

229494-36133

8

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THE 15th DAY OF JANUARY 1999

CORAM : HON'BLE MR. S.L.JAIN, J.M.
HON'BLE MR. G.RAMAKRISHNAN, A.M.

ORIGINAL APPLICATION NO.1146 OF 1997

Mohd. Mukim S/o Shri Abdul Mazid
R/o Vill. House No.136, Sayed Raja,
Post Sayed Raja, District Chandauli/Varanasi.

.... Applicant

C/A Shri C.P.Gupta, Adv.

Versus

1. Union of India, through Post Master General,
Allahabad.
2. Sr. Superintendent of Post Offices,
Varanasi.
3. Sub Divisional Inspector of Post Office,
Chandauli, Sub Division, Chandauli, District
Varanasi.

.... Respondent

C/R Shri N.B.Singh, Adv.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application u/s 19 of the Administrative Tribunal Act 1985 for a writ of certiorari quashing the impugned order dated 17.10.97 (Annexure-A1) issued by respondent no.3 reinstating the applicant on the post of E.D.D.A.- E.D.M.C. at Bagahi Kumbhapur Branch Post Office with all consequential benefits including back wages and the continuity of service.

1994-36133

9

2. There is no dispute between the parties in respect of the fact that the respondents made advertisement, vide advertisement letter no. P.93/Baghai Kumbhapur 1996-97 dated 5.2.97 for the post of E.E.D.A.-E.D.M.C. at Baghai Kumbhapur Branch Post Office. The name of the applicant was sponsored by the Employment Exchange along with other candidates, a public advertisement was also made by the then Sub Divisional Inspector of Post Office Chandauli, the applicant also applied in response to public advertisement, the selection was made amongst the list of candidates sponsored by Employment Exchange as well as candidates applied in response to public advertisement, selected and The applicant was appointed on 15.4.97, joined on 8.5.97 and took over the charge on the same date from Shri Rama Shanker Singh. Since then the applicant was working on the said post, on 17.10.97 respondent no.3 under Rule 6 passed the order terminating the services of the applicant mentioning the fact that he will be paid salary of one month in lieu of the notice but the same has not been paid.

3. The applicant's case, in brief, is that there was no complaint either from the public or the authorities concerned, for issuing ^{no} any show cause notice of affording opportunity of hearing, ^{was issued} the said impugned order is passed in collusion with respondent no.2 in order to accommodate some other person in whom they are interested. The higher authorities have no power either inherent or otherwise to revise the order of appointment passed by lower departmental authority or to set aside the same. Thus the order passed is without jurisdiction, hence this O.A.

4. The respondents have denied the said allegations and stated that the applicant had lowered merit. The S.C. candidate was not considered giving preference to them, S.S.P.O. East, Varanasi reviewed the order and asked for a fresh appointment,

1994

hence prayed for dismissal of the O.A. with costs.

5. The applicant's counsel relied on 1997(1) A.T.J.513 Sunit Dutt v. A.S.P. West, Kanpur City and others decided by Central Administrative Tribunal, Allahabad Bench and argued that in a case where no show cause notice was given, order of termination from service deserves to be quashed and authorities should be directed to pass fresh appropriate order after affording the applicant a reasonable opportunity to show cause in the matter.

6. He has also relied on 1997(1) A.T.J. 540 Smt. Sunita Nautiyal v. Un on of India and others decided by Principal Bench, New Delhi and argued that in a case where false caste certificate is submitted at the time of appointment, opportunity of hearing should be afforded to the applicant and then only matter should be decided.

7. Admittedly in the present case no show cause notice was issued to the applicant before passing the impugned order. It is not a case of termination of services simpliciter, the case proceeds on the ground that during the course of selection some irregularities are committed.

8. It is settled law that, if any, material adverse to the applicant from a foundation for termination, principles of natural justice may necessarily require that prior opportunity of notice be given and after considering its reply appropriate order may be passed giving reasons in support thereof. (1996 5.C.(L & S) 320 Union of India and others v. Jai Kumar Parida).

9. Rule (six) 6 mentions that the services of an employee can be terminated by the ^{appointed} authority. It is true that Annexure-A1

J.V. / -

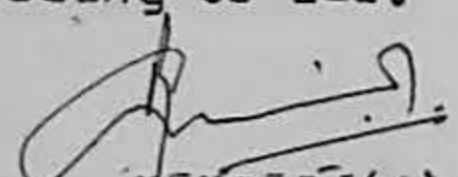
1494-3613

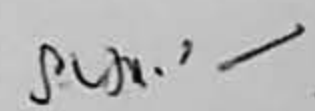
11

the impugned order is passed by the appointing authority but it is at the behest of respondent no.2.

10. In the circumstances, we allow the O.A., quash the impugned order Annexure-A1 dated 17.10.97 passed by respondent no.2 and order that the applicant is provisionally reinstated as E.D.D.A.-cum- E.D.M.C. at Bagahi Kumbhapur Branch Post Office with all consequential benefits. The respondents are ordered to comply with the said order and pay consequential benefits along with cost of the petition amounting to Rs.650/- (Rs.500/- as counsel's fee and Rs.150/- as other expenses) within one month of service of the order.

11. The respondents are at liberty to issue show cause notice to the applicant and after affording him a reasonable opportunity of being heard to pass the reasoned order according to law.


MEMBER (A)


MEMBER (J)

Gc