CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 3 of 2004
Original Application No. 4 of 2004
Original Application No. 5 of 2004
Original Application No. 6 of 2004
Original Application No. 7 of 2004
Original Application No. 8 of 2004
Original Application No. 9 of 2004
Original Application No. 10 of 2004
Original Application No. 11 of 2004
Original Application No. 12 of 2004
Original Application No. 13 of 2004
Original Application No. 14 of 2004
Original Application No. 15 of 2004
Original Application No. 16 of 2004
Original Application No. 17 of 2004
Original Application No. 53 of 2004
Original Application No. 55 of 2004
Original Application No.700 of 2004

Indore, this the 28th day of April, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

1. Original Application No. 3 of 2004 -

Anil Sharma, S/o. Shri Kailash Chandra Sharma ... Applicant

2. Original Application No. 4 of 2004 -

Jahoor Mohammed, S/o. Shri Ali Hussain ... Applicant

3. Original Application No. 5 of 2004 -

Sumer Kumar Prajapati, S/o. Shri Chandulalji Prajapati ... Applicant

4. Original Application No. 6 of 2004 -

Vivek Sharma, S/o. Shri Manoharlal Sharma ... Applicant

5. Original Application No. 7 of 2004 -

Subhash Chandra Rathod, S/o. Shri Hiralal Rathod ... Applicant

6. Original Application No. 8 of 2004 -

Laxmi Narayan Nagariya, S/o. Shri Nathusingh Nagariya ... Applicant

7. Original Application No. 9 of 2004 -

Vishwanath Singh, S/o. Shri Bhagwan Singh ... Applicant

8. Original Application No. 10 of 2004 -

Bhanwerlal Joshi, S/o. Shri Anandilal Joshi ... Applicant

9. Original Application No. 11 of 2004 -

Banshilal Kumbhkar, S/o. Shri Laxman Kumbhkar ... Applicant

10. Original Application No. 12 of 2004 -

Om Prakash Navgotri, S/o. Shri Bhagirath Navgori ... Applicant

11. Original Application No. 13 of 2004 -

Vishnu Kumar Kumbhkar, S/o. Shri Umrao Singh Kumbhkar ... Applicant

12. Original Application No. 14 of 2004 -

Kalyan Singh Choudhary, S/o. Shri Balram Choudhary ... Applicant

13. Original Application No. 15 of 2004 -

Suresh Sharma, S/o. Shri Hiralal Sharma ... Applicant

14. Original Application No. 16 of 2004 -

Baldeo Singh Choudhary, S/o. Shri Padam Singh Choudhary ... Applicant

15. Original Application No. 17 of 2004 -

Munnalal Saini, S/o. Shri Mangal Ji Saini ... Applicant

16. Original Application No. 53 of 2004 -

Jai Nayak, S/o. Shri Dayaram Nayak ... Applicant

17. Original Application No. 55 of 2004 -

Umesh Kumar Sharma, S/o. Shri P. Lalji Sharma ... Applicant

18. Original Application No. 700 of 2004 -

Poonak Chandra Kumbhkar, S/o. Shri Babulal Kumbhkar ... Applicant

(By Advocate - Shri V. Tripathi on behalf of Shri S. Paul for all the OAs)

V e r s u s

Union of India and others. ... Respondents

(By Advocate - Shri S.A. Dharmadhikari in OAs Nos. 3/2004, 5/2004, 7/2004, 9/2004 & 53/2004,
Shri K.N. Pethia in OAs Nos. 4/2004, 10/2004, 17/2004 & 700/2004,
Shri Om Namdeo in OAs Nos. 6/2004, 15/2004 16/2004 & 55/2004,
Shri P. Shankaran in OAs Nos. 8/2004, 11/2004 & 12/2004,
Shri S.P. Singh in OAs Nos. 13/2004 & 14/2004)

O R D E R (Common)

By Ms. Sadhna Srivastava, Judicial Member -

After perusing the files of these Original Applications, we find that the facts of these cases are quite different from other cases, as such we are disposing of these cases by a separate order.

2. As the issue involved in all these cases are common and the facts and grounds raised are identical, for the sake of convenience we are disposing of these Original Applications by this common order.

3. By filing these Original Applications the applicants have claimed the reliefs to set aside their termination orders annexed at Annexure A-1 in all the OAs and also to set aside at Annexure A-4 in so-me OAs the orders passed/rejecting their representations. They have also prayed to struck down Rule-8 of GDS Rules, 2001 as it is unconstitution and ultra-virus with further direction to the respondents to reinstate the applicant with full back wages and other consequential benefits.

4. The brief facts of the cases are that all the applicants were appointed as Gramin Dak Sevak Mail Carrier/Deliverer (in short GDSMC/D) in different ED Branch offices, sometimes in the years 2001 and 2002 by the appointing authority i.e. Asstt. Supdt. of Post offices (in short ASPO), Indore, after due process of selection. The photo copy of the appointment letters has been filed by the applicants in all the OAs as Annexure A-2. However, the termination orders in all the cases are issued on different dates.

4.1 In all the cases the termination orders have been challenged on the ground that the respondents had passed the orders of termination without assigning any reasons and without giving any

show cause notices to the applicants. The respondents have terminated the services of the applicants vide impugned orders at Annexure A-1 in all the OAs, after invoking the provisions of Rule 8 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 (hereinafter to be referred as the rules). The counsel for the applicants contended that their services could not have been brought to an end without giving them show cause notices and without affording them an opportunity to explain the reason for which their services have been brought to an end. The services of the applicants could not have been terminated contrary to the provisions of Articles 14 and 311 of the Constitution of India and since the action has been taken without affording them an opportunity to be heard, the orders terminating their services can easily be construed to be an arbitrary order and it deserves to be quashed and set aside. Aggrieved by the order of termination some applicants have filed representations before the Post Master General and the Post Master General after considering it rejected the same by passing the impugned orders at Annexure A-4 in some OAs. The counsel for the applicants further argued that the powers under Rule 8 of the rules are misused by the authorities. Hence, these Original Applications are filed.

5. The respondents in counter affidavit defended the action of terminating the services of the applicants and contended that all the applicants are appointed without following the prescribed procedure and therefore, their appointments are irregular. They have contended that the appointing authority has overlooked the instructions issued by the respondents and without obtaining prior permission from the competent authority to make appointment, issued the orders of the appointment. The appointing authority has failed to follow the rules and regulations and since it was found later that the appointments were irregular and dehors the rules, the decision was taken to

take action by invoking the Rule 8 of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001. The counsel for the respondents further submitted that the orders of termination is simplicitor and one months' allowances has already been remitted to them. Therefore, there is no irregularity in the orders of termination. The respondents have prayed that the OAs be dismissed with costs.

6. Heard the learned counsel for both the parties and carefully perused the pleadings and records.

7. At the out set the counsel for the applicants has submitted that he is not pressing the relief regarding the constitutional validity of Rule 8 of the rules. He has mainly relied upon the decision of this Tribunal decided on 7th March, 2005 in OA No. 862/2003 and also the decision of the Ahmedabad Bench of the Tribunal in OA No. 153/2002 reported in 2003 (1) ATJ 353. The learned counsel for the applicants submitted that in all the above two cases cited by him the Tribunal had taken a decision relying on the circular dated 13.11.1997 of the Department of Posts that the provisions of EDDA (Conduct & Service) Rules could not have been invoked in such cases and that termination of services of an ED agent without issuing a show cause notice is bad in law.

8. Admittedly before issuing the termination order under Rule 8 of the rules, show cause notices were not given to the applicants though the applicants were appointed on regular basis and since the date of appointment, all the applicants had been working on their respective posts. No doubt in all the cases the termination orders are simplicitor, it does not give any reason and where the termination order is simplicitor normally the courts would not like to interfere. But in the instant case the respondents have categorically stated in their

replies that the appointments of the applicants are irregular as the appointing authority has appointed the applicants without taking prior permission from the higher authorities. The law is settled that when on such a ground the termination order is issued, the same could not have been issued without first giving a show cause notice to the applicant and obtaining his representation on the question of erroneous appointment of his services. It is quite clear that the termination orders passed in these cases is not in accordance with the circular issued by the Department of Posts and is issued in complete disregard of the circular. It has been clearly instructed by the department in the same circular that there is no need to invoke the ED Agents (Conduct & Service) Rules while passing the final orders in such cases. In spite of this instruction from the department, the respondents has terminated the services of the applicant by invoking Rule 8 of the GDS (Conduct & Employment) Rules, 2001 which is Pari Materia to Rule 6 of ED Agents (Conduct & Service) Rules. No opportunity of defending their cases has been given to the applicants prior to terminating their services and, therefore, it can easily be construed that the principles of natural justice were not followed and the termination orders, therefore, deserves to be quashed and set aside on this ground alone.

8.1 The same view has been taken in the case of Manohar Choudhary in OA No. 862/2003 (supra) by this Bench of the Tribunal. We do not see any reason to take a different view that the one taken in the case of Manohar Choudhary and we are of the considered opinion that the same deserves to be followed in this case also.

9. In view of the aforesaid discussion and in the facts and circumstances of the case, we quash and set aside the termination orders issued by the ASPOs as well as the impugned orders

passed by the Post Master General rejecting the representations of the applicants and direct the respondents to reinstate the applicants in services. The applicants would be entitled to the wages/allowances for the period when they have actually worked. The respondents shall, however, be at liberty to take any further action, as deemed fit, after serving show cause notices to the applicants and considering the replies of the applicants to such show cause notices.

10. With the above directions, the Original Applications stands disposed of. No order as to costs.

11. The Registry is directed to supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.

(Ms. Sadhna Srivastava)
Judicial Member

(M.P. Singh)
Vice Chairman

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