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**Central Administrative Tribunal
Jabalpur Bench**

OA No.167/05

Jabalpur, this the 13th day of October 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Mr.A.K.Gaur, Judicial Member

Ku.Saroj Sahu
D/o Shri Gopi Lal Sahu
R/O 1740, VFJ Road
New Shobhapur-Bharpura
P.O.Vehicle Factory
Jabalpur.

Applicant

(By advocate Shri V.Tripathi)

Versus

1. Union of India through
its Secretary
Ministry of Communication
Department of Post
New Delhi.
2. The Chief Post Master General
Chhattisgarh Circle
Raipur.
3. The Superintendent of Post Offices
Balghat Division
Balghat.
4. Assistant Superintendent of Post Office
Seoni
Distt. Seoni.

Respondents.

(By advocate: Shri A.P.Khare)

ORDER

By A.K.Gaur, Judicial Member

The applicant is challenging the action of the respondents in not accepting her joining in pursuance of her selection on the post of Gramin Dak Sewak Branch Post Master, hereinafter be referred to as the "GDSBPM".

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2. The facts of the case in brief are that a notification was issued by respondent No.3 on 25.1.2003 notifying one post of Gramin Dak Sewak Branch Post Master (GDSBPM for short) for Sirmangni (Lakhnadon) Branch Post Office situated at Seoni. According to the applicant, she was having all requisite qualification for the post and, therefore, she submitted her candidature for the post. After receiving the call letter (A-1), the applicant appeared for selection on 11.4.2003 along with all original certificates and other documents. Thereafter, the applicant received appointment order dated 26.4.2003 (A-2) for the said post. As per the appointment order, the applicant was directed to deposit Rs.4000/- as security amount at Seoni Head Post Office. She complied with the said direction and went to join the post on 30.4.2003. However, the Post Master, Lakhnadon did not accept the joining of the applicant. Thereafter, the applicant approached the Assistant Superintendent of Post Offices, Seoni (respondent No.4), who also declined to accept the request of the applicant for joining the post of GDSBPM. It is alleged in the OA that several representations submitted by the applicant to the respondents in this regard remain unanswered. Hence the applicant has filed this OA seeking a direction to the respondents to accept her joining as GDSBPM and provide her all consequential benefits w.e.f. 30.4.2003 and to set aside the orders marked as Annexure A-4, A-5 and A-6 respectively.

3. After filing of the OA, the applicant incorporated certain amendments in the OA stating that her appointment was stayed by the Chief Post Master General, Raipur vide order dated 30.4.2003 (A-4) and also prayed for quashing the order dated 30.4.03 (A-4), order dated 18.6.03 (A-5) and order dated 18.8.03 (A-6). It is also stated that the Assistant Director, Chhattisgarh Circle, Raipur issued an order dated 18.6.2003 (A-5) in which he was instructed by the Chief Post Master General to cancel the appointment of the applicant made by the Superintendent of Post Offices beyond his authority and jurisdiction. The applicant also made a reference to A-6 dated 18.8.2003 whereby the Superintendent of Post Offices was restrained to issue any appointment letters.

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4. Learned counsel for the applicant submitted that the Chief Post Master General has no authority and jurisdiction to stay the appointment order of the applicant. He further submitted that the Chief Post Master General issued the stay orders on extraneous considerations with malafide intention. Therefore, the action of the Chief Post Master General is arbitrary, unjust, unfair and amounts to colourable exercise of power.

5. Respondents have filed a reply contending that the applicant was provisionally appointed vide SSPOs letter dated 25.4.2003. The Chief Post Master General, Chhattisgarh Circle, Raipur vide letter dated 30.4.2003 stayed the order of the SSPOs and directed not to hand over the charge to the applicant till further orders. However, the order of the Chief PMG could not be conveyed to applicant. In the meantime, the applicant approached the Tribunal, aggrieved by the order of the Assistant Superintendent of Post Offices (Seoni) dated 26.4.03 which was issued by him in pursuance of SSPOs, Balaghat letter dated 25.4.2003. The respondents have further contended that the applicant has no right to appointment as 'GDSBPM' Sirmangri when the Chief PMG had stayed the order of SSPOs Balaghat. Further, the applicant was ordered to work as 'GDSBPM' purely on temporary basis, and it does not confer any right for appointment on regular basis.

6. We have heard the learned counsel on either side and perused the records.

7. The respondents have produced a letter dated 13.11.97 (filed along with the reply) issued by the Ministry of Communication, Department of Post. In this letter, it is mentioned that "in some cases, the appointments are found to have been made erroneously. To set right the irregular appointments, the superior or reviewing authorities have to pass orders requiring the appointing authorities to cancel such irregular appointments and make fresh appointments". Sub paras (i) to (iii) of para 3 of this letter are worth reproducing hereunder:

- (i) The question whether appointment of a particular ED Agent to a post was erroneous or not should

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be decided by an authority next higher than the appointing authority in accordance with the established principles governing appointments.

- (ii) In regard to appointment which was made in contravention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED agent which was passed in contravention of the existing rules/instructions whether statutory or administrative/executive, as otherwise, it would amount to perpetuation of the mistake and would be detrimental to the larger interests of Government. However, in these cases, the principles of natural justice should be complied with by giving the ED Agent a show cause notice and opportunity to be heard before passing any order adversely affecting him. There is no need to invoke ED Agent (Conduct & Service) Rules, while passing final orders in such cases.
- (iii) Cases of erroneous appointments should be viewed with serious concern and suitable disciplinary action should be taken against the officers and staff responsible for such erroneous appointments."

8. The learned counsel for the applicant has cited a Full Bench decision of Madras Bench of this Tribunal, reported in A.T. Full Bench Judgements 2000-2003, in OA No.587, 588 and 589 of 2002 decided on 8.1.2004 (R. Jambukeswaran and ors. Vs. Union of India and ors.) to show that Rule 16 of EDA (Conduct and Service) Rules, 1964 does not confer power upon a higher administrative authority to revise the order of appointment purported to have been passed by the lower administrative authority under rule 3. In our considered view, the aforesaid case is not applicable to the facts of the present case. Neither letter dated 13.11.97, issued by Ministry of Communication and Department of Posts was cited by either of the parties, nor an occasion before the Full Bench arose to consider its applicability. In view of the aforesaid letter, we find no illegality in the letter dated 18.6.03 (A-5) & 18.8.03 (A-6), whereby Supdt of Post Office was restrained to issue any appointment letter

9. We are of the considered opinion that in view of the directions contained in the letter of the Postal Department, the Chief Post Master General, Chhattisgarh Circle has right to stay the order of the Senior Superintendent of Post Offices, as the same has been passed without his approval.

10. In view of the aforesaid fact, we find no merits in the case and the OA deserves to be dismissed. However, we may make it clear that the principle of natural justice must be complied with by giving the applicant a show cause notice before passing any order adversely affecting ^{her to} him or setting aside ^{her to} his appointment. The OA is accordingly dismissed. No order as to costs.

(Signature)
(A.K. Ganr)
Judicial Member

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

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पूरांकल सं ओ/ब्या.....जयलपुर, दि.....
परिचालिका कार्यपालिका:-

- (1) ...के कार्यालय
- (2) ...के कार्यालय
- (3) ...के कार्यालय
- (4) ...के कार्यालय

(Signature)
N. Tripathi
(Signature)
A.P. Khare

(Signature)
उप-सचिव

(Signature)
19.10.06