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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1949 of 2000

New Delhi, this the 12th day of February, 2001.

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Braham Singh
s/o Shri Atar Singh
r/o Village Murlipur
P.S. Mundali
District Meerut U.P.

-APPLICANT

(By Advocate: Mrs. Rani Chhabra)

Versus

1. Union of India
through its Secretary,
Ministry of Communications,
Department of Posts,
Dak Tar Bhawan,
Parliament Street, New Delhi.
2. The Post Master General,
Dehradun Region,
Dehradun-I.
3. The Assistant Superintendent of Post
Offices,
South Sub Division Meerut,
Meerut.
4. The Senior Superintendent of Post Offices,
Meerut Division Meerut. -RESPONDENTS

(By Advocate: Shri RAjinder Nischal)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant in this case is aggrieved of the fact that in this case he has impugned the notice of termination issued under Rule 6(b) of the P&T EDAS (Conduct and Service) Rules, 1964 dated 26.7.2000 and allege that this notice is illegal and unjustified and in excess of the powers conferred upon respondent No.3 which is totally illegal, arbitrary, unjustified and unconstitutional and the same is liable to be quashed.

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2. Facts in brief are that the applicant was appointed to the post of Extra Departmental Messenger (hereinafter referred to EDMC) in the office of Murlipur Phool. There was a condition annexed with that, that in case Shri Subodh Kumar services are not terminated and it is decided to take him back into service, the provisional service of the applicant will be terminated without notice. In addition to that department had also reserved the right to terminate the provisional appointment of the applicant at any time before the period mentioned above without assigning any reason.

3. So it is in pursuance of the above condition that the department had issued the impugned notice under Rule 6 to the applicant to terminate his services.

4. The applicant in his OA has also alleged that the issue of notice is illegal as it violates Article 14 and 16 of the Constitution of India.

5. It is further stated that the action of the department in issuing notice of termination without affording any opportunity of being heard and without disclosing as to on what ground the services are being terminated, is altogether arbitrary and unconstitutional, so on this ground it is liable to be quashed.

6. The respondents are contesting the OA. The respondents in their reply have stated that the case of the applicant relates to the appointment of EDMC Murlipur Phool and according to the department applicant was appointed provisionally as EDMC Murlipur Phool vide memo dated 29.5.99. It is submitted that complaints were received from Gram Paradhan Alampur Buzurg and Gram Pradhan Jithauli and the matter was enquired into. The allegations levelled against him was that he did not belong to the Village and Post Office Murlipur Phool but rather he belongs to Village Sisauli. On these complaints, an enquiry was conducted and it was found that the applicant's name is in the voter list in the year 1999 of Village Sisauli at S.No.570 so the department came to the conclusion that the appointment of the applicant as EDMC of Murlipur Phool was in violation of the rules and thus the appointment is void ab initio that is why the department exercised the power under Rule 6 and issued a notice of termination of the applicant.

7. I have heard the learned counsel for the parties and have gone through the record of the case.

8. The learned counsel for the applicant has referred to a judgment of this very Tribunal in OA 1049/89 Dharam Pal Vs. U.O.I. & Others decided by the Allahabad Bench. The Division Bench after deliberating the issue and on going through various



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other judgments came to the conclusion that the services of a similarly situated employee could not be terminated without giving him an opportunity.

9. Besides that the applicant has also relied upon another judgment in the case of Hari Prasad given in Civil Appeal No.660/97 which case also pertains to EDA. The said appeal is against the orders passed by the Allahabad Bench and the order of the Allahabad Bench was upheld by the Hon'ble Supreme Court. Relying upon these judgments, the counsel for the applicant submitted that in this case also since no opportunity of being heard had been given to the applicant, so notice of termination is illegal and arbitrary and the same is liable to be quashed.

10. In reply to this Shri Rajinder Nischal appearing for the respondents submitted that since the appointment having been made in violation of the rules was void ab initio so the applicant could not be retained in service as such no notice was required. On this aspect I may mention that whatever certificates and documents have been submitted by the applicant, the same were placed before the appointing authorities and that certificates do mention that the applicant was earlier resident of Village Sisauli but at the time of appointment was residing at Murlipur Phool village, a certificate issued by the Gram Pradha. Applicant has also submitted a character certificate wherein it has been mentioned that the applicant was a native of village Sisauli but at the time of appointment he was residing at Murlipur

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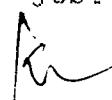
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Phool. Thus there was no attempt on the part of the applicant to mislead the department to seek appointment as EDMC.

11. I further note that the department came to the conclusion after conducting an enquiry based on the complaints received from Gram Pradhan Alampur Buzurg and Gram Pradhan Kithauli that the applicant is not a resident of Murlipur Phool and it is again the case of the department that the enquiry was conducted based on the complaint of these two complainants but no opportunity at all was given to the applicant. Thus the enquiry was conducted at the back of the applicant and assuming for the sake of the arguments that some enquiry had been conducted and findings had been arrived at but then also the principles of natural justice do require that the applicant should be given a hearing or at least an explanation to rebut the allegations made against him or to justify that he is a resident of Murlipur Phool and since no opportunity has been given so I find that the notice of termination itself is illegal and the same is liable to be quashed. Accordingly I quash the same.

12. In view of the above discussion, I allow the OA and direct the respondents to re-instate the applicant in service within a period of 2 months from the date of receipt of a copy of this order. However, the applicant will not be paid salary for the period he was out of job.





13. Shri Rajinder Nischal submits that the department may be permitted to conduct an enquiry as regards the residence of the applicant is concerned. I permit the department to conduct an enquiry after giving applicant a show cause notice in accordance with law.


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh