

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 58 of 2001

Allahabad this the 01st day of October, 2004

Hon'ble Mr.A.K. Bhatnagar, Member (J)  
Hon'ble Mr.D.R. Tiwari, Member (A)

Brijesh Bahadur Singh, S-/o Late Rajendra Bahadur Singh  
R/o Village and Post Diyawan, Sub Post Office Amargarh  
Patti, Pratapgarh.

Applicant

By Advocate Shri Avnish Tripathi

Versus

1. Union of India through its Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices, Pratapgarh Division, Pratapgarh.
4. Sub Divisional Inspector, Patti Sub Division, Pratapgarh.

Respondents

By Advocate Shri Rajeev Sharma

O R D E R ( Oral )

By Hon'ble Mr.D.R. Tiwari, Member (A)

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

(i) to issue an order, rule or direction quashing and setting aside the impugned order dated 18.10.2000 by which the respondent no.2 directed the respondent no.3 to cancel the appointment of the applicant on the basis of which the respondent no.3 cancelled the

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appointment of the applicant as E.D.R. Diyawan (Annexure No.A-1 in Compilation no. Part 1 to this original application).

- (ii) to issue an order, rule or direction quashing and setting aside the impugned order of cancellation of appointment by which the respondent no.3 cancelled the appointment of the applicant after review.
- (iii) to issue an order, rule or direction quashing and setting aside the impugned show cause notice dated 12.1.2000 issued by the respondent no.4 in pursuance of the cancellation order passed by the respondent no.2/3 (Annexure no.A-2 in Compilation no. Part 1 to this Original Application).
- (iv) to issue an order, rule or direction in the nature of mandamus directing the respondents to give all the consequential benefits to the applicant for the post of E.D.R. Diyawan, Patti Pratapgarh in consequence of the 1st/Second relief."

2. Briefly stated, the facts of the case are, that the applicant was appointed as Extra Departmental Runner Diyawan, Patti Pratapgarh vide letter dated 12.06.2000 (annexure A-9) against the vacant post. He took the charge for the said post on 13.06.2000 after completing all the formalities required under Rule (annexure A-10). He also submitted the Security Bond and Postal Life Insurance being a regular E.D. employee because the said facility is only meant for regular E.D. employee (annexure A-11). He was appointed as a retrenched E.D. Employee and the provisions about it is contained in the instructions/rules, which may be seen at annexure A-12.

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3. All of a sudden, respondent no.2 reviewed the appointment of applicant and cancelled the same and directed respondent no.3 without issuing direction to respondent no.4 to terminate the services of the applicant. This was done in spite of the fact that applicant had completed 4 months of service without any complaint against the work and conduct of the applicant.

4. Aggrieved by the said cancellation/show cause notice for termination, this O.A. has been filed by the applicant and this Tribunal after hearing both the parties granted interim relief on 19.01.2001. This O.A. has been assailed on various grounds namely:-

(i) show cause notice containing implied termination without affording any opportunity is against the D.G. Post instructions contained in letter dated 13.11.1997;

(ii) The review of appointment of the applicant by respondent no.2 is against the Rules on the subject;

(iii) The action of respondent no.2 to review appointment and direction to respondent no.3 and 4 for terminating the services, is arbitrary illegal and unjustified.

Other reasons for assailing the impugned orders are mentioned in paragraph no.5 and its various sub paragraphs.

5. The respondents on the other hand has opposed the O.As and refuted the claims made by the applicant. They have filed a detailed counter affidavit, wherein it has been submitted that respondent no.2 had simply reviewed the appointment made by appointing authority as respondent no.2 was competent to review the same. On review, appointment .. pg.4/-

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was found irregular. They have also submitted that post of E.D.R. Diyawan fell vacant because one E.D.Agent was promoted to Group 'D'. They have submitted that the applicant was only provisionally appointed on the post of E.D.R. Diyawan by the S.D.I. They have further submitted that he was not treated as retrenched employee and, as such, the question to offer alternative appointment on any vacant post does not arise. They have argued that it is provided in the Rules that if any E.D. employee who was appointed provisionally and subsequently discharged from service due to administrative reasons and he has rendered less than 3 years service in the department, may be given alternative employment. In the instant case, neither the applicant was treated as retrenched employee nor he has put his 3 years continuous service in the department and he is not entitled for alternative employment. They have stated that the applicant was issued the show cause notice dated 12th January, 2001. In view of this, they have argued that the O.A. is devoid of merit and be dismissed.

6. During the course of hearing, counsel for the applicant submitted that this O.A. is fully covered by the decision of the Full Bench in the case of Tilak Dhari Yadav Vs. Union of India 1997(36) A.T.C. 539(Alld. Bench) and Ambuja Kashi Vs. Union of India Full Bench C.A.T. Hyderabad, decided on 10.02.1995 in O.A.No.57/91. Counsel has also reiterated the facts and the legal pleas from the pleadings of the applicant. Learned counsel for the respondents on the other hand has submitted that applicant's case is not that of provisional appointment of retrenched employee, and as per D.G.(Post) letter dated 13.11.1997 the appointment of E.D.A. employee may be reviewed by the higher authority under Rule 6(a) .. pg..

of E.D.A. (Conduct and Service) Rules, 1964. Thus, the action taken by the respondents is legal, valid and justified.

7. We have heard the rival contentions of counsel for both the parties and given our anxious consideration to their submissions and perused the pleadings on record.

8. The only question which survives for adjudication in this case is the validity and legality of the impugned orders annexed as annexure A-1 and annexure A-2. It may be stated that in the two Judgments it has been laid down that the higher authority cannot review the appointment made by the competent authority because there is no rule for this purpose in the E.D.A. (Conduct and Service) Rules 1964. There is no doubt that appointment of the applicant has been reviewed by the Assistant Director in the Office of respondent no. 2, who is an authority administratively higher than the appointing authority and issued the directions as under:-

"मुझे संदर्भित पत्र के प्रकरण में यह कहने का आदेश हुआ है कि आपसे आग्रह करें कि अधियमित नियुक्ति के विरुद्ध अविलम्ब कार्यवाही करें।

कृपया पत्र की पावती स्वीकार करें तथा  
अनुपालन आव्याप्ति प्रेषित करें।"

9. Accordingly S.D.I. Patti, Sub Division Pratapgarh has issued Annexure A-2 giving show cause notice of one month, which mentions that on expiry of period of one month, services of the applicant shall stand terminated.

10. In view of two Full Bench decisions (supra), we have no hesitation in holding that the impugned orders

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are liable to be quashed.

11. In the result, O.A. succeeds on merits and is allowed. The impugned order dated 18.10.2000 (annexure A-1) and order dated 12.01.2001 (annexure A-2) are quashed and set aside. The applicant shall, therefore, be entitled to all the consequential benefits for the post of Extra Departmental Runner, Diyawan, Pratapgarh. No order as to cost.

*Dhara*  
Member (A)

*J.S.*  
Member (J)

/M.M./