

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.No.514/2003

Hon'ble Sh. M.P.Singh, Vice Chairman
Hon'ble Sh. G. Shanthappa, Judicial Member

Jabalpur, this the 17th day of November, 2003

Bhupendra Verma
s/o Shri Bhagwan Das Verma
r/o Nowgong, Tehsil Nowgong
District Chhatarpur (MP). ... Applicant

(By Advocate: Sh. N.S.Ruprah)

Versus

1. Union of India through
Secretary
Post & Telegraphic
Govt. of India
New Delhi,
2. Director
Postal Services (Head Office)
M.P.Parimandal, Bhopal.
3. Chief Post Master General
Madhya Pradesh Circle
Bhopal (MP).
4. Superintendent of Post Office
Chhatarpur Division
Chhatarpur (MP).. ... Respondents

(By Advocate: Sh. P. Shankaran)

O R D E R (Oral)

By Sh. G. Shanthappa, Member (J):

The said OA is filed seeking the relief to quash the impugned termination notice dated 16.7.2003 (Annexure A-1) and direct the respondents to continue the applicant in service as Branch Post Master.

2. The facts of the case in brief are that the applicant belongs to Scheduled Caste and he was appointed as Extra-Departmental Branch Post Master (EDBPM), GDS, Tindni w.e.f. 28.3.2003 (Annexure A-9). The respondents

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have issued another order dated 13.8.2002 appointing him as EDBPM, Tindni, Branch Office. While he was serving as EDBPM, the respondents have issued a show cause notice dated 16.7.2003 asking the applicant to submit the following:

- " 1. That for the purpose of filling the post of Branch Post Master, the required permission was not taken.
- 2. That the movable and immovable property in the name of the applicant was not considered at the time of appointment"

The applicant has received the said notice on 22.7.2003 and he has replied as per Annexure A-11. Since he did not receive any orders, he has challenged the said order before this Tribunal for quashing.

3. The applicant has urged the ground that the respondents have not followed the procedure, they have no authority to discriminate an employee on the basis of financial status of an individual, they have no authority to take action against an employee on the basis of financial position of the individual, and though the applicant was working for five months from 28.3.2002, his services were not regularised. Hence, the impugned show cause notice, according to the applicant, is liable to be quashed and he may be directed to continue as Branch Post Master.

4. Per contra, the respondents have filed their reply contending that the OA is not maintainable since the applicant is challenged the show-cause notice. Hence, the OA is liable to be ~~dismissed~~ dismissed on that ground alone.

5. The impugned show cause notice has been issued by the reviewing authority to review of the case and on satisfying that the applicant's appointment is irregular and against the rules, the applicant did not fulfil the conditions, hence the service of the applicant shall be terminated. Accordingly, the authority has passed the impugned order.

6. Respondents have stated in their reply that "the vacancy of GDS/BPM was notified vide Annexure R/2 without prior approval from the Principal Chief Postmaster General, Bhopal as it was a new created post and it was to be filled up only on diversion from other Branch Post Office. Even the selection and appointment of applicant was later on found not in conformity with the requirements as he is not having alternate independent source of income or any other immovable assets which is a pre-condition for employment as GDS. Therefore, his appointment was found to be irregular and against the rules. Because of this irregular appointment, he was given show cause notice in compliance with the principles of natural justice against which he also submitted his representation on 31.7.2003. This representation was under consideration of the competent authority. However, without waiting for the final outcome of this representation and without giving breathing time to the Respondents to take a proper decision on his representation, he approached this Hon'ble Tribunal through this OA. Therefore, he has not exhausted his alternate remedy and application filed by him is ~~also~~ premature. Therefore, it is to be dismissed on this ground alone.

7. The respondents have further produced the rules regarding Gramin Dak Sevak (Conduct and Employment) Rules, 2001 in supersession of the existing Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 and contended that 'A Sevak shall fulfil the compulsory condition of alternate independent source of income preferably derived from landed property or immoveable assets as a pre condition for employment as Sevak and shall maintain the same after his employment as Sevak; '.

8. The respondents have also taken a preliminary objection and stated that the applicant has filed this OA without exhausting the remedies available to him under the rules, hence, the OA is liable to be dismissed.

9. In rejoinder to the oral arguments of the respondents' counsel, the learned counsel for the applicant has relied on the decision of this Tribunal in OA No.362 of 2003 connected with OA No.398 of 2003 and stated that the present case is squarely covered by the aforesaid decision of this Tribunal. Hence, this OA is liable to be allowed.

10. We have heard the learned counsel for the applicant and the learned counsel for the respondents. After perusal of the pleadings and the documents available on record, we have decided to consider that whether the applicant had fulfilled all the conditions for appointment as EDBPM, whether the order of this Tribunal in OA No.362/2003 connected with OA No.398/2003 and also the orders of the Bangalore Bench of this Tribunal reported in 2003(1) AT& 277 are applicable to the facts of this case?

11. The respondents had appointed the applicant after following the procedure and also after verification that whether the applicant had sufficient ~~xx~~ means of income from the property. At this stage, a show cause notice was issued by the respondents for cancellation of the appointment of the applicant only on the ground that he did not fulfil the conditions prescribed in the aforesaid rules.

12. We find that in similar circumstances, like the present case, this Tribunal has decided OA No.362/2003 connected with OA No.398/2003, passed the order on 8th August, 2003, by following the Full Bench Judgement of this Tribunal in H. Lakshmana and Others v. The Superintendent of Post Offices, Bellary & Others, 2003(1) ATJ 277 wherein it has been held that possessing of adequate means of livelihood in the circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the aforesaid post. The facts of the said cases and the facts of the present case on hand are similar.

13. Accordingly, the present impugned action taken by the respondents is illegal. We quashed and set-aside the impugned order at Annexure A/1 dated 16.7.2003. The OA is disposed of with a direction to the respondents to consider the case of the applicant in the light of the aforesaid decision in OA No.362/2003 and also Full Bench Judgement (supra). The respondents

are further directed to comply with the aforesaid directions within three months from the date of receipt of a copy of this order. No costs.

G. Shanthappa
(G. SHANTHAPPA)
Judicial Member

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

/rao/

Fauzeeb
21.11.03

N S Ruprah, Adv.
P. Shankaran, Adv.
21.11.03

Ansarea
21.11.03