

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 13 DAY OF 4 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Original Application No. 1052 of 2001

(U/S 19, Administrative Tribunal Act, 1985)

Surendra Nath Singh, son of late Barmeshwar Singh,
Resident of Village and Post Bairiya, District Ballia.

..... *Applicant*

By Advocates : Shri S.K. Singh

Versus

1. Union of India through Secretary, Department of Postal Services, New Delhi.
2. Chief Post Master General, Head Post Office, Lucknow.
3. Superintendent of Post Offices, Ballia Division Ballia.
4. Post Master/Sub Post Master, Bairiya District Ballia.
5. Dy. Regional Inspector Post Offices, Eastern Region, Bairiya District Ballia.
6. Daya Nidhi Tiwari, Tar Manager Bairiya, Post Office Bairiya Post Office Bairiya District Ballia.

..... *Respondents*

By Advocate : Shri S. Singh
Shri R.D. Tiwari
Shri R.K. Srivastava

O R D E R

By Hon'ble Mr. A.K. Gaur, Member (J)

The Applicant through this O.A. filed under section 19 of Administrative Tribunals' Act 1985, prayed for following main relief (s):-

"(a) A writ, order or direction to the respondents setting aside the alleged impugned termination order against the applicant, if any, passed by the respondent and also may set aside by the order

dated 11.3.2000 passed by the respondent no. 5 restraining the work on the post of E.D.D.A Pandeypur Bariya District Ballia.

(b) *A writ, order or direction commanding the respondent to provide the work to the applicant on the post of E.D.D.A Pandeypur Bariya District Ballia and pay the salary to the applicant month to month on the grade of 1740-2640".*

2. The case of the applicant, in brief, is that the father of the applicant was appointed in the year 1958 and since he was continuously working in the department of Post Office Ballia and during his service period, he died on 15.6.1995 leaving behind his wife and the applicant and one elder brother, who was also appointed in the Force. After the death of deceased employee, applicant submitted his representation, which was considered by the competent authority and issued appointment order dated 26.8.1997. Thereafter the applicant was appointed on the clear vacant post of E.D.D.A, which fell vacant due to death of his father with clear stipulation that if his appointment is not got confirmed/approved by C.P.M.G. Lucknow or disapproved by the C.P.M.G Lucknow, the services of the applicant will be treated as terminated without any notice. It is further stated in the appointment letter of the applicant that the services of the applicant will be governed by Extra Departmental Agent (Conduct and Service Rules 1964) as amended from time to time and other rule and order applicable to E.D.A.D, therefore, according to the judgment of Supreme Court reported in **AIR 1977 S.C. page 1677- The Superintendent of Post Offices etc. Vs. P.K. Rajamma etc.** the employees of Postal Department are holder of civil post, and are employees of the Central Government. Vide order dated 8.3.2000, passed by Superintendent of Post Office,

Ballia, the applicant has been terminated but the applicant has not been served with any termination order till the filing of the present O.A. Aggrieved against the termination order, applicant approached District Consumer Forum, Ballia and filed a case No. 189 of 2000 on 28.8.2000. The Court of District Consumer Forum rejected the case of the applicant vide order dated 20.7.2001 giving liberty to the applicant to approach before appropriate forum on Tribunal.

3. On notice, respondents filed counter affidavit and submitted that at the time of death of his father, the applicant was having one elder brother and sister. His elder sister Smt. Geeta Singh had already been married, whereas, his elder brother namely Shri Triloki Nath Singh was working in Indian Army as D.C.S. Even the applicant was working as Contractor in district Gurgaon (Haryana). Despite all this, the applicant applied for being appointed on compassionate ground and he pressurized the competent authority to appoint him on compassionate ground as E.D.D.A on temporary basis subject to the approval given by the C.P.M.G. Lucknow. When the Chief Post Master General, Lucknow office vide its letter dated 14.10.1998 raised certain objections and demanded the documents from the applicant so as to consider the question of approval of his appointment on the post of E.D.D.A, the applicant could not submit any information as was demanded from him. The applicant did not furnish the information deliberately and willfully because he knew that once he furnished the information and filled up

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the form in respect of gratuity, group insurance and other post retiral benefits of his father, his case for compassionate appointment would be rejected. Respondents submitted that the applicant misbehaved with the then Deputy Regional Inspector, Post Offices namely Shri Hari Shanker Lal and threatened to murder him, in respect of which a case, crime No. 52 of 2000, under section 332 504, 506 I.P.C. and section 3(1) 10 of S.C./S.T.(P.A.) Act at Police Station Bairiya was pending against him. Respondents further submitted that the applicant filed two cases: firstly case No. 164 of 2000 and secondly 189 of 2000 in District Consumer Forum Ballia, but both of them were dismissed on 20.7.2001.

4. By filing rejoinder affidavit, the applicant has denied the contention of the respondents made in the counter affidavit and submitted that the allegation of the respondents that approval of the applicant was refused by C.P.M.G. Lucknow but no document has been annexed by the respondents alongwith counter affidavit in this regard. It is also maintained that the termination order dated 8.3.2000 has not been served upon the applicant. A bare perusal of aforesaid order dated 8.3.2000 would indicate that it is merely a direction of respondent NO. 4 to the respondent NO. 5 to terminate the services of the applicant without affording any opportunity of hearing to the applicant.

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5. We have heard Shri S.K. Singh, learned counsel for the applicant and Shri R.K. Srivastava, learned counsel for the respondents.

6. Learned counsel for the applicant has vehemently argued that the respondents have completely violated the principle of natural justice and fair play during the course of enquiry. Learned counsel for the applicant would further contend that the applicant has not at all concealed any material fact from the notice of the respondents. Learned counsel for the applicant argued that on the direction of Higher Authority, Appointing Authority can not terminate the services of the applicant. In support of his contention, learned counsel for the applicant has placed reliance on the ***Full Bench decision of R. Jambukeswaran and Ors. Vs. Union of India decided on 8.1.2004 (P.B.)***.

7. Learned counsel for the respondents would contend that applicant was appointed temporarily with clear understanding that his appointment will be terminated at any time without any notice and without assigning any reason.

8. We have given our thoughtful consideration to the pleas advanced by the learned counsel for the parties, we are of the considered view that in the instant case applicant has not been given any opportunity of hearing to defend his case. We have perused the G.D.S (Conduct and Employment) Rules in which Rules 8 provides as under:-

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"The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak".

9. For better appraisal of the controversy involved in the present case, we may refer to the decision rendered by Full Bench of this Tribunal in the case of *Tilak Dhari Yadav Vs. Union of India and Ors. reported in (1997) 36 A.T.C. 539 (F.B)* which has been passed taking into account the decision rendered by Hon'ble Supreme Court. Relevant para 6 of the said judgment is reproduced hereunder:-

"6. In the light of our discussion aforesaid, we are of the that under Rule 6 of the Rules, the appointing authority does not possess power to cancel the appointment of Extra Departmental Agent 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. Accordingly, our answer to the question referred to the Full Bench is as follows:-

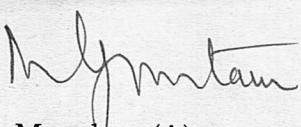
Rule 6 of Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in administrative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

10. Similar view has also been taken by the Madras Bench of the Tribunal in the case of **R. Jambukeswaran (supra) N. Ambujakashi** in which the Full Bench has also taken into account the decisions rendered in Tilak Dhari Yadav's case (supra).

11. It is settled principle of law that when an order is passed in violation of principles of Natural Justice and fair

play, the same would be a nullity. An order which entails civil consequences, must be passed strictly according to law. The rule of audi alteram partem mandates that the decision makers should afford to the person concerned a reasonable opportunity of hearing (**Km. Neelima Misra Vs. Dr. Harinder Kaur and others, AIR 1990 SC 1402**).

12. In view of the above observations, the O.A. is allowed. Impugned order dated 11.3.2000 is quashed and set aside. Respondents are directed to reinstate the applicant in service within two months from the date of receipt of a certified copy of this order. However, it will open to the respondents to take action if still required in pursuance of misconduct of the applicant, in accordance with provision of Rules. It is further clarified that the applicant will not be entitled for any back wages. No costs.



Member (A)



Member-(J)

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