

(1)

**Central Administrative Tribunal
Jabalpur Bench**

OA No.160/05

Jabalpur, this the 1st day of ~~July~~^{August} 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

Padmakant Shivhare
Son of Shri Laxi Prasad Shivhare
Branch Post Master
Dhunwara Head Post Office Amdara
District Satna.

Applicant

(By advocate Shri Awadesh Kumar Tiwari)

Versus

1. Union of India through
The Secretary
Department of Post
New Delhi.
2. The Post Master General
Chhattisgarh
Raipur Division, Raipur.
3. The Superintendent of Post Offices
Rewa.
4. Inspector of Post offices
Post Office Maihar
District Satna.

Respondents

(By advocate Shri P.Shankaran)

ORDER

By A.K.Gaur, Judicial Member

By filing this OA, the applicant has prayed for quashing the order dated 31.1.2005 (A-9) and for issuing a direction to the respondents to allow him to continue on his post with all consequential benefits.

M/

2. The brief facts of the case are that the respondents invited applications for the post of Extra Departmental Branch Post Master vide notification dated 22.4.2002 (A-1). The applicant applied and he was found qualified to be appointed. Accordingly, the appointment letter was issued to the applicant and he took charge of Branch Post Master, Ghunwara, on 8.10.2002 (A-2). It is, contended by the applicant that the charge was handed over to him in the presence of the Inspector of Post offices, Maihar (A-3). After taking over the charge, the applicant executed Annexure A-4 Bond dated 17.10.2002, as directed by the respondents. While working as such, the appointment of the applicant was cancelled vide Annexure A-5 issued from the office of the Superintendent of Rewa. The applicant challenged the said action of the respondents by filing OA No.343/03 and this Tribunal set aside the impugned orders and allowed the OA. The operative portion of the Tribunal's order dated 18th August 2004 reads as follows:-

"Keeping in view the above facts and circumstances, as the respondents have not disclosed any ground for the irregularity and simply cancelled the order, we find some substance in the contention of the learned counsel of the applicant. Moreover, the respondents have not given any prior notice to the applicant before cancelling his appointment. It is well settled legal position that when an adverse order was being passed against the applicant having the effect of civil consequences, an opportunity of hearing was required to be given to the applicant, which has not been done in this case. Accordingly, the impugned orders dated 7.4.03 and 12.5.03 are quashed and set aside and the order of the Tribunal dated 9.6.03 merges with this order".

3. It is urged on behalf of the applicant that the applicant was appointed after due process of selection and compliance of the rules and he had also furnished the security of his immovable property and started post office in his own house but without holding any enquiry or issuing show cause notice and in utter violation of the principle of natural justice, his appointment was cancelled. It is further contended by the learned counsel for the applicant that after the order of the Tribunal, the respondents had

issued a notice dated 23.11.2004 to the applicant stating that the notification for selection of the applicant was not proper and therefore the appointment of the applicant was also illegal, whereas the Tribunal had not given any such direction or liberty to the respondents to start the proceeding de-novo.

4. The respondents have filed their reply and contended that a notification was issued inviting applications from willing and qualified candidates for appointment of GDS BPM, Ghunwara. The post of GDS BPM was reserved for ST/SC/OBC candidate in descending order. The applicant who belongs to OBC was selected after pre-appointment formalities and the charge of GDS BPM, Bhunwara, was handed over to him 8.10.2002 by the then SPO, Rewa Division. However, on review of the selection by reviewing authority, it was found that the selection and appointment of the applicant was irregular and in violation of the departmental instructions on the subject. Therefore the services of the applicant were dispensed with. After receipt of the Tribunal's order, the applicant was reinstated and a show cause notice was issued to him on 23.11.2004. The applicant replied to the show cause notice on 8.12.2004 (A-8). After considering the reply to the show cause notice, the appointing authority came to the conclusion that the appointment of the applicant was not in conformity with the instructions issued on the subject and, therefore, the selection and appointment of the applicant was cancelled again vide the impugned order. It is contended by the respondents that as per the provisions contained in Rule 4(3) of Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001, any authority superior to the appointing authority may, at any time, review the appointment cases and pass such orders as it thinks fit. As per rules/records, the vacancy should have been reported as reserved for ST candidate whereas the notification was issued for ST/SC/OBC with further instructions that in case the number of requisite candidate from ST is not available, preference will be give to other candidates. It is further contended by the respondents that the vacancy was reserved for ST candidate against which only one

42

nomination had been received. Therefore the appointing authority should have adopted the method of getting fresh nominations from eligible candidates as per instructions contained in OM dated 19.8.98. Instead of adopting this procedure, the appointing authority proceeded with the selection of a candidate from OBC category in utter violation of the rules and instructions on the subject and accordingly appointed the applicant. The appointment of the applicant was cancelled second time after affording him an opportunity of hearing, hence there is no illegality on the part of the respondents, contend the respondents.

5. Learned counsel for the respondents has cited the decision of Hon. Supreme Court in the case of Brij Mohan Singh Vs. Union of India & others reported in 2001-II-LLJ 550 and another decision reported in 2001 (4) JT 436 in support of his contention and argued that in view of the above decision, the OA is liable to be dismissed.

6. After hearing the learned counsel on either side and going through the records very carefully, we find that the vacancy was reserved for ST candidate against which only one nomination has been received. Instead of adopting the method of getting fresh nominations from eligible candidates as per instructions contained in OM dated 19.8.1998, the appointing authority has proceeded with the selection of a candidate from OBC category, which in this case, happened to be the applicant. This has been done in violation of the rules and instructions on the subject. In this case, the competent authority has rightly followed the provisions of Sub-rule (3) of Rule 4 of GDS (Conduct & Employment) Rules which reads thus:-

“(3) Notwithstanding anything contained in these rules, any authority superior to the Appointing Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the appointing Authority, and if such Appointing Authority appears-

- (a) to have exercised a jurisdiction not vested in it by any law or rules then being in force; or
- (b) to have failed to exercise a jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit”.

W

We also find that the applicant has been given an opportunity of hearing before his appointment has been cancelled second time. Therefore it cannot be said that the respondents have committed any illegality in their action.

7. In view of the above discussion, the OA is dismissed being devoid of merits. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

aa.

पृष्ठान्न सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्थात् :-

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....
- (3) न्यायी श्री/श्रीमती/कु.....
- (4) अध्यक्ष, को.प.अ., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

Awadh K. Tewari
DN 988
P. Shankaran
DN 988

उप रजिस्ट्रार

Filed
2/8/06