

Central Administrative Tribunal, Jabalpur Bench

O.A. No. 427 of 2005

Jabalpur, this the 13th day of June, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Hon'ble Dr. G.C. Srivastava, Vice Chairman (A)

Jalam Singh
S/o Shri Nonelal
Aged about 28 years
Terminated branch
Dakpal of Vilalge Konikala,
Resident of Konikala, Tah. Patan,
District- Jabalpur (MP).

...Applicant

By Advocate: Shri M.K. Sanghi.

Versus

1. Union of India through
its Secretary,
Department of Post,
New Delhi.
2. Assistant Director-II,
Postal Services,
Office of Chief Post Master General,
C.G. Circle,
Raipur.
3. Upper Superintendent Post Offices,
Jabalpur Division,
Jabalpur.

...Respondents

By Advocate: Shri A.P. Khare.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Applicant is challenging the order dated 28.1.2005 (Annexure A-6) whereby his services as Branch Post Master were terminated in exercise of the power conferred by Rule 4.3 of Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

2. The background of the case is as follows. In response to a circular dated 4.2.2004 (Annexure A-1) issued by Senior Superintendent of Post Offices, Jabalpur Division (respondent No.3 herein), inviting applications for appointment to the post of Branch Postmaster, Konikala (Patan), the applicant submitted his application. He was selected and appointed as Branch Postmaster, Konikala. He joined the post on 17.6.2004. Thereafter, he was served with a show cause notice dated 2.12.2004 by Assistant Director, Postal Services, Office of the Chief Post Master General, C.G. Circle, Raipur

(respondent No.2) alleging that the selection was not made in accordance with the circular dated 17.9.2003 and merit was ignored in selection and the same was done only on the basis of landed property whereas one of the candidates had secured higher marks in matriculation examination (Annexure A-3). The applicant replied to the show cause notice on 29.12.2004 refuting the allegation that the selection was not made as per rules and on merit. The applicant also filed OA No.58/2005 before the Tribunal assailing the show cause notice. The respondents filed a short reply in that case, stating that the services of the applicant had been terminated vide order dated 28.1.2005 and as that OA had become infructuous, The Tribunal disposed it off vide order dated 10.2.2005 as infructuous (Annexure A-5). The applicant was not served with the termination order dated 28.1.2005 but only a copy of it was given in the earlier OA filed by him. It seemed that the services of the applicant were terminated only on the premise that his selection was not on merit but was on the basis of landed/immovable property owned by him. The applicant controverted the allegation that the selection was not based on merit. It is submitted that the circular dated 4.2.2004 has provided that the preference would be given to persons having sufficient source of income from landed/immovable property. The action of the respondents is malicious, arbitrary and liable to be struck down. For any technical error, the applicant cannot be deprived of his livelihood.

3. Contesting the OA, the respondents pleaded that in the circular dated 4.2.2004, it was specifically mentioned that the selection would be made based on marks secured in the matriculation examination. It was also stipulated that preference would be given to candidates with adequate means of livelihood derived from landed property or immovable assets. As many as 11 applications were received in which one Rajesh Kumar Gour had secured 50% marks and the applicant and one Delan Singh Dhurwa had secured 49.6% marks for appointment on 7.6.2004 ignoring the claim of a better candidate with 50% marks in the matriculation examination. The applicant had joined the post on 17.6.2004. As laid down in Rule 4 (3) of GDS (Conduct and Employment) Rules 2001 the records of the case were called for and the selection/appointment was reviewed by the competent authority who noticed irregularities in the appointment and proposed to cancel the appointment of the applicant. The irregularities noticed were that the condition of property mentioned in the notification dated 4.2.2004 was in contravention

Handwritten signature

of DG's instructions dated 17.9.2003, the selection was made ignoring the merit as laid down in the said instructions. The applicant was thereafter served a show cause notice on 2.12.2004 proposing cancellation of his appointment on above mentioned grounds and giving an opportunity to submit representation if any against the proposed action. The representation submitted by the applicant had been considered by the competent authority and having found no grounds to allow the irregular appointment to continue, the same was ordered to be cancelled vide memo dated 28.1.2004.

4. We have heard the learned counsel for the parties and perused the records.

5. Learned counsel for the applicant has argued that the selection and appointment of the applicant was based on merit and in terms of the notification dated 4.2.2004 (Annexure A-1). Preference was rightly given to the applicant who had substantial income for his livelihood from the land and other immovable property. The learned counsel has drawn our attention to Para 3 of the notification dated 4.2.4002 (Annexure A-1).

6. Learned counsel for the respondents has drawn our attention to Para 2 of the said notification and submitted that it was clearly stipulated that the selection would be on the basis of the marks secured in matriculation examination. He further stated that the next condition that preference would be given to those who had sufficient income for their sustenance from immovable property was not in accordance with the instructions of the DG dated 17.9.2003 and was required to be ignored.

7. Rule 4 (3) of GDS (Conduct & Employment) Rules 2001 has provided as under:-

“(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 time being in force; or

(b) to have failed to exercise a jurisdiction so vested; or

© to have acted in the exercise of its jurisdiction illegally or which material irregularity, such superior authority may, after giving an opportunity of being heard, may such order as it thinks fit”

8. The services of the applicant have been terminated by the competent authority in exercise of the power vested by these rules. The competence of the authority who has terminated the services of the applicant has not been questioned before us. The question

M. A. 10/2/04

that arises before us is twofold. Firstly whether Para 3 of the notification dated 4.2.4004 (Annexure A-1) about the preference to be given to a candidate who had adequate income for his independent livelihood from land and other immovable property, being not in conformity with the instructions of Director General dated 17.9.2003, had to be ignored by the appointing authority – the senior Superintendent of Post Offices in the present case – and the selection could have been made only on the basis of marks secured by the candidates in the matriculation examination and secondly whether preference could be given to the applicant because of para 3 of the circular dated 4.2.2004 even when the marks secured in the matriculation examination were lesser than the marks which an other candidate had secured in the matriculation examination.

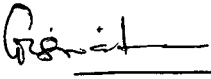
9. The Senior Superintendent of Post Offices was bound by the directions of the Director General contained in the letter No.22-12/2001-GDS dated 17.9.2003, copy of which is filed by respondents as D-1. He could not have ignored these instructions and issued a notification inviting applications with stipulation as mentioned in Para 3 also. Anyhow, having written it, he was still bound to follow the instructions of the Director General while making the selection and appointing the selected candidate to the post. In either case, the SSPO could not have acted contrary to the instructions of the Director General and any action contrary to these instructions was not legal.

10. As regards the second question, it may be stated that Para 2 of the notification dated 4.2.2002 had prescribed the educational qualification as minimum matriculation or equivalent examination. It was also stipulated that no wieghtage would be given to any examination above the matriculation examination. Further it was stipulated that the selection would be on the basis of the marks secured in the matriculation examination. As such out of 3 short listed candidates, the candidate who secured the maximum marks in the matriculation examination was required to be selected. Now we come to Para 3, which has provided for preference to persons having income form land and other immovable property. Firstly this term of the notification being not in conformity of DG's instructions dated 17.9.2005 should have been ignored. Moreover question of giving preference could have arisen when highest marks secured by candidates was 49.6% and more than one candidate had secured 49.6% marks in matriculation examination, then for selecting them, preference could be given to a person who had sufficient income for his

Handwritten signature

livelihood from immovable property. That is the only reasonable interpretation of Para 2 and 3 read together. In other words only the person who had secured highest marks in the matriculation examination was to be selected if merit was the criteria and if there are more persons with equal marks secured in the matriculation examination, then preference could have been given as per Para 3 of the notification. The applicant did not have the highest marks in the matriculation examination amongst the short listed 3 candidates. Therefore, even if it is assumed, though not decided, that Para 3 of the notification was to be borne in mind by the SSPO since it was one of the conditions of the notification, yet the applicant could not have been selected because another candidate had secured more marks than him in the matriculation examination.

11. Considering the case of the applicant from any angle, we do not find merit in this OA. Accordingly, the OA is dismissed. Parties to bear their own costs.


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


(M.A. Khan)
Vice Chairman (J)

Rakesh

पूठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि अर्पित:-

(1) सचिव, उच्च प्रशिक्षण एवं प्रशिक्षण, जबलपुर


(2) अध्यक्ष, उच्च शिक्षण, जबलपुर के काउंसल

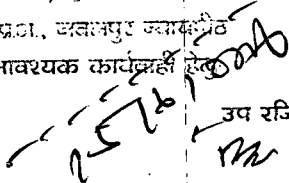
(3) प्रत्यक्षी, उच्च शिक्षण, जबलपुर के काउंसल

(4) अध्यक्ष, उच्च शिक्षण, जबलपुर के काउंसल

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार


15-6-06


15/6/06

M. N. Sanghi, D. 208
A. P. Khare, D. 208