

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 18 of 2004

Original Application No. 910 of 2004

Original Application No. 1111 of 2004

Indore, this the 29th day of April, 2005

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

1. Original Application No. 18 of 2004 -

Kailashpuri Goswamy, S/o. Shri Motipuri Goswamy,
aged about 36 years, R/o. Choubabaradhira, Tonkhurd,
Distt. Dewas. ... Applicant

(By Advocate - Shri V. Tripathi on behalf of Shri S. Paul)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Communication, Deptt. of
Post, New Delhi.

2. The Chief Post Master General, M.P.
Circle, Hoshangabad Road, Bhopal.

3. Assistant Superintendent of Post Offices,
Indore Division, Distt. Indore (MP).

4. Post Master General, Indore Region,
Indore. ... Respondents

(By Advocate - Shri K.N. Pethia)

2. Original Application No. 910 of 2004 -

Satish Kumar Bairagi, S/o. Shri Ramalal Bairagi,
Date of birth 31.3.1978, R/o. Village & Post -
Mendakwas, Gautampura, Tahsil - Depalpur,
Distt - Indore (MP). ... Applicant

(By Advocate - Shri V. Tripathi on behalf of Shri S. Paul)

V e r s u s

1. Union of India, through it's Secretary,
Ministry of Communication, Deptt. of
Post, New Delhi.

2. The Chief Post Master General, M.P. Circle,
Hoshangabad Road, Bhopal.

3. Postmaster General, Indore Region,
Indore (MP).

4. Assistant Superintendent of Post Offices,
Indore Sub-Division, Indore (MP)... Respondents

(By Advocate - Shri K.N. Pethia)

3. Original Application No. 1111 of 2004 -

Avinash Kharbanda, S/o. Shri Devendra Kharbanda,
Aged about 28 years, R/o. Village & Post - 110/2,
Maruti Nagar, Sukiya, Distt - Indore (MP). ... Applicant
(By Advocate - Shri V. Tripathi on behalf of Shri S. Paul)

V e r s u s

1. Union of India, through its Secretary, Ministry of Communication, Deptt. of Post, New Delhi.
2. The Chief Post Master General, M.P. Circle, Hoshangabad Road, Bhopal.
3. The Director of Postal Services, Indore Region, Indore (MP).
4. The Assistant Superintendent of Post Offices, Indore Sub-Division, Indore (MP). ... Respondents

(By Advocate - Shri P. Shankaran on behalf of Shri S.K. Mishra)

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 following main reliefs :

OA No. 18 of 2004 -

- "(ii) set aside the termination order Annexure A-1,
- (iii) upholding that Rule-8 of GDS Rules, 2001 is unconstitutional and ultra-virus is liable to be struck down,
- (iv) consequently command the respondents to reinstate the applicant with full back wages and other consequential benefits as if the impugned termination order is never passed,
- (v) set aside the order dated 3.3.2004 Annexure A-4."

OA No. 910 of 2004 -

"(ii) set aside the termination order dated 4.12.2003 and order dated 31.3.2004 Annexure A-1 and Annexure A-4,

(iii) upon holding that Rule-8 of GDS Rules 2001 is unconstitutional and ultra-virus is liable to be struck down,

(iv) consequently command the respondents to reinstate the applicant with full back wages and other consequential benefits as if the impugned termination order is never passed."

OA No. 1111 of 2004 -

"(ii) set aside the termination order dated 4.12.2003 Annexure A-1,

(iii) upon holding that Rule-8 of GDS Rules 2001 is unconstitutional and ultra virus is liable to be struck down,

(iv) consequently command the respondents to reinstate the applicant with full back wages and other consequential benefits as if the impugned termination order is never passed."

4. The brief facts of the case in OA No. 18 of 2004 are that the applicant was appointed on adhoc basis on the post of Gramin Dak Sevak Branch Post Master (in short GDSBPM) at Chaubara Dhira ED Branch office, vide order dated 3.10.2004 by the respondent No. 3. His services have been terminated vide order dated 4.12.2003 (Annexure A-1). Hence, this Original Application is filed.

4.1 The brief facts of the case in OA No. 910 of 2004 are that the applicant was appointed on the post of GDSBPM on adhoc basis at Mendakwas ED Branch office, vide order dated 10.9.2001 by the respondent No. 4, on the vacant post due to removal from service of the regular incumbent. His services have been terminated vide order dated 4.12.2003 (Annexure A-1). Hence, this Original Application is filed.

4.2 The brief facts of the case in OA No. 1111 of 2004 are that the applicant was appointed on the post of GDSBPM

on adhoc basis at Bisnaoda ED Branch office, vide order dated 5.10.2001 by the respondent respondent No. 4. His services have been terminated vide order dated 4.12.2003 (Annexure A-1). Hence, this Original Application is filed.

5. Admittedly all the applicants were appointed on adhoc basis on the post of GDSBPM by the Assistant Superintendent of Post Offices, Indore and their termination orders have been issued on 4th December, 2003. The counsel for the applicants has assailed the order of termination mainly on the ground that the orders of termination had been passed under Rule 8 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 (hereinafter to be referred as the rules) and their services were terminated forthwith with the direction that money order will be issued for payment of TRCA. The termination orders are simplicitor and on the basis of it it appears that it is not punitive in nature. He has argued that it is well settled law that Extra Departmental Agents has a Master and servant relations with Postal Department and is a civil post holder. Being a civil post holder he has a protection of Article 311 of the Constitution of India and other provisions of Article 14 & 16 etc. He further submitted that the termination order does not indicate any reasons as to why the applicants' services have been terminated. Since the termination orders entails civil consequences and is an adverse order, as such the applicants are entitled for an opportunity of being heard before passing of the impugned order.

6. On the other hand the learned counsel for the respondents has submitted that all the three applicants were appointed on adhoc basis as GDSBPM by the Assistant Supdt. of Post Offices who was not competent for making appointment on the post of GDSBPM. The competent authority for making

appointment of GDSBPM is the Superintendent of Post Offices. The applicants services were liable to be terminated at any time and they have no right to continue in services as a regular employee as they entered into a specific contract and voluntarily accepted the contractual liability. The Asstt. Supdt. of Post Offices completely failed to follow the rules and regulations and made such appointments which are illegal and irregular. Thus, on these aforesaid grounds the services of the applicants have been terminated. There is no illegality in the orders of termination passed in all the aforesaid three cases. Therefore, the Original Applications are liable to be dismissed with costs.

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

8. A bare perusal of the terminations orders contained in Annexure A-1 in all the OAs shows that the termination orders have not been passed under Rule 8 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 as neither one month's notice nor TRCA in lieu of one month's pay has been remitted to the applicants. All the applicants, in paragraph 4.2 of their OAs, have admitted that they have passed the VIIIth standard examination and as such they were eligible to be appointed on the post of Gramin Dak Sevak Mail Carrier. ✓ They were considered for appointment in accordance with the provisions and were appointed ~~XXXXXX post XXXXXXXX~~ against clear and vacant posts. A bare perusal of the appointment order Annexure A-2 in all the OAs shows that all the applicants were appointed on adhoc basis on the post of GDSBPM. Admittedly the minimum qualification prescribed for the said post of GDSBPM is high school and the appointing authority is the Superintendent of Post Offices. In the instant case all

the applicants were appointed by the Asstt. Supdt. of Post Offices who is not the competent person to appoint the GDSBPMs. We/ termination orders have been passed in accordance with the terms and conditions mentioned in the appointment orders. These orders have not been passed under Rule 8 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001. Since all the applicants do not fulfil the qualifications prescribed for GDSBPM as such their appointment orders are void ab initio and their services have rightly been terminated. When the appointments are made dehors the rules then the applicants have no right for their continuance on the post. We find no irregularity in the termination orders.

9. In view of the aforesaid, all the Original Applications are dismissed without any order as to costs.

S. Sadhna Srivastava
(Ms. Sadhna Srivastava)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

"SA"