

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 14 OF 2004

ALLAHABAD, THIS THE 26th DAY OF AUGUST, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Narendra Singh Yadav
s/o Shri Shiv Raj Singh Yadav,
resident of village Nagla Gangi,
P.O. Sakit Via Etah,
District-Etah-207121.

.....Applicant

(By Advocate : A.B.L. Srivastava)

V E R S U S

1. Union of India through the Secretary, Deptt. of Post, Ministry of Communication, Director cum General Post, Dak Bhawan, New Delhi-110 001.
2. The Superintendent of Post Offices, Etah.
3. The Sub Divisional Inspector Post, East Sub-Division, Etah.

.....Respondents

(By Advocate : Shri R.R.K. Mishra)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A. applicant has sought quashing of the order dated 22.12.2003 whereby services have been terminated. He has further sought a direction to the respondent No.3 to allow the applicant to join his duties on recovery of his arrears on the basis of medical certificate and or to pass such other order or orders that this court deems fit and

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proper in the circumstances of the case.

2. The brief facts as submitted by the applicant are that applicant had been engaged as Substitute EDDA in Aruna Nagar Branch Post Office for different periods. He had maintained his duties with full devotion and to the satisfaction of all his superiors. Therefore, when the post of EDMC/EDDA now designated as G.D.S. Mail Carrier Kansuri fell vacant due to regular incumbent of the post having been appointed as Post Man in Group 'D'. The applicant also applied for the said post. He was accordingly appointed vide order dated 30.05.2001 as EDDA-cum EDMC Kansauri Branch Post Office(Pg.60). To his utter surprise respondent No.3 issued order of termination with immediate effect vide memo dated 22.12.2003.

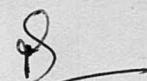
3. It is this letter, which has been challenged by the applicant in this O.A. on the ground:-

- (i) his services could not have been terminated without giving him show cause notice.
- (ii) No reasons whatsoever have been assigned while terminating his services.
- (iii) Termination is bad in law because it shows no application by the appointing authority but has been done at the behest of higher authority.

4. In support of his submission, he relied upon the following judgments:-

A. 2001(3) ATJ 622	B. 2004(1)ATJ 56
C. 2001(1) ATJ 161	D. 2000(1)ATJ 456

5. Respondents on the other hand have opposed this O.A. on the ground that petitioner had committed a fraud in as much as he submitted forged high-school marksheets on the basis of which appointment was given to him. This fact came to the



notice when the O.A. was filed by another candidate and enquiries were made with the Regional Secretary, Madhyamik Shiksha Parishad, U.P. Regional Office, Meerut who submitted his report that the High School Marksheets bearing Roll No. 097265 for the year 1999 in the name of Narendra Singh son of Shri Shivraj Singh having date of birth 28.3.1981 having marks as 451/600 is forged. (Copy Annexed with the CA). They have further explained that the District Inspector of School Etah also sent his report vide letter dated 19.12.2003 stating therein that Shri Narendra Singh has prepared a forged marksheets and took the appointment. His actual marks for the year 1999 with Roll No. 097265 were 365/600, which fact has been corroborated by the Principal as well. Copy annexed as Annexure CA-7 and CA-8. They have, thus, submitted that since the appointment of the petitioner was made on the basis of forged highschool marksheets as detailed above, hence his appointment was cancelled vide SPOs memo dated 19/20-12-2003 and S.D.I.(P) was directed to terminate the services of the petitioner and to relieve him at once. The S.D.I.(P) himself visited the Branch Office on 22.12.2003 to serve the memo on the petitioner but he ran away without receiving the same and without signing the charge~~s~~ report. He did not turn back, therefore, the charge of post of GDS MD cum MC Kansuri was handed over to Shri Jai Pal Singh GDS Branch Post Master Kansuri Etah on 23.12.2003. Copy of the charge~~s~~ report annexed as Annexure CA-9. Thereafter memo dated 22.12.2003 ^{is 12} _{was 12} sent to the applicant by a registered post on 23.12.2003 (Annexure CA-10). They have submitted the marksheets bearing 451/600 was submitted by the applicant which bears his signatures on the back portion (Annexure CA-2). These facts came to the notice when Shri Pradeep Kumar filed O.A. No. 2887/03. They have, thus prayed that the interim order taken by the applicant by



suppressing these facts may be vacated.

6. Applicant has filed rejoinder affidavit wherein he has stated that essential prescribed qualification for selection for the post of EDDA/EDMC/GDS Mail Carrier is 8th passed with a preference to Matriculates. Therefore, respondents could not have seen the marks obtained by the applicant in the matriculation. He has further stated that he was selected on the basis of marks obtained by him in 8th standard. He has reiterated the other things and has submitted that any inquiry, which has been held at the back of the applicant, cannot be used against him nor is it sustainable in law. In case, there was any complaint against him, he should have been given a copy of the complaint and opportunity must have been given to him before issuing the order of termination. He has, thus, prayed that the O.A. may be allowed. Counsel for the respondents relied on J.T. 2004(1) S.C. 88.

7. We have heard both the counsel and perused the pleadings as well.

8. It is correct that while terminating the services of the applicant, no reason whatsoever, has been assigned by the respondents nor any show cause notice was given to the applicant before terminating his services. It goes without saying that once a person has been given appointment a right accrues in favour of that person and his services can be dispensed with only after following due process of law. According to the service Rules for Postal Gramin Dak Sewak as amended in 2003. Rule (4) has been amended and now it reads as under:-

4. Appointing Authority:

(3) : Notwithstanding anything contained in these rules any authority superior to the Appointing authority as shown in the Schedule, may, at any time, either



on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears-

- (a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or
- (b) to have failed to exercise a jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit.

It is thus, clear that now power has been given to the superior authority to call for the records relating to the appointment of person if such appointing authority appears to have acted in the exercise of its jurisdiction illegally or with material irregularity and he may after giving an opportunity of being heard make such order as it thinks fit, whereas the judgments, which were given earlier, such orders were quashed by the Tribunal because under the rules, no such power was given to the superior authority. Therefore, in the changed circumstances, since the rules themselves have been amended, the judgments relied upon by the counsel for the applicant do not hold good any more. It would be relevant to point out that this amendment has been carried out on 09.05.03 whereas applicant's services have been terminated on 22.12.2003. Therefore, the contention raised by the counsel for the applicant that appointing authority could not have terminated his services at the behest of superior authority, is rejected. However, there is merit in the contention of counsel for the applicant that when he states that his services could not have been terminated without giving him opportunity to defend himself because even as per the amended rule it is clear that the superior authority can pass the orders only after giving an opportunity of being heard to the person concerned. Therefore



to that extent, since admittedly no show cause notice was given to the applicant nor he was given the reasons while terminating his services, the impugned order cannot be sustained. Counsel for the respondents has relied on the Supreme Court Judgment but the facts of the said case are absolutely different. In as-much-as in the said case, the report of Scrutiny Committee constituted by the State Government was given to the appellant there in which was challenged by him by filing a Writ Petition. The Writ Petition was dismissed. Against which, he filed Special leave Petition, Special Petition was also rejected by the Hon'ble Supreme Court. It was at this stage that appellant therein moved the Administrative Tribunal seeking protection under Article 311 against his dismissal. Tribunal had held that appellant services could not have been terminated without following the procedure laid down under Article 311. It was in that back drop that Hon'ble Supreme Court held that since appellant had played fraud, equitable consideration would not come for his rescue. Whereas in the instant case, at no stage was applicant informed either of the complaint or about the alleged enquiry or the reports submitted by various authorities. Moreover, the rule by which power has been given to the superior authority itself makes it clear that before passing any order opportunity of hearing should have been given. Therefore, the judgment given by Hon'ble Supreme Court would not be applicable in the present facts.

9. In view of the above discussion, we hold that the impugned order is bad in law as principles of natural justice have not been complied with as was required under the rules. Accordingly, the order dated 22.12.2003 is quashed and set aside. However, liberty is given to the respondents



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to give opportunity to the applicant by informing him all the reports submitted by various authorities and then to pass a reasoned order after considering all the points raised by applicant in his representation under intimation to the applicant. This exercise shall be completed within 3 months from the date of receipt of a copy of this order. Till such time, final orders are passed, applicant may be kept under put off duty and paid allowance as admissible under the Rules. The O.A. is accordingly, disposed off with no order as to costs.



Member (A)



Member (J)

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