

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.....119..... of 1998.

DATE OF DECISION.....7-3-2000.....

Smt. Arpita Chakraborty

PETITIONER(S)

S/Sri B.K.Sharma, S.Sarma, U.K.Nair.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

THE HON'BLE MR G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS LAKSHMI SWAMINATHAN, JUDICIAL MEMBER

DATE OF DECISION.....

1. Whether Reporters of local papers may be allowed to see the judgment ? PETITIONER(S)
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ? ADVOCATE FOR THE

Judgment delivered by Hon'ble Judicial Member..

Lakshmi Swaminathan
RESPONDENT(S)

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE

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1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

ADVOCATE FOR THE

Whether the Judgment is to be circulated to the other Benches ?

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 119 of 1998.

Date of Order : This the 7th Day of March, 2000.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

The Hon'ble Mrs Lakshmi Swaminathan, Judicial Member.

Smt. Arpita Chakraborty,
BPM Karnamadhu,
Karimgange.

. . . Applicant

By Advocate S/Sri B.K.Sharma, S.Sarma &
U.K.Nair.

- Versus -

1. Union of India
represented by the Secretary to the Govt.
of India, Ministry of Communication,
New Delhi.

2. The Chief Post Master General,
Assam Circle, Meghdoot Bhawan,
Guwahati-1.

3. Sr.Superintendent of Post Offices,
Cachar Division,
Silchar-788001.

4. The Post Master,
Karimgange H.O.

. . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

ORDER (Oral)

SMT.LAKSHMI SWAMINATHAN (J.M)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 impugning the order dated 4.6.1998 terminating her service as Branch Post Master (BPM), Karnamadhu Branch Post Office.

2. The brief facts of the case are that the applicant was selected for the post of BPM provisionally by order dated 14.8.1997. According to the applicant, thereafter she has been satisfactorily discharging her duties in the post of BPM. She has contended that suddenly the respondents have passed the impugned order dated 4.6.1998 terminating her

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service under Rule 6 of EDA (Conduct and Service) Rules 1964, read with certain instructions mentioned in the order, with immediate effect i.e. from 4.6.1998.

3. Admittedly, no show cause notice had been issued to the applicant before the termination order was passed. Mr S. Sarma, learned counsel for the applicant has submitted that the impugned termination order is, therefore, not sustainable in law as there is a clear violation of the principles of natural justice. He has submitted that the reason given in the impugned order, namely, that "His (sic) continuation as the BPM is found unjust on administrative ground" also shows that the order is punitive in nature which could not have been passed without giving the applicant a reasonable opportunity of hearing after giving her a show cause notice. The next contention of the learned counsel is that the applicant is not an Extra Departmental Agent, to enable the respondents to proceed under Rule 6 of the EDA (Conduct and Service) Rules 1964 as she has been selected, although provisionally, as BPM. Accordingly, the learned counsel has prayed that the termination order suffers from various infirmities and should be quashed and set aside and the applicant should be allowed to continue in service as BPM. He also relies on a decision of the Bangalore Bench of the Tribunal in Mrs B. Prema Jayadev vs. The Regional Provident Fund Commissioner & Ors. (2000(1) SLJ 248).

4. We have seen the reply filed by the respondents and heard Mr A. Deb Roy, learned Sr.C.G.S.C. The respondents in their reply have submitted that the applicant had been selected from amongst 17 candidates who had been sponsored by the local Employment Exchange and was selected as BPM provisionally on 14.8.1997. According to them on receipt of certain complaints, the competent authority had found, on enquiry, that the selection made for the post was irregular and hence

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a decision was taken to terminate the applicant with immediate effect and to hold a proper selection from amongst the eligible candidates. Therefore, they have contended that their action is legal and in order, and there is no violation of the principle of natural justice as they have found that the selection process was not in order.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. In the appointment order dated 14.8.1997 issued by the respondents it is seen that the applicant has been selected provisionally for the post of BPM, Karnamadhu B.O. and she had subsequently taken charge of the post. It is seen that till 4.6.1998 she had worked in that post when the impugned termination order was passed. It is nowhere stated that the applicant was in any way responsible for the decision taken by the respondents in conducting the selection for the post. We also find merit in the submissions made by Mr S.Sarma, learned counsel, that the last sentence in para 1 of the impugned order where it has been stated that the applicant's continuation as the BPM is found unjust on administrative ground, ^{may be} casts a stigma on the applicant. From the reasons given in the reply affidavit of the respondents, it appears that they had cancelled the selection because of alleged irregularity in conducting the selection. In the facts and circumstances of the case and following the settled law, we are satisfied that the order of termination has been passed by the respondents, which has civil consequence on the applicant, without complying with the principles of natural justice. The applicant ought to have been given a show cause notice and be heard before the termination order was passed which has not been done in this case. We are fortified in the view we have taken by the judgment of the Apex Court in

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Basudeo Tiwary vs. Sido Kanhu University & Ors. (JT 1998(6) SC 464) wherein it was held that :

"In order to arrive at a conclusion that an appointment is contrary to the provisions of the rules etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made."

It was further held that :

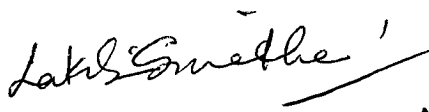
"If in a given case such exercise is absent, the condition precedent stands unfulfilled."


(See also the judgments in Mrs Prema Jayadev's case (supra) (2000(1) SLJ 248); Smt Maneka Gandhi vs. Union of India and another (AIR 1978 SC 597 and Managing Director, ECIL, Hyderabad & Ors. vs. B.Karunakar & Ors. (1993 SCC(L&S) 1184).

6. The Tribunal by order dated 8.6.1998 had stayed the operation of the impugned order dated 4.6.1998 which has been continued from time to time. Learned counsel for the applicant submits that the applicant is still in service as BPM. In view of ~~the~~ what has been stated above, we find that the impugned termination order cannot be sustained in law as it is punitive in nature and has been passed without complying with the principles of natural justice. Accordingly the termination order dated 4.6.1998 is quashed and set aside.

The O.A. is allowed. Liberty is however, granted to the respondents to proceed in the matter in accordance with law.

No order as to costs.


(Smt) LAKSHMI SWAMINATHAN)
-JUDICIAL MEMBER


(G.L.SANGHVI)
ADMINISTRATIVE MEMBER