filed reply. The facts as stated has not been disputed. In the reply, the respondents have stated that appointment of the applicant was made ignoring the claim of other candidate who was more meritorious and as such the appointment of the applicant was found irregular by the competent authority. It further stated that before terminating the services of the applicant, the

instructions dated 13.11.97 (Ann.R2) was kept in view and proper show-cause notice was given to the applicant and it was after considering the reply given by the applicant that the services of the applicant was terminated by the appointing authority. It is further stated that the representation of the applicant was also rightly rejected by the respondent No.2.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The learned counsel for the applicant while relying upon the judgment of the Tribunal rendered in TA No. 5/1994 on 9.4.1997 by the Lucknow Bench in the case of Chandra Sekhar Pandey vs. Union of India, 1998 (1) CAT 373 argued that the appointment has been reviewed by the higher authority which is not permissible under law and as such the order of termination as well as order rejecting the representation of the applicant deserve to be quashed and set-aside. It is further argued that the applicant cannot be made to suffer on account of wrong committed by the appointing authority whereby the appointment was given to him. The applicant has discharged his duty of the post of GDSBPM satisfactorily and there was nothing adverse, as such the respondents are estopped from terminating the services of the applicant.

4.2 We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the judgment rendered by the Lucknow Bench

in the case of Chandra Shekhar Pandey (supra) was passed on the facts and circumstances of that case. That was a case where appointment of the applicant therein as EDBPM was terminated without giving any show-cause notice and for unsatisfactory grounds not disclosed in the notice, On the directions given by the reviewing authority who directed cancellation of appointment of the applicant and consequently the appointing authority the Senior Superintendent of Post Offices, terminated the services of the applicant. It was in the context of these facts, that the Lucknow Bench has held that higher authority cannot review appointment of the EDBPM in Postal Department and the impugned order of termination was passed not by the appointing authority using his own discretion but on the direction or in compliance of the Director, Postal, as such the impugned order is invalid in law. In the instant case, the impugned order was passed by the appointing authority after giving show-cause notice to the applicant thereby disclosing the reasons of his termination and thereafter the appointing authority has passed the detailed impugned order thereby giving reasons for termination of the services of the applicant vide order dated 19.5.2003 (Ann.A1). Thus, it cannot be said that the appointing authority has not used his discretion while terminating the services of the applicant and the appointing authority has not applied ~~its~~ mind while terminating the services of the applicant. As can be seen from last para of the impugned order dated 19.5.2003 which

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runs in four pages, it has been clearly recorded by the appointing authority that he has considered the representation of the applicant pursuant to issue of show-cause notice and has come to the conclusion that the applicant has obtained 42.18% marks in matriculation whereas other candidate has obtained 47.27% marks in matriculation which was basic qualification made for the post but despite possessing all requisite qualifications and obtaining higher marks, appointment has been given to the applicant ignoring claim of the meritorious candidate and thus, appointment of the applicant is illegal and the applicant has not furnished any explanation qua this fact.

The appointing authority has also relied upon the letter/instructions dated 13.11.97 issued by the Postal Department whereby the higher authority has been empowered to direct the appropriate authority to review the illegal appointment made and for that purpose higher authority can give instructions to his subordinate authority where it has been found that the appointment has been made on irregular basis. It is only thereafter that the services of the applicant were terminated vide impugned order dated 19.5.2001. From the facts as stated above, it is no doubt true that Shri Laxmi Narayan Goswami, who was one of the candidate and has applied for the post of GDSBPM, Deogaon, preferred a complaint to the Chief Post Master General, Rajasthan Circle, Jaipur alleging that his selection on the said post has been ignored in spite of having higher percentage of marks in the Secondary Examination with

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other eligibility conditions than that of the candidate who was selected and appointed on the post of GDSBPM, Deogaon and the matter was examined by the Chief Post Master General whether the selection was made in conformity with the rules and on merits and it was only after examining the entire record that the Chief Post Master General came to the conclusion that the applicant has been wrongly selected ignoring the claim of a meritorious person. It was under these circumstances and after examining the record that the Chief Post Master General, Rajasthan Circle, Jaipur directed the appointing authority to terminate the regular appointment of the applicant after following the proper procedure. Such a course was permissible to the Chief Post Master General in view of the policy decision/instructions issued by the Postal Department vide letter dated 13.11.1997 which instruction came to be issued on account of irregularities committed in the selection of Extra Departmental Agents and decision rendered by the Central Administrative Tribunal whereby it has been held that an authority administratively higher than the appointing authority have no power of review in a matter of appointment by the appointing authority and the services terminated were required to be reinstated pursuant to the decision rendered by the CAT Benches. This fact can be gathered from para 2 of the aforesaid instructions dated 13.11.97. It appears that the postal authorities have taken note of the decision rendered by the CAT Chandigarh Bench in OA


No.916/HP/94 decided on 21.10.94 in the case of Amar Singh vs. Union of India, 1995 (1) ATJ 64 whereby the applicant therein was allowed to continue on the post to which he was appointed on regular basis unless and until his services were dispensed with in accordance with due process of law/rules/instructions. Thus, according to us, no infirmity can be found in the action of the respondents whereby instruction has been issued by the Chief Postmaster General, Rajasthan Circle, Jaipur to the appointing authority to terminate the services of the applicant in the light of the instructions dated 13.11.97 (Ann.R2) when he came to the conclusion that the selection of the applicant to the post of GDSBPM has been wrongly made ignoring the claim of a more meritorious candidate, which course was permissible to him in the light of the policy decision as indicated in the letter dated 13.11.97. It may further be stated that the instructions issued by the Postal Department vide letter dated 13.11.97 where it was permissible for higher authority to direct the appointing authority to review the matter where illegality/irregularity in the appointment of GDSBPM has been made, were not brought to the notice of the Lucknow Bench in the case of Chandra Shekhar Pandey (supra), ~~As per~~ such the decision was rendered in ignorance of the aforesaid policy decision and in para 10 of the said order one of the ground to come to the conclusion was that Director, Postal Services has no power to review in the case of appointment. Had the instructions issued by the

postal authorities vide letter dated 13.11.97 were brought to the notice of Lucknow Bench, then no finding could have been recorded on that aspect.


4.3 The learned counsel for the applicant has also brought to our notice the decision rendered by this Tribunal in OA No.240/99, Nand Kishore Soni vs. Union of India and ors. decided on 2.7.2001 whereby the impugned order was quashed while relying on some of the judgments and also on the ground that appointment was given to the applicant on the basis of documents pertaining to his immovable property and income and on the basis of those documents the competent authority has approved the candidature of the applicant, selected him, appointed him and sent for training. Thus, according to the Bench, delay if any in filing those documents in question have been waived by the competent authority. Thus, the matter in controversy and grounds on which services of the applicant were terminated were entirely on different grounds i.e. late submissions of documents pertaining to immovable property and income, though the same were submitted by the applicant before making actual selection. Thus, the applicant cannot draw any assistance from this order. Moreover, the instructions dated 13.11.97 which authorises the higher authority to review ~~the~~ matter and to give direction to the appointing authority to terminate such appointment after following procedure mentioned in the circular viz. issue of show cause notice and thereby also intimating the grounds on which the services are being

terminated and passing appropriate orders after consideration of representation made by the affected person, were not brought to the notice of the Bench and ^{thus} the contrary observation was made in the order that termination of services cannot be ordered by the appointing authority on the direction of the higher authority.

5. Thus for the foregoing reasons, we are of the view that the applicant has not made out any case for our interference, more particularly, when the validity of instructions dated 13.11.97 which authorises the higher authority to give direction to the appointing authority to pass order of termination, where the appointment is irregular/illegal, has not been challenged in this OA. Accordingly the OA is dismissed with no order as to costs. Respondents may proceed to fill the post of GDSBPM, Deogaon in the light of the instructions dated 13.11.1997 by advertising the same afresh. No costs.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)