

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A. No./T.A. No. 739/97

Date of decision 18/2/99

Jagdish Prasad Bujar Applicant(s)

C/A

Sri A.P. Gupta

COUNSEL for the
Applicant(s)

Versus

Asstt Subpdt of Post office Respondent(s)

Sri S.C. Tripathi

Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. S.K. Agrawal for V.C./Member()

Hon'ble Mr. G. Ramakrishna Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters or not ? Yes
3. Whether their Lordship wish to see the fair Yes copy of the judgment ?
4. Whether to be circulated to all Benches ? No


(SIGNATURE)

MANISH

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

* * *

Allahabad : Dated this 18th day of February, 1999

Original Application No.739 of 1997

District : Agra

CORAM :-

Hon'ble Mr. S.K. Agrawal, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

Jagdish Prasad Bishan
S/o Sri Deep Chand,
R/o Mohalla-Tola,
Ward No. 1, Shamsabad,
Agra.

(Sri O.P. Gupta, Advocate)

..... Applicant

Versus

1. Asst. Superintendent Post Offices(Central Sub-Division, Agra-282 001.
2. Senior Superintendent of Post Offices, Agra Division, Agra.
3. Union of India through Secretary Ministry of Communication, Government of India, New Delhi.

(Sri S.C. Tripathi, Advocate)

..... Respondents

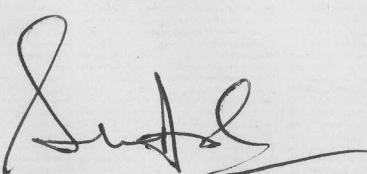
ORDER

By Hon'ble Mr. S.K. Agrawal, J.M.

In this OA filed under Section 19 of the Central Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the impugned notice dated 3-7-1997 for terminating the services of the applicant. The applicant also makes a prayer to allow him to continue on the post with all consequential benefits.

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2. The facts of the case in brief as stated by the applicant are that that the applicant is a SC candidate and out of 17 E.D. posts in Agra Central Sub-Division, one post was filled up from SC category in Agra Division. It is also stated that the applicant was appointed on 26-12-1996 as E.D. Runner but the respondents issued notice dated 3-7-1997 to the applicant to terminate the services of the applicant so as to appoint Sri Yuvraj Singh. It is stated that the applicant is a regularly selected candidate after sponsoring the name from the Employment Exchange and he was found most suitable. Thereafter, he was appointed vide order dated 26-12-1996. Since then he is working with full satisfaction of the respondents. It is further stated that Sri Yuvraj Singh made a complaint to the Post Master General, Agra who cancelled the appointment of the applicant without giving any notice/opportunity of hearing to the applicant and directed to the Senior Superintendent of Post Offices to terminate the services of the applicant and in pursuance of that order the Asst. Superintendent of Post Offices gave the impugned notice dated 3-7-1997 to the applicant purporting to be under Rule 6(a)/^{and (b)} of EDA(Conduct & Service) Rules, 1964. In view of this notice, the services of the applicant stand terminated. It is also stated that the appointing authority did not apply its mind for the notice of termination and acted as per the directions of the higher authorities. In such situation the provision of Rule 6 (a) & (b) of E.D.A. (Conduct & Service) Rules, 1964 could not be invoked. Therefore, the impugned notice is bad in law and is arbitrary attitude of the respondents and also



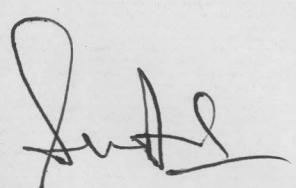
in violation of the principles of natural justice which is liable to be quashed.

3. A counter affidavit was filed. It is admitted that the applicant was selected after following the process of selection and was appointed vide order dated 26-12-1996 but Sri Yuv Raj Singh made a complaint dated 6-1-1997 alleging the premation of the applicant as irregular. It is stated that the competent authority reviewed the matter and found the appointment of the applicant as irregular. It is also stated that as per the notification dated 26-8-1996 this post was not shown as reserved post and the applicant acquired an income certificate on 5-10-1996 after the last date fixed i.e. 30-9-1996. Sri Yuvraj Singh was O.B.C. candidate having better merit. Therefore, he should have been appointed. Therefore, the reviewing authority Senior Superintendent of Post Offices issued the direction to cancel the irregular appointment of the applicant. Consequently, respondent no. 1 issued the impugned notice under Rule 6 of the DEA (Conduct & Service Rules) 1964 for termination of the services of the applicant. Therefore, this OA is devoid of any merit and is liable to be quashed.

4. A rejoinder affidavit was also filed reiterating the facts stated in the O.A.

5. Vide this Tribunal order dated 19-7-1997 the operation of the notice at Annexure-3 was stayed and the applicant is continued.

5. It is submitted by the learned counsel for the applicant that the appointment of the applicant was reviewed by Senior Superintendent of Police, who is not a competent authority. Therefore, the impugned



notice dated 3-7-1997 is illegal, arbitrary and in violation of the principles of natural justice. On the other hand, learned lawyer for the respondents has submitted that the appointment of the applicant was legal. On the complaint by Sri Yuvraj Singh, the appointing authority has taken action in pursuance of the directions of the reviewing authority. Therefore, there is no wrong in it.

6. The learned lawyer has referred in support of his contention :-

- (i) (1993) 23 ATC - V.K. Sabu vs. Asst. Supdt. of Post Offices and another, page 117.
- (ii) (1994) 26 ATC R.159 - T.G. Gowrikutty vs. Supdt. of Post Offices, Alapuzha and another.
- (iii) AT Judgement 1995 (1) R.218 - Suresh Kumar Yadav vs. UOI & Ors.
- (iv) AT Judgement 1995 (1) R.640 - Shri Amar Singh Dev vs. UOI & Ors.
- (v) (1997) 36 ATC R.530 - Tilak Dhari Yadav vs. UOI & Ors-FB Allahabad.
- (vi) Vijay Kumar Pandey vs. UOI & Ors OA No.971/1995 and OA No.973/1995 decided on 23-4-1998.

7. In V.K. Sabu vs. Asst. Supdt. of Post Offices it was held that termination of E.D. Agent on the ground of selection being found irregular by the reviewing authority, the provisions of Rule 6 cannot be invoked.

8. In T.G. Gowrikutty, vs. Supdt. of Post Offices, Alapuzha and another, it was held that non-approval of selection by higher authority is not a valid ground for termination. In this case the applicant was appointed as EDBPM but notice given to her for termination of her services because the Post Master General perused the selection file and he did not



approve the selection. It was held that the same was not permissible in exercise of such unlimited direction. Therefore, the termination notice was quashed.

9. In Suresh Kumar Yadav vs. UOI & Ors, it was held that if there are no allegation of unsatisfactory work and services are terminated on account of complaint without affording any opportunity of being heard, it was held that it is a violation of the principles of natural justice and the order of termination quashed on this ground.

10. In Amar Singh vs. UOI & Ors, it was held that an authority administratively higher authorities than the appointing authority has no power of review in the matter of appointment by appointing an authority and termination in pursuance of such power of review is not valid and, therefore, quashed.

11. In Tilak Dhari Yadav vs. UOI & Ors (FB), Allahabad it was held that termination of services of EDA other than unsatisfactory service by the appointing authority or superior to appointing authority, Rule 6 does not confer power on appointing authority or superior to appointing authority to terminate the services of EDA without giving him an opportunity to show cause. The FB answered the reference in this case as follows:-


Rule 6 of Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent, who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause.

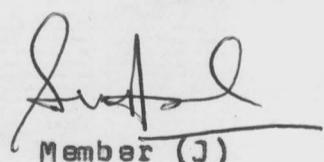
12. In Vijay Kumar Pandey, this Tribunal has considered the same point in question and the order of termination dated 6-9-1995 was quashed in OA Nos. 971/95 and 973/95).

13.8 In the instant case admittedly the applicant was selected after his name was sponsored by the Employment Exchange and he was selected after following the complete process of selection. As per respondents the applicant was selected as SC candidate and the applicant secured the highest marks out of the SC candidates. It appears that the matter was reviewed on the intervention of Ministry of Communication. Admittedly, the review was done not by the appointing authority but by the authority higher than the appointing authority. Therefore, issuing notice on the direction of such reviewing authority is not sustainable as per legal propositions mentioned above.

14. We, therefore, allow this OA and quash the impugned notice dated 3-7-1997. There shall be no order as to costs.



Member (A)



Member (J)

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