

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 925 of 2001

Tuesday, this the 15th day of July 2008

**Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Bhagwat Prasad, S/o Shri Jagmohan Prasad, R/o Mohalla Pardiepur
(Golghar) Infront of HANUMAN MANDIR, GORAKHPUR.

Applicant

By Advocates S/Sri Arun Kumar, M.P. Yadav

Versus

1. Union of India through Secretary (Posts) Department of Posts, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Postmaster General, Gorakhpur Region, Gorakhpur.
3. Senior Superintendent of Post Offices, Gorakhpur Division, Gorakhpur.
4. Assistant Superintendent of Post Offices, Central Sub Division, Gorakhpur.
5. Shri Chandra Prakash, S/o Shri Pakhandi, E.D. Mail Peon, Rajghat, Gorakhpur.

Respondents

By Advocate Sri Saumitra Singh (for respondent No. 1 to 4)

None (for respondent No. 5)

ORDER

By Justice A.K. Yog, Member (J)

Heard Sri M.P. Yadav, Advocate on behalf of the applicant and Sri Saumitra Singh, Senior Standing Counsel for Union of India. Perused the pleadings viz. Original Application, Counter Affidavit filed on behalf of Respondents No. 2 and 3 (as stated in the Counter Affidavit) and Rejoinder Affidavit, filed against it.

2. The applicant/Bhagwat Prasad filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 (herein after referred as Act) being aggrieved against the impugned order dated 21.07.2000/annexure A-1 to the O.A., whereby his services as Extra


By

Departmental Mail Peon, Rajghat, Gorakhpur were terminated forthwith by the then Assistant Superintendent of Post Offices, Central Sub Division, Gorakhpur in the purported exercise of power conferred under Rule 6 (b) and the note below Rule 6 (b) of P & T EDAs (Conduct & Service) Rules, 1964, called- 'Rules 1964', photocopy of the Order enclosed as annexure A-1 to Compilation I. After about 14 months, vide order dated 06.09.2001 respondent department made provisional appointment of respondent No.5/Chandra Prakash-impealed under order of the Tribunal dated 05.12.2002 allowing Impleadment Application/M.A. No. 1961 of 2002. The applicant sought amendment, and apart from other requisite amendments, he also incorporated the following relief: -

"8 (iii) to issue an order, rule or direction quashing and setting aside and impugned order dated 6.9.2001 (annexure no. A-1(i) by which the respondent no. 5 was appointed on the post of E.D.M.P. Rajghat, Gorakhpur."

3. The main grounds of attack, against the impugned orders, are that the impugned orders are illegal, arbitrary and passed in violation of Article 311 (2) Constitution of India, and violative of principles of natural justice since passed without affording the opportunity of hearing, appointment of applicant once made by following the relevant service rules, could not arbitrarily/whimsically cancelled in purported exercise of its powers vested under Rule 6 of Rules, 1964, as mentioned in the impugned order of termination, which is also violative of Article 311 (2) of the Constitution of India etc.

4. Grievance of the applicant is that after terminating his services arbitrarily, one Chandra Prakash/respondent No. 5 has been appointed in his place which shows that respondents are guilty of 'hiring and firing', which is not permissible-(see Apex Court Judgment in State vs. Piara Singh^{ay ay}). Power to terminate services, as contemplated under Rule 6, of Rules, 1964 (permitting termination of services by giving one month's notice) is with sole object to promote administrative exigency and it is to be exercised bonafide for genuine reasons. The powers conferred under the said Rule cannot be and should not be permitted ^{to} ~~be~~ ^{being} exercised whimsically and or arbitrarily for ulterior motives. In this context, Applicant refers to Memorandum/copy of communication (of the department) dated 13.11.1997 (Photocopy filed as annexure A-6), relevant extract of which reads: -



"

The situation arising out of CAT judgments questioning the validity of the remedial action ordered by reviewing authorities has been deliberated upon thoroughly. It is observed that an authority which is higher than the appointing authority, in accordance with established principles, enjoys supervisory powers to revise the administrative orders of the subordinate authorities for good and sufficient reasons and pass appropriate remedial orders after following the procedure indicated below: -

- (i) The question whether appointment of a particular ED Agent to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing appointments.
- (ii) In regard to appointment which was made in contravention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/instructions whether statutory or administrative/executive, as otherwise, it would amount to perpetuation of the mistake and would be detrimental to the larger interest of Government. However, in these cases the principles of Natural Justice should be complied with by giving the ED Agent a show cause notice and opportunity to be heard before passing any order; adversely affecting him. There is no need to invoke ED Agents (Conduct & Services) Rules, while passing final orders in such cases.
- (iii) Cases of erroneous appointments _____ /should be viewed with serious concern and suitable disciplinary action should be taken against the concerned officers and staff responsible for such appointments.

While complying with the directions given by the next higher authority, the appointing authority will insure that a proper show-cause notice is issued to the ED Agents concerned and his representation, if any, is forwarded to the next higher authority for taking it into account before passing the final orders.

4. The contents of this letter may please be brought to the notice of all concerned for information/guidance/compliance action

The receipt of this letter may please be acknowledged.

Yours faithfully

Sd.

(U.S. Puria)

Assistant Director General (ED&TRG.)"

5. There is nothing in the counter affidavit to show that respondents have complied with the above requirements or that approval was taken from the higher/competent authority. In this context, learned counsel for the respondents referred to para-3 of the counter affidavit (sworn by Mohd. Aejaz Ahmad). For convenience, we reproduce the para-3 of the counter affidavit: -

"3 That the contents of paragraph No.1 of the Original Application, it is stated that the termination order dated 26.7.2000 has been issued under the provision of Rule 6 (b) Extra Deptl. Agent (Conduct and Service) Rules, 1964 by the appointing authority according to rules. According to D.G.'s instruction dated 13.11.1997 higher authority higher to appointing authority is competent to review the appointment of particular ED Agent. In this case erroneous appointment was made in contravention of rules. The fact was on record. Application has to represent nothing. Therefore, he was allowed one month's allowance in lieu of notice period according to rules."

6. There is no mention that higher authority had reviewed and passed requisite order as contemplated in this _____, even otherwise no date of such order (if any) mentioned nor copy of such order is enclosed with the counter affidavit.

7. On behalf of the respondents, emphasis is being laid upon para-7 of the counter affidavit, which reads: -

"That the contents of paragraph No. 4 (4) of the Original Application is misleading hence denied in part and part of the paragraph under reply is matter of record to the extent appointment letter dated 8.1.1998 is correct. Rest is denied in place it is adverted that Chandra Prakash belonging to O.B.C. community was most eligible candidate as he has secured 59.3% marks in High School where as the petitioner has secured 44.8% of marks. So was the reason the applicant's service has been terminated in place of Chandra Prakash has been appointed who is affectively performing his duty from 7.9.2001 in the department."

8. It is interesting to note that the ground/reasons (for issuing impugned order) as disclosed in para-7 of the counter affidavit (quoted above) is better merit of Respondent No. 5. Relevant extract of Office Memorandum dated 06.09.2001 for making 'provisional appointment' of respondent No. 5/Chandra Prakash is being reproduced: -

An

"Whereas Shri Bhagwat Prasad EDMP II Rajghat (Gorakhpur) is relieved due to termination of service vide this office Memo No. even dt. 26.07.00 and need has arisen to engage a person to look after the works of EDMP Rajghat (GR), the undersigned has decided to make a provisional appointment to the said post.

2. The provisional appointment is tenable till the disciplinary proceedings/judicial appeals & petition and he has exhausted all channels of departmental and judicial appeals and in case it is finally decided not to take Shri Bhagwat Pd. Back into service till regular appointment is made.

3. Shri Chandra Prakash S/o Sri Pakhandi r/o _____ T. No. 2 (Khota Tola) Post Kunraghat, P.S. GR cant, Distt. Gorakhpur is offered the provisional appointment to the post of EDMP II Rajghat, Gorakhpur. Sri Chandra Prakash should clearly understand that if even it is decided to take Bhagwat Pd. Back into service the provisional appointment will be terminated without notice.

4. The undersigned reserves the right to terminate the provisional appointment any time before the period mentioned in para-2 above without notice and without assigning any reason.

5. Shri Chandra Prakash shall be governed by the G.D.S. (Conduct & Employment) Rules 2001 and all other rules and orders applicable to G.D.S.

6. In case the above conditions are acceptable to Sh. Chandra Prakash, he should sign the duplicate of this Memo and return the same to the us immediately."

(Underlined to lay emphasis)

9. From the above, it is clear that Respondent No. 5 was given 'provisional appointment' after about 14 months of terminating services of the applicant. There is no whisper of 'merit' of respondent No. 5 in the Office Memorandum dated 06.09.2001 or in the impugned order. Memo dated 06.09.2001 discloses the ground "need has arisen to engage a person". Evidently respondents have attempted to improve upon their 'defence' by carving out a new case. Impugned termination order cannot be 'defended' by carving out a new case as an after thought.

10. Even otherwise if we accept the averments made in para-7 of the counter affidavit, it was incumbent upon the respondents to give show cause notice to the applicant, an opportunity of hearing before passing order adverse to him. That not being done, the impugned order of termination cannot be sustained and vitiated being passed in violation



of principle of natural justice. Impugned order cannot be sustained being vitiated in law.

10. We may bring on record that Respondent No. 5 has not been served as required in law. The Applicant (and his counsel)-and the Respondent No.1 to 4 (and their counsel) neither pointed out this fact nor prayed for fresh service. At the same time the Registry also failed to place a correct and comprehensive report in this respect as a consequence of whereof-O.A. was listed for final hearing. Respondent No. 5 was impleaded vide order dated 05.12.2002. Office note dated 17.03.2003 (order sheet is not paged as required under statutory rules), reads: -

"Regd. notice alongwith Petition Copy issued on 6-2-03. Unserved notice received with Postal remark.

Submitted.

Sd./-III.

17-3-03"

Original Registered Post envelope (in file-Part C) shows postal endorsement (in red ink/in Hindi) "Parcel". This note is followed-later vide note dated 28.09.2004 and 21.12.2004 by the Registrar "List for hearing on 28.10.04". Same noting repeated from date to date. Later office note date 25.01.2008 reads - "Pleadings are complete." Apparently such notings are against record besides misleading. Working in the Registry-clearly reflects that "Rules" are ^{or being ignored with impunity as.} noted and working in the Judicial Section is in shambles. Further the Registry accepted two Vakalatnamas (on 18.07.2005 and 04.07.2006) without checking-viz. necessary details not filled-(see red lines/marking made by us in the said Vakalatnamas). Also these Vakalatnamas are not as per Vakalatnama form prescribed under relevant rules/statutory form. Registrar is directed to take suitable steps to get 'order-sheet' form printed and ensure it is paged, filled/written with specific details and that the same is in order. It must be ensured that there is no casual working.

11. In view of the above, this O.A. deserves to be allowed.

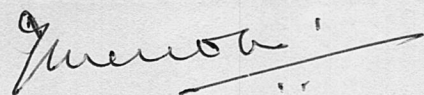
12. The impugned order dated 21.07.2000(Annexure A-1) is hereby quashed. The applicant shall be allowed to join and continue in service with immediate effect. No relief is being claimed with respect to

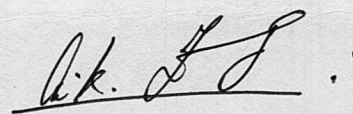
Am,

salary/back wages and hence not entitled to emoluments/back wages for the period he has not worked. We further direct that Sri Chandra Prakash-respondent No. 5, if working shall not be disturbed. The respondents shall ensure that while extending the relief, granted by us, to the applicant through this O.A., shall not affect or prejudice rights of Respondent No. 5, if any.

13. The O.A. stands allowed with directions as above.

14. There shall be no order as to costs.


Member (A)


Member (J)

/M.M/