

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 21st day of March, 2002.

Original Application No.1000 of 2001.

CORAM:-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. AK Bhatnagar, J.M.

Vinod Kumar Verma,  
Son of Prabhu Nath Prasad Verma,  
Resident of Mohalla Patal Kuiyan,  
Manbela, Tappa Khuthan, Pargana Haveli,  
Tehsil Sadar, P.O. Jhungia Bazar,  
Gorakhpur City, Ex.Gramin Dak Sewak  
(Delivery Agent), Jungal Beni Madho Branch,  
Post Office, Via Fertilizer Factory,  
District Gorakhpur.

(Sri J.M. Sinha, /Sri A. Tripathi, Advocates)

• • • • • Applicants

Versus

1. Union of India through the  
Secretary Ministry of Communication,  
Department of Posts, Govt. of India,  
Dak Bhawan, New Delhi.
2. Post Master General, Gorakhpur.
3. S.S.Os.Gorakhpur Division, Gorakhpur.
4. S.D.I. East Sub Division, Gorakhpur.
5. Mahesh Chandra Yadav S/o Shri Bhagelu Yadav,  
R/o Village Kazakpur, P.O. Rampur, Shivpuri,  
New Colony, Gorakhpur-273016,  
Presently employed as E.D.D.A. Jungal Beni Madho,  
Post Office, Fertilizer Factory, Gorakhpur.

(Sri P Krishan/Sri RK Pandey, Advocates)

• • • • • Respondents

O R D E R (O\_r\_a\_l)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for setting aside the notice of termination and the order of termination issued by respondent no.4 by Annexure-A-1 in compliance of the order of respondent nos.2 and 3. A prayer has also been made for setting aside the

*(Signature)*

appointment of respondent no.5 on the same post which was said to be illegally made on 20-6-2001. A direction is also sought to the respondents to not terminate his services except by following the legal provisions contained in Rules.

2. The applicant has claimed that he was appointed on the post of E.D.D.A. Jungal Beni Madho Post Office, Gorakhpur. He claims that he was duly appointed after the requisition was sent to Employment Exchange on 24-8-1998 and applications of 305 candidates <sup>3 out of 5 & who</sup> ~~by the employment exchange were~~ <sup>3</sup> sponsored ~~and~~ and verified by the respondents. The applicant was duly appointed after selection and took over charge on 2-7-1999. It appears that on complaint of respondent no.5 that his application made directly against the notification of the vacancy was not considered by the respondents, respondent nos.2 and 3 issued direction to respondent no.4 to review the appointment of the applicant and terminate his services. The applicant was thereafter given the impugned notice dated 11-6-2001 by which his services were terminated and it was directed that the applicant shall be entitled to claim the sum for the period of notice. The applicant claims that he was relieved on 19-6-2001 without notice.

3. We have heard Sri Avnish Tripathi, counsel for the applicant and Sri Uday Krishna, counsel for the Official Respondents and Sri RK Pandey, counsel for Private Respondent and also perused the record.

4. Learned counsel for the applicant placed before us the order of Lucknow Bench in the case of Hari Prakash Mishra Vs. UOI & Ors, 1993(3) ATJ 550 in which it has been held that if discretion vested in the appointing authority is exercised under the direction of any of the higher/superior authorities then it stands vitiated. It has also been laid down that the discretion vested

exercised in <sup>1</sup> in the appointing authority cannot be reviewed by ~~the~~ <sup>a higher</sup> ~~the~~ appointing authority. Learned counsel for the applicant has also placed before us the order of the CAT in Saroj Kumar Mohanti Vs. UOI & ors, 2001(1) ATJ 161. In this order the Division Bench did not accept the view expressed in OA No.558/1995 and chose to rely upon the Full Bench decision of the Tribunal in the case of Tilak Dhari Yadav, of Allahabad Bench, R.M. Gunamurti Vs. SP Belari of Bangalore Bench, and Smt. Saku Bai and Ambujakshi Vs. UOI & ors of Bangalore Bench in OA No.1475. The Division Bench has also upheld the view taken in Full Bench Judgement and held that the termination of E.D.A. under Rule 6 cannot be on the behest of the superior authorities. Learned counsel for the applicant has also relied upon the judgement of the Hon'ble Supreme Court in Basudeo Tewari Vs. UOI & Ors, 1998(2) SC 358 in which it has been held that an appointment would be terminated if made contrary to the provisions of the Acts, Statutes, Rules or Regulations or in irregular or unauthorised manner <sup>but if</sup> cannot be terminated at any time without notice as per the provisions of Section 35(3) of the Higher Universities Act. The Apex Court held that there was an implied view for arriving at a conclusion that the appointment has been made contrary to the Acts, Statutes, Rules, or Regulations etc. It was held that since the notice has not been given to the applicant when ordering termination of his services the impugned order of termination cannot be sustained.

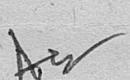
5. Learned counsel for the respondents chose to rely upon the case of Brij Mohan Singh(2002) UPLBEC 2310. This authority is not applicable to the case before us because in that case gross irregularities and illegalities were found to have been committed for the appointment in question. This is not the case

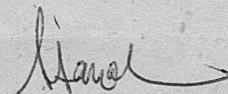
here.

6. A perusal of the order dated 11-6-2001 impugned in this case shows that the notice of termination has been given by the appointing authority to the applicant under Rule 6(b) of EDA (Service & Conduct Rules) 1964. The order appears to be simplicitor in nature. However, respondents in response to paras 1 and 6 of the application have stated in para 4 of their counter reply that the appointment of the applicant has been reviewed by the higher authorities who found that Mahesh Chandra Yadav was more meritorious. Thus, there is allegation for issuance of order of termination as supplied by the higher authorities in the case before us.

7. The impugned order also shows that no opportunity was given to the applicant before termination of his services under Rule 6(b) EDA (Service & Conduct) Rules, 1964. The judgement of the Apex Court in the case of Basudeo Tewari (supra) makes it clear that notice in such case has been denied. The applicant claims that the application of respondent no.5 had not been received within time. None of the respondents have controverted this claim of the applicant.

8. We, therefore, set aside the order dated 11-6-2001 impugned in this OA. The respondents can take action only after issuance of notice and <sup>ascertainment of &</sup> ~~permitted~~ facts regarding the date when the application of respondent no.5 was received. The applicant shall be reinstated to his post. No payment shall be made to the applicant for the unserved period. The respondents shall comply with this direction within two weeks from the date a copy of this order is produced before them. There shall be no order as to costs.

  
Member (J)

  
Member (A)

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