CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPURBENCH,
CIRCUIT COURT SITTING AT GWALIOR

Original Applications Nos. 631, 632, 633 and 634 of 2001

Indore This 18th the day of Ocotober, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Application No. 631 of 2001

Hamant Kumar Yadav S/o Shri Kanhaiyalal Yadav aged 23 years Occupation Extra Departmental Delivery Agent, Speed Post Centre, Gwalior Railway Station, Gwalior, R/o C/o Narmada Devi Yadav, Pragati Nagar, Shabd Pratap Ashram, Gwalior **-Applicant**

VERSUS

1. The Union of India,Through The Secretary, Ministry of Telecommunication, Department of Post Offices, Bahadur Shah Zafar Marg,New Delhi.

2. Principal Chief Post Master General, Bhopal (M.P.)

3. Post Master, Lashkar Head Office, Gwalior (M.P.) **-Respondents**

(2) Original Application No. 632 of 2001

Tarun Sonane S/o Shri H.R.Sonane, Aged 24 years, occupation Extra Departmental Delivery Agent, Speed Post Centre, Gwalior Railway Station, Gwalior, R/o Dana Oli, Kali Mata Ka Mandir,Lashkar, Gwalior **- Applicant**

VERSUS

1. The Union of India, Through The Secretary, Ministry of Telecommunication,Department of Post Offices,Bahadur Shah Zafar Marg, New Delhi.

2. Principal Chief Post Master General, Bhopal (M.P.)

3. Post Master, Lashkar Head Office Gwalior (M.P.) **-Respondents**

(3) Original Application No. 633 of 2001

Rajesh Sharma S/o Radha Vallabh Sharma aged 23 years, occupation Extra Departmental Delivery Agent, Speed Post Centre, Gwalior Railway Station Gwalior, R/o Ganj Rajgarh Road,Raobagh Mohalla, Datia (MP) **-Applicant**

VERSUS

1. The Union of India,Through The Secretary, Ministry of Telecommunication, Department of Post Offices, Bahadur Shah Zafar Marg,New Delhi.

2. Principal Chief Post Master General, Bhopal (M.P.)

3. Post Master, Lashkar Head Office Gwalior (M.P.) **-Respondents**

(4) Original Application No. 634 of 2001

Anand Page S/o Shri Diwakar Page, Aged 26 years, occupation Extra Departmental Delivery Agent, Speed Post Centre, Gwalior Railway Station Gwalior, R/o Fadnis Ki Goth Chawadi Bazar, Lashkar, Gwalior **-Applicant**

VERSUS

1. The Union of India,Through The Secretary, Ministry of Telecommunication,Department of Post Offices Bahadur Shah Zafar Marg, New Delhi.

2. Principal Chief Post Master General, Bhopal (M.P.)

3. Post Master, Lashkar Head Office Gwalior (M.P.) **-Respondents**

Present:

Shri S.Paul, learned counsel for the applicants in all the aforesaid OAs)

Shri V.K.Sharma, learned counsel for respondents in all the aforesaid OAs)

COMMON ORDER

By M.P. Singh, Vice Chairman –

All the aforementioned OAs have been taken up and heard together. As the issue involved and reliefs claimed in all the aforementioned four Original Applications are common and the

facts involved and grounds mised are identical, for the sake of convenience all these four OAs are being disposed of by this common order.

2. By filing the aforesaid Original Applications, the applicants have sought the following main reliefs:-

> "(A) That, the order in Annexure-A-5 and notices in Annexure A/6 and A/8 may kindly be declared as arbitrary, illegal and have been passed without application of mind, hence these may be quashed.
> (B) That, respondents be ordered or directed not to discontinue the service of applicant".

3. The brief facts of the afore-mentioned OAs are that the applicant in OA 631/2001, had applied for the post of Extra Departmental Delivery Agent (for short 'EDDA') for Gwalior City in response to an advertisement issued by the respondents. He had participated in the selection, and was considered and found fit for appointment. Thereafter, the respondent no.3 in pursuance of the order dated 28.1.2000 of Sr. Superintendent of Post Offices (for short 'SSPO') Gwalior Division, Gwalior, issued appointment order of the applicant appointing him on the post of EDDA in the pay scale of Rs.1740-30-2640 vide order dated 9.2.2000. Similarly, vide orders dated 7.2.2000, the respondents have appointed the applicants in other OAs 632 and 633 of 2001 as EDDA. The applicant in OA 634/2001 was appointed as ED Packer in the pay scale of Rs.1545-25-2020.Thereafter, the respondent no.3 had issued a corrigendum vide memo dated 21.2.2000 (Annexure-A-4) whereby he has added the word "purely temporary and on adhoc basis" in his earlier aforesaid orders dated 7/9.2.2000.

3.1 One Ajay Kumar S/o Thakurdas, who was also one of the candidates for the aforesaid selection, had filed an OA No.1131/2000 against his non-appointment and the Tribunal vide order dated 28.3.2001 had disposed of the said OA with a direction to respondent no.2 to decide his representation by a speaking order. The respondent no.2 i.e. the Principal Chief Post Master General,Bhopal had rejected the representation of aforesaid

Ajay Kumar vide memo dated 21.6.2001 (Annexure-A-5). While rejecting the representation of aforesaid Ajay Kumar, the respondent no.2 in his aforesaid order dated 21.6.2001 had also observed as under:

> "(c)On review of the case it was also seen that the recruitment made in the 5 posts was not in accordance with the recruitment rules, consequently, it has been ordered to cancel the irregular recruitment and terminate the services of all the five candidates appointed, after observing the usual formalities".

On the basis of the aforesaid order dated 21.6.2001, the respondent no.3 has issued the notices dated 31.7.2001 (Annexure-A-6) to the applicants, stating that he has provisionally come to the conclusion to terminate the services of the applicants, and had given an opportunity of making representation to the applicants against the proposed penalty. The applicants have submitted their representations to the respondent no.3 against the aforesaid notice. Thereafter, respondent no.3 again issued notices dated 18.8.2001(Annexure-A-8) to the applicants under Rule 8(1) of Department of Posts Gramin Dak Sewak (Conduct and employment) Rules, 2001 (hereinafter referred to as 'the GDS Rules') to ~~the applicants~~ informing that their services shall stand terminated with effect from the expiry of one month from the date on which the notices are served to them. The applicants have contended that the orders passed by the respondent no.2, in so far as it relate to the recruitment of the applicants, and the finding of respondent no.2, holding recruitment irregular, are wholly illegal, arbitrary and mechanical. The respondent no.2 has neither pointed out any specific irregularity in the selection or recruitment process nor he has disclosed any violation of rules of selection process or recruitment proceeding, and no reason has been given for his afore-mentioned finding. Thus, without positive finding, reason or irregularity, the orders passed by the respondents ~~are~~ cannot sustain in the eye of law. The applicants have further contended that the respondent no.3 in the orders/notices in Annexure-A-6 has stated

that the applicants are given an opportunity of making representation on the proposed penalty. If this is the reason that the services of the applicants are going to be terminated by way of punishment, then it is necessary to give show cause notice explaining the misconduct and to conduct enquiry to prove the misconduct against the applicants. But no show cause notice either by respondent no.2 or 3 has been given nor charge sheet has been issued nor any enquiry has been conducted against the applicants. Thus, the orders passed by the respondents, without complying with the due process, are not sustainable in law and hence deserve to be quashed.

3.2 The applicants have further submitted that the notices dated 18.8.2001 (Annexure-A-8), issued by the respondent no.3, terminating the services of the applicants, are illegal because they are camouflage orders concealing real facts. Hence these Original Applications.

4. The respondents in their reply have stated that the appointment of the applicants were made in contravention of the rules, as having been made by the Senior Superintendent of Post Office, while the appointing authority is the Post Master. The appointment was thus made by the authority not competent to do so. The matter was duly inquired into and after following the procedure, the services of the applicants have been put to an end. There is no mala fide in the action. The respondents in their reply have submitted that the respondent no.3 initially issued notices dated 31.7.2001 (Annexure-A-6) but subsequently notices dated 18.8.2001 (Annexure-A-8) were issued in accordance with the terms of contract of appointment, as well as Rule 8 of the new Rules of 2001. Thus, the orders at Annexure-A-8 are perfectly legal and valid.

5. Heard the learned counsel for the parties.

6. The learned counsel for the applicants has submitted that the appointment of the applicants have been made after following the

due procedure. The respondents while issuing the notices dated 31.7.2001 as well as notices dated 18.8.2001have not disclosed the reasons for terminating the services of the applicants. However, as per the subsequent notices issued on 18.8.2001, it was stated that the notices are issued in pursuance of Rule 8(1) ibid. It is only after the reply filed by the respondents that they have disclosed the reason for terminating the services of the applicants, that the appointments were made in contravention of the rules, as they have been made by the Senior Superintendent of Post Offices while the appointing authority was the Post Master.

7. The learned counsel for the applicants has drawn our attention to Rule 4(3) of the GDS Rules, which is reproduced as under:-

> "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-
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> (a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or
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> (b) to have failed to exercise a jurisdiction so vested; or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit".

The learned counsel has submitted that aforesaid Rule 4(3) ibid has been inserted vide D.G.Posts, letter No.19-15/2002-GDS dated 9th May,2003 and as such has come into force from 9th May,2003, whereas the applicants were appointed in the year 2001 and, therefore, the authority superior to the appointing authority had no power to review the appointments made by the appointing authority in the year 2001. He has also submitted that the appointment orders were issued by the Post Master, who is the appointing authority, and the notices for termination were also issued by him, however, the selection and appointment of the

applicants was approved by the higher authority i.e. the Senior Superintendent of Post Offices, which in any way cannot be a ground for termination of the services of the applicant. The applicants were appointed after following the due procedure. They were doing their duties to the satisfaction of their superiors and there was no allegation or charge of any of the misconduct or otherwise against the applicants. He has relied upon the judgment of the Allahabad Bench of this Tribunal in the case of **Baij Nath Tripathi Vs.Union of India and others,** 2001(3)ATJ 285 wherein it has been held that "power to terminate the service of an EDA can be examined by the appointing authority and not by the Director of Postal Services who is the next higher authority", and accordingly the Tribunal had quashed the order of termination from service of the applicant in the said case. The learned counsel has also relied on the decision in the case of **Jyothiraj Thirakappa Lalege Vs. Sr. Supdt. of Post Offices**, 2003 (1)ATJ 705 wherein it has been held that the "higher administrative authority has no power to review the appointment order made by the lower authority and cancellation of appointment in such a situation is violative of principles of legitimate expectation and the department cannot be allowed to take advantage of their own wrong and fault". The learned counsel has also stated that a similar view has been taken by the Jabalpur Bench of the Tribunal in a bunch of 18 cases decided by a common order dated 28.4.2005, leading case **Anil Sharma Vs.Union of India and others,** O.A.No.3 of 2004.

8. On the other hand, the learned counsel for the respondents has submitted that the services of the applicants have been terminated under Rule 8(1) ibid because their appointment was made at the behest of the Superintendent of Post Offices, which is the higher authority than the appointing authority. In this case the appointing authority is the Post Master and this irregularity was noticed by the Principal Chief Post Master General, in due course

of time, and he has ordered to cancel the recruitment and terminate the services of the applicants after observing the due formalities. All formalities have been completed by the respondents before terminating the services of the applicants. The applicants have been given an opportunity of hearing. Thus, there is no illegality or irregularity in the orders passed by the respondents.

9. Earlier, this Tribunal has considered the matter and vide common order dated 28.2.2002 had dismissed these OAs. The said order dated 28.2.2002 was challenged before the Hon'ble High Court of Madhya Pradesh, Bench at Gwalior, by way of filing Writ Petitions Nos.2601, 2602 & 2603/2002 and 1528/2003 and the Hon'ble High Court vide its orders dated 28.7.2005 have set aside the aforesaid order of the Tribunal and remitted the cases to this Tribunal for consideration.

10. We have given careful consideration to the rival contentions and we find that the appointments of the applicant have been made after following due procedure. There were no complaints against the applicants. Their work was quite satisfactory. It was only the Principal Chief Post Master General who has ordered to cancel the recruitment of the applicants on the ground that their appointments had been made by the Senior Superintendent of Post Offices, which happens to be the higher authority than the Post Master, who is the appointing authority in this case.

11. We also find that though the respondents have stated in their replies that the appointments of the applicants were made on contractual basis, however, on perusal of the impugned orders dated 31.7.2004 we find that the applicants were appointed on provisional basis. As regards holding of enquiry and issue of show cause notices are concerned, we find that the services of the applicants have been terminated not on the ground of misconduct and, therefore, there was no necessity of holding an enquiry as per the procedure prescribed for holding a detailed enquiry.

12. We further find that Rule 4(3) ibid has been inserted by the orders dated 9.5.2003 issued by the Director General Posts, by which powers have been given to the superior authority to review the appointment orders. In the instant cases, we find that the appointment orders of the applicants have been issued in the year 2000. Thus, the superior authority had no powers to review the appointments of the applicants which were made in the year 2000. Moreover, the appointments of the applicants have been made by holding due selection. The approval given by the Senior Superintendent of Post Offices to the proposal submitted by the Post Master for appointment of the applicants, does not prejudice the appointment of the applicants.

13. In the result, these four OAs are allowed. The impugned orders in Annexure-A-5 and notices in Annexure A/6 and A/8 in the respective OAs are quashed and set aside. The respondents are directed to reinstate the applicants immediatelty and grant them all consequential benefits. However, it is made clear that the applicants will not be entitled to any back wages.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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