

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 805 of 2002

Jabalpur, this the 13th day of July, 2004.

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

Om Prakash Mishra,
S/o Shri Ram Shankar Mishra,
aged about 24 years,
Gramin Dak Sevak Branch Post
Master (GDSBPM), R/o Village-
Post Rajadhau, Tahsil Mauganj,
District Rewa(MP)

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
Ministry of Communication,
Department of Posts,
New Delhi.
2. Chief Post Master General,
Chhattisgarh Circle,
Raipur(C.G.).
3. Superintendent,
Post Offices,
Rewa Division,
Rewa-486 001(MP)

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R (ORAL)

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the following main reliefs :-

"(ii) Set aside the order dated 30.10.2002
Annexure A/1;

In alternatively

(iii) Declare the Rule '91) of GDS (Conduct & Employment) Rules, 2001 as ultra vires and unconstitutional and struck down the same;

(iv) Consequently, command the applicant be permitted to continue as GDSBPM with all consequential benefits as if the order".



2. The brief facts of the OA are as follows:

A notification was issued for appointment to the post of Extra Departmental Branch Post Master (EDBPM) which was subsequently redesignated as GDSBPM. By order dated 6.4.99 (Annexure A-2), respondent No.3 informed the applicant that he was selected pursuant to his application dated 3.3.99. The applicant submitted his joining on 15.4.99 (Annexure A-3). By order dated 14.5.99 (A-4), the applicant was provisionally appointed for a period of 4 months w.e.f. 15.4.99 or till regular appointment was made. The applicant was given an order of appointment dated 1.12.99 (A-5). This order shows that the applicant was confirmed as permanent employee by giving him a confirmation order of appointment. The applicant is entitled for all the benefits arising out of his permanent appointment dated 1.12.99. The settled legal position was that whenever an employee is confirmed on a subsequent date, the date of confirmation relates to back to the original date of appointment. The impugned order dated 30.10.02 (A-1) was issued whereby the applicant's services were directed to be terminated after one month from the date of notice served on him. The impugned order was served on the applicant on 8.11.2002. Accordingly, the applicant's services shall stand terminated on 8.12.2002. A permanent employee's services cannot be terminated by giving him one or three months' notice.

3. Heard the learned counsel for both parties.. It was argued on behalf of the applicant that the applicant was duly selected by the respondents and appointment letter dated 1.12.99 (A-5) was issued to him. The impugned order was passed on the basis that the applicant belongs to, general category, whereas some kith and kin of political leader of reserved category was interested to occupy the said post. The petitioner has not misrepresented anything to obtain employment. The impugned order is punitive in nature and was issued on the basis of extraneous consideration.

(D)

The impugned order is bad in law and liable to be quashed.

4. In reply, the learned counsel for the respondents argued that applications were invited through the employment exchange vide letter dated 3.2.99 and vacancy was reserved for special ST community. Out of the five candidates, the applicant was found suitable for appointment as EPM and as such he was selected. The applicant was appointed purely on provisional basis. On verification it was found that the applicant was appointed against a post notified as reserved. The matter was not thoroughly examined by the Circle Level and it was seen that late M.D.Kashyap, Superintendent of Post Offices, Rewa was responsible for the irregular selection of the applicant, which should have been specifically filled by either SC or ST candidate. Subsequently respondent No.3 got verified the actual reason for terminating the services of the applicant from respondent No.2. In view of the above, respondent No.2 clarified the position regarding irregular appointment of the applicant. Hence the action taken by the respondents is perfectly legal and justified.

5. After hearing the learned counsel for the parties and carefully perusing the records, we find that the applicant was duly selected and appointed by the respondents and accordingly Annexure A5 appointment letter was issued to him. There was only one vacancy and the applicant was found the most suitable candidate.

6. Considering all the facts and circumstances of the case, we are of the view that the impugned order passed by respondents dated 30.10.2002 (Annexure A1) is liable to be quashed and set aside. Accordingly the impugned order is set aside and quashed. OA is allowed. Respondents are



directed to reinstate the applicant within a period of two months from the date of receipt of the copy of this order. Since the applicant has not worked during the period between the termination of his services and reinstatement, he shall not be entitled for any back wages but he shall be considered for seniority in his service.

The OA is accordingly disposed of.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

aa.

पृष्ठांकन सं. ओ/न्या..... जवलपुर, दि.....
प्रतिलिपि अवृं डित:-
(1) सचिव, उच्च न्यायालय वार एसोसिएशन, जवलपुर
(2) आवेदक श्री/श्रीमती/तु..... के काउंसल S. Paul
(3) प्रत्यक्षी श्री/श्रीमती/तु..... के काउंसल S A Dhermalilani
(4) कृपयाल, योग्य, जवलपुर न्यायपीठ
स्वतंत्र एवं आवश्यक कार्यवाही हेतु 12/8/84
उच्च न्यायालय

Issued
on 6.8.04
by
S. P. S.