

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 677 of 1994

New Delhi this the 15th day of September, 1994

Mr. Justice S.K. Dhaon, Acting Chairman  
Mr. B.N. Dhoundiyal, Member

Shri Giri Prasad Sharma  
R/o Village Gajipur,  
Delhi-110091.

....Applicant

By Advocate Shri S.K. Gupta

Versus

1. Union of India through  
Secretary,  
Department of Posts,  
Dak Tar Bhavan,  
Parliament Street,
2. Post Master General,  
Agra (U.P.).
3. Senior Superintendent of Post Offices,  
Aligarh-202001. (U.P.).
4. Sub Divisional Inspector (Posts)  
North Sub Division,  
Aligarh-202001. ....Respondents

By Advocate Shri M.I. Verma

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Acting Chairman

The order dated 24.07.1993 passed by the Sub Divisional Inspector (P), North Sub Division, Aligarh terminating the services of the applicant is being impugned in the present application.

2. On 20.04.1991, the applicant was engaged as EDMP provisionally till regular appointment. On 23.04.1991, the applicant was given a regular appointment.

3. A counter-affidavit has been filed on behalf of the respondents. Therein, the material averments are these. The appointment of the applicant was reviewed by the PMG Agra Region Agra and it was noticed by that officer that the applicant had been appointed ignoring the seniority of one candidate, namely, Pratap

84

*(S)*  
*10*

Singh who secured 55.5% marks in the High School Examination whereas the applicant secured 34.2% marks in that examination. The applicant was, therefore, irregularly appointed.

4. We may now read the impugned order. It recites that the services of the applicant are being terminated under Rule 6 of the EDAS (Conduct & Services) Rules, 1964 with immediate effect.

5. Rule 6 underwent a change on 2.2.1993. Since the impugned order was passed on 24.07.1993, the matter would be governed by the Amended Rule 6. It, inter alia, provides that the service of an employee who has not rendered more than three years continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing by either side. The period of notice shall be one month. The proviso thereto emphasises that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance at the same rates at which he was drawing them immediately before the termination of his services. The note appended to the proviso has relevance and, therefore, the same is being extracted:-

" Where the intended effect of such termination has to be immediate, it should be mentioned that one month's basic allowance plus Dearness Allowance is being remitted to the ED Agent in lieu of the notice of one month through money order".

Indisputably, the compliance of the note was not done by the respondents. On the other hand it has been so admitted. The explanation offered is that the

*Sug*

respondents were not aware of the contents of the said note when the impugned order was passed.

6. Non-compliance of the note need not detain us since we are inclined to interfere with the impugned order on another ground. It shall be stated hereafter.

7. Our attention has been drawn to the Appointment and Service Conditions of ED Agents which are mentioned at page 77 of Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department (incorporating orders received upto April, 1992)(Fifth Edition 1992). For appointment of ED Agents, the minimum educational qualification laid down is VIII Standard. It is also stated that Matriculation or equivalent would be preferred. The Swamy's Compilation also contains an extract of the D.G., Posts letter No.17-497/90 ED & Trg., dated 10.05.1991. Paragraph 2 of the said letter, inter alia, states that the deciding factor for the selection of ED BPMs/ED SPMs would be to offer ED appointments to the person who secured maximum marks in the examination which made him eligible for the appointment provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED allowance. It will thus be seen that the emphasis in the aforesaid paragraph is that while deciding the competitive claims of rival candidates the criteria is as to who secured the maximum marks in the examination which makes such a candidate eligible for appointment. We have already indicated that the eligible examination for the purpose of appointment of the applicant was VIII Standard. It is not the case of the respondents that the other candidate who is mentioned in the

(X) (12)

affidavit had secured higher percentage of marks in VIII Standard in comparison to the applicant. It follows that the factor which was taken into account by the authority concerned while terminating the services of the applicant, namely, that the other candidate had secured higher marks in the High School Examination was irrelevant and extraneous. The applicant having been appointed on a regular basis, he acquired a right to hold the post of ED Agent. He could be deprived of that right only in accordance with <sup>the</sup> law and such a law should be strictly construed in favour of the Government servant who is being deprived of his source of livelihood.

8. There is another reason as to why we should interfere with the impugned order. Indisputably, the applicant was not afforded any opportunity of hearing before the impugned order was passed. Since the impugned order was not an order of termination simpliciter but it was founded on the ground that the appointment of the applicant was allegedly irregular, the minimum requirement of the principle of natural justice should have been observed before passing any order adverse to the interest of the applicant. We are fortified in <sup>our</sup> view on both the points by a decision of the Chandigarh Bench in O.A. No. 65-HR of 1992 decided on 07.07.1993. We respectfully agree with the decision of the Chandigarh Bench.

9. We are informed that during the pendency of this O.A. on 05.04.1994 the Reviewing Authority (Superintendent of Post Offices, Aligarh) rejected the Review Petition filed by the applicant. We find from a perusal of the same that he has given no reasons

Sug

✓2 ✓3

in support of his order. This is enough to vitiate the order of the Reviewing Authority. Moreover, we have already held that the Reviewing Authority passed the order terminating the services of the applicant not only on extraneous consideration but also in violation of the principles of natural justice. This infirmity will not invalidate the impugned order merely because the Reviewing Authority has rejected the appeal.

10. This application succeeds and is allowed. The impugned order is quashed. The respondents are directed to reinstate the applicant in service within a period of 3 months from the date of receipt of a certified copy of this order. The question of back wages will be considered by the appropriate authority.

11. There shall be no order as to costs.

*B.N. Dhaon*  
(B.N. DHOUNDIYAI)  
MEMBER (A)

*S.K. Dhaon*  
(S.K. DHAON)  
ACTING CHAIRMAN

RKS