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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

THE 24 TH DAY OF DECEMBER 1998

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

ORIGINAL APPLICATION NO. 615 OF 1997

Sarvesh Kumar Dixit son of late Sri Hari Dutt Dixit
resident of Ghav Shamu Khan, Farrukhabad.

... Applicant

Versus

1. Union of India through Director General Post Offices,
New Delhi.
2. Senior Superintendent of Rail Mail Service, Kanpur
Region, Kanpur.
3. Inspector, R.M.S. Kanpur Division Kanpur.
4. Post Master General, Kanpur Division Kanpur.

ORIGINAL APPLICATION NO. 713 OF 1997 ✓

Gajendra Singh son of Sri Jaipal Singh,
resident of near Railway Station (Four Signal)
Garhi Ashraf Ali, Farrukhabad.

... Applicant

Versus

1. Union of India through Director General, Post Offices,
New Delhi.
2. Senior Superintendent of Rail Mail Service Kanpur Reg.
Kanpur.
3. Inspector, R.M.S. KP, Ist. Sub Division, Kanpur.
4. Post Master General, Kanpur Division, Kanpur.
5. Sub. Record Officer, R.M.S. Fategarh, Farrukhabad.

... Respondents

J.S.P. ✓

17

(3)

ORIGINAL APPLICATION NO.716/97

Yamuna Prasad Yadav son of Sri Katwaru Yadav
C/o Shri Magru Yadav, H.P.O. Unnao.

.... Applicant

Versus

1. Union of India through Director General, Post Offices, New Delhi.
2. Senior Superintendent of Rail Mail Services Kanpur Region, Kanpur.
3. Inspector, R.M.S., K.P. Ist. Sub Division, Kanpur.
4. Post Master General, Kanpur Division, Kanpur.
5. Sub Record Officer, R.M.S. Unnaon.

.... Respondents

C/A Shri K.K.Tripathi, Advocate
C/R Km. Sadhana Srivastava, Advocate

ORDER

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

These are the applications under section 19 of the Administrative Tribunal Act 1985 to set aside the termination notice/order dated 2.6.97 passed by respondent no.4, for a direction to the respondents to continue the applicant in service as E.D.Mail man and also to pay his regular salary and when becomes due along with the cost of the petition.

2. The posts of E.D.Mail Man were vacant at R.M.S. Farrukhabad, Unnao and Kanpur and for filing the same names have been called from the Employment Exchange, the name of the applicants were sponsored by the Employment Exchange, the respondent no.4 asked for certificate of qualification, applicant sent a marksheet, after completing the due formalities the applicant's application was sent for police verification which was done by the police, the applicant was asked

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14

4

for medical examination which was done and appointment letter was issued on 11.3.97 (in O.A. No.615/97 & 713/97) and on 6.6.96 (in O.A. No.716/97). He joined the duties in compliance of the said appointment order. The services of the applicant were terminated under Rule 6(a) & (b) of the E.O.A. Conduct Rules 1964 by respondent no.4 vide notice dated 2.6.97 by one month's notice.

3. The applicants' case, in brief, is that before the termination of services, principles of natural justice have not been followed, no pay of one month has been tendered or paid to him, hence this O.A. for the above said reliefs.

4. The respondents have denied the said allegations and alleged that it was not necessary to follow the principles of natural justice, as one month's notice was given, hence tendering or payment of one month's salary was not essential one, hence prayed for dismissal of O.A.

5. On perusal of the C.A. the cause for termination of service is mentioned as under:-

"While Post Master General, Kanpur has reviewed the file of appointment of petitioner, has found some irregularity as old residential condition was communicated to the Employment Exchange. While new condition was already in existence on the date of requisition. Besides the posts have also been earmarked to O.C., O.B.C. and S.C. candidates. Contrary to Directorate's instructions dated 5.10.94. A true copy of instructions dated 5.10.94 issued by the D.G. P & T New Delhi is annexed herewith as annexure-CA2, to this affidavit. The respondent no.4 further found that the appointment of candidate was made without getting character and antecedent verified in advance, violating the Rules contained in D.G. letter

J.C.P.

dated 17.10.66. Due to these irregularity the petitioner's services have been terminated."

6. O.A. No. 713/97

"While Post Master General, Kanpur has reviewed the file of appointment of petitioner has found some irregularity, as old residential condition was communicated to the Employment Exchange. While new condition was already in existence on the date of requisition. Besides the posts have also been earmarked to O.C., O.B.C. and S.C. candidates. Contrary to Director's instructions dated 5.10.94. A true copy of instruction dated 5.10.94 issued by D.G. P&T New Delhi is annexed as Annexure CA-1, to this affidavit. Due to these irregularities the petitioner's services have been terminated."

6. A. No. 716/97

While Post Master General, Kanpur has reviewed the file of appointment of the petitioner, has found some irregularity, as old residential condition was communicated to the Employment Exchange. While new condition was already in existence on the date of requisition, Besides the posts have also been earmarked to O.C., O.B.C. and S.C. candidates. Contrary to Director's instructions dated 5.10.94. A true copy of instruction dated 5.10.94 issued by D.G. P&T New Delhi is annexed herewith as Annexure-CA 1 to this affidavit. Due to these irregularities the petitioner's services have been terminated."

6. The respondent's counsel relied on 1996 SCC (L&S)320 Union of India and others v. Jai Kumar Parida and submitted that it was not necessary for the respondents to afford an opportunity to the applicant of hearing. Para 5 of the said authority is worth mentioning which is as under:-

P.D.P. 1/

"The question is whether the termination of the respondent is in accordance with this rule. There appears to be a complaint laid down against the respondent that he had produced a false income certificate before seeking appointment. That was taken into account while making the appointment of the respondent as Extra Departmental Branch Post Master. It is settled law that if any material adverse to the respondent formed a foundation for termination, principles of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply appropriate order may be passed giving reasons in support thereof. If it is only a motive for taking action, in terms of Rule 6, since that rule provides that such a termination could be made within three years without any notice, there would be no obligation on the part of the appellant to issue any notice and to give opportunities before termination. So each case requires to be examined on its own facts.

7. Perusal of the said para makes it clear if it is only a notice for taking action in terms of Rule 6, since that rule provides that such a termination could be made within three years without any notice, there would be no obligation on the part of the appellant to issue any notice and to give opportunities before termination. It has also been mentioned that if any material adverse to the respondents form the foundation for termination principles of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply appropriate order may be passed giving reasons in support thereof. As per the learned counsel for the respondent there is no material adverse to the applicant for forming a foundation of termination. Hence no notice was necessary.

Sub:-

8. The learned counsel for the respondents also relied on 1998 SCC (L&S) 956 Superintendent of Post Offices and others v. E. Kunhiraman Nair Muliyan and submitted that if a termination is simplicitor, Article 311 of the Constitution of India is not applicable when the terms of the appointment stipulates so. On perusal of the said authority we find that if the work of the employee is unsatisfactory within three years from the date of appointment or any administrative ground unconnected with his conduct the services of the employee can be terminated as per rule 6. Perusal of the pleadings of the parties makes it clear that the services of the applicants have been terminated on account of unsatisfactory work within three years of the date of appointment or on any administrative ground unconnected with this conduct.

9. As stated above, the cause for termination of the services of the applicants is as mentioned in para 5 of this judgment.

10. In O.A. No. 910/94 Tilakdhari v. Union of India and others a reference was made to the full Bench and was answered by the Central Administrative Tribunal as under:-

"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."

P.W.D.

22

8

11. There is no dispute between the parties that the services of the applicants were of less than three years.

12. In S.C.Jai Singhani v. Union of India and others A.I.R. 1967 SC 1427 it was held that -

"... The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

"In the light of our discussion aforesaid, we are of the view that under Rule 6 of the Rules, the appointing authority does not possess power to cancel the appointment of Extra Departmental Agents for reasons other than unsatisfactory service or for administrative reasons unconnected with the conduct of the appointee, without giving him an opportunity to show cause."

13. Rule 6 does not confer unbridled or absolutely power to the appointing authority in the matter of termination of services of the E.D. employee who has not already rendered more than three years continuous service from the date of the appointment.

14. In the present case, action was initiated on the basis of the order of respondent no.4, the cause for contravening

the instruction while appointment, though the applicant was not a party to it, he had a right to show that no such irregularities as alleged were committed at the time of his appointment as E.D. Mail Man or irregularities were not such as to vitiate the entire process of selection.

15. Admittedly no notice was given to the applicants and their services were terminated before completion of three years service, hence the said termination order is vitiated on the principles as stated above.

16. Applicant Sarvesh Kumar Dixit (now the alone applicant in O.A. No.615/97) has filed the O.A. along with the applicant Gajendra Singh (now the applicant in O.A. No.713/97 and Yamuna Prasad (now applicant in O.A. No.716/97) but by order dated 2.7.97 they were not permitted to continue the said O.A. along with Sarvesh Kumar Dixit and hence O.A. No.615/97 continued only for applicant Sarvesh Kumar Dixit and interim order was in favour of Sarvesh Kumar Dixit which was to the effect "meanwhile the operation of the order dated 12.6.97 shall remain stayed" which was extended from time to time and operative till now.

17. Gajendra Singh (Applicant in O.A. No.713/97 Yamuna Prasad (Applicant in O.A. No.716/97) also enjoyed the benefit of the said interim order from 12.6.97 till 2.7.97 and later on discontinued as per order dated 23.7.97 and status-quo was ordered to be maintained. We do not know what was the status on 23rd July 1997 and onwards.

18. In the circumstances it is ordered that O.A. Nos. 615/97, 713/97 and 716/97 are allowed, order of termination

J.W.A. -

23

(P)

dated 2.6.91 is set aside and the applicants are reinstated on the said post with all consequential benefits less already paid along with cost of the petition, amounting to Rs.650/- (Rs.500/- as legal practitioner fee and Rs.150/- as other expenses).

19. The respondents are directed to comply with the said order within one month of service of the order.