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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: THIS THE 2nd DAY OF August 2006.

Original Application No.1235 of 2005

HON'BLE MR. A.K. Bhatnagar, Member-J
HON'BLE MR. P.K. Chatterji Member-A

Yagyesh Dutt Panday, S/O Radha Raman Panday
R/O Village-Semara, Post Office-Malukahi
District-Kushinagar.

.....Applicant

By Adv: Sri N.K. Pandey

Versus

1. Union of India through Secretary Ministry
Of Communication,
New Delhi.
2. Post Master General Gorakhpur Region,
Gorakhpur.
3. Senior Superintendent Post Office,
Deoria Region,
Deoria.
4. Sub- Divisional Inspector of
Post Office,
Kasia.
5. Anil Kumar Tripathi
S/o Triveni Tripathi
Vill & Post - Khampur.
District- Deoria.

.....Respondents.

By Adv: Sri S. Singh

ORDER

By Hon'ble Mr. P.K. Chatterji, AM

The applicant in this OA No. 1235 of 2005 has
challenged the order dated 26.08.2005 passed by the
respondent No. 3 by which his services has been
terminated without any notice and without showing

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any reason and without giving any opportunity of hearing. The applicant was engaged as Gramin Dak Sewak Branch Post Master (GDSBPM), Pagar, Laxmi Nagar, Distt. Kushinagar. He had passed the High School examination in the year 1997 having secured 66.5% marks. The respondents offered him the appointment after screening his application and other testimonials and found him most suitable candidate for the job amongst all. Appointment letter was issued by SSPO Deoria vide memo No. A 455/Ed/ChII dated 24.06.2004 and he took over charged of Branch Post Office after completing pre-appointment formalities on 10.07.2004. The applicant worked on the said post from 10.07.2004 till 26.08.2005 when all of a sudden his appointment was terminated by the respondent No. 3.

2. The applicant challenged the order on the ground that no reasons were assigned for the termination of the appointment and no show cause notice was also issued to him before termination of his services, and for this reason orders of the respondents were violative of Article 14, 16 20 (1) and 311(2) of the Constitution of India.

3. The relief sought by the applicant are as under:

- a. Issue a direction to quash the impugned order dated 26.8.2005 passed by respondent

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no.3 as per direction made by respondent no.2.

- b. Issue a direction to respondent no. 3 to reinstate the petitioner on the post he was holding at the time of removal.
- c. Any other direction as this Tribunal may deem fit and proper may be issued.
- d. Award costs of this application In favour of the applicant.

4. The counter affidavit was filed by the respondents in which they have clarified the position as follows:

The post of GDSBPM, Pagar Laxmi Ganj was notified on 09.04.2003 for filling up through general candidates. Copy of notification was sent to the Employment Exchange, Kushinagar for sending the name of suitable candidates. It was also circulated to the Branch Post Master (BPM) Pagar Laxmi Ganj, Sub Divisional Inspector (SDI) Kushinagar, District Magistrate Kushinagar etc for inviting applications from open market. The Employment Exchange did not send any name upto 08.05.2003. Nine applications received from the open market, were examined and three were short-listed on the basis of the marks obtained in the High School examination. They are:

- a. Anil Kumar Tripathi, 72%
- b. Yagyesh Datt Pandey, 64.83%

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c. Mushtaqeem Shesh, 64.20%

5. After verification of the documents by the SDI, Post Offices, Kasaia, Sri Anil Kumar Tripathi (A.K. Tripathi) vide his statement dated 06.08.2003 intimated that he has taken the house of Asharfi Devi on rent at the village for running the Post Office as well as for the purpose of residence. But on verification of the said house of Asarfi Devi ~~gave the statement~~ ^{mushtaqeem} gave the statement on 06.05.2004 that she had refused to give the house on rent to Sri A.K. Tripathi. Thereafter, the documents of candidates at Sl. No. 2 were verified and were found to be genuine. Sri Yagyesh Datt Pandey (Y.D. Pandey) was found to be a resident of village Pagar on which the Post Office is to be located. As he was found to be eligible for the post from all angles, appointment letter was issued to him on 24.06.2004 and the applicant joined the post on 10.07.2004.

6. In the meantime Sri A.K. Tripathi vide his letter dated 25.06.2004 informed that he would be able to provide the house of Sri Satya Narayan Singh of village pagar for running the Post Office and for his residence. The respondents have submitted that as he gave the declaration on 25.06.2004 i.e. after issue of appointment letter to the applicant, his application was rejected by the respondent No. 3.

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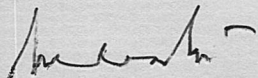
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Sri Tripathi was aggrieved by this decision and represented before, Post Master General (PMG), Gorakhpur region. On consideration of the representation, the PMG, Gorakhpur vide his letter dated Bharti/M-14/Vividh Deoria/95/96 dated 14.07.2005 directed to cancel the appointment of the present applicant and to appoint A.K. Tripathi in his place as he was the first candidate in the select list having secured the highest marks in the High School examination.

7. In compliance of that order the appointment of the applicant was cancelled on 26.08.2005 and Sri A.K. Tripathi was appointed on the said post vide order of the same date and is working since 01.09.2005. It is this order of cancellation of appointment which has been impugned by the applicant in this OA.

8. We have considered the pleadings and also submissions made by the learned counsel for the parties during hearing. The main grounds on which the applicant has assailed the order of the respondents are :

- a. After issue of the initial appointment letter and having allowed him to work as GDSBPM for over an year, the respondents' action in terminating the applicant was

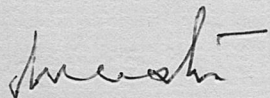


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violative of relevant rules and Article 14, 16 and 311 (2) of the Constitution of India.

b. No show cause notice was issued nor any disciplinary action was taken and his appointment was terminated without assigning any reason.

9. On this issue the learned counsel for the applicant has brought to our notice the extract of the decision of the Apex Court in case of **Prabhudayal Birari Vs. M.P. Rajya Nagrik Aapurti Nigam Ltd., JT 2000 (9) 373**, arising out of **SLP (C) Nos. 189-190 of 2000**. The facts of this case were that the appellant was appointed as Assistant District Manager in MP State Commodities Trading Corporation Limited, Indore. As per terms of the appointment, the services of the appellant could be terminated on one month's notice or on payment of one month's salary in lieu thereof notice by either side. The respondents by order dated 11.05.1981 terminated the services of the appellant on w.e.f. 11.06.1981. The notice of termination was served on the appellant on 08.06.1981 and he was relieved on 10.06.1981. The appellant sought legal redressal and the trial court decreed the suit of the appellant holding that neither the appellant was



(16)

given one month's notice nor one month's salary. Therefore, the order of termination was void. Against this order the respondents filed Writ before the higher court, where the decision went in their favour. Thereafter, on the basis of the SLP filed by the appellant the Apex Court after considering the facts of the case and also refereeing to the judgment of **Kusum Gupta Vs. Haryana State Small Scale Industries Corporation, [1986 Pt. II M.P.W.N. 108]** finally held as under:

"Having regard to the facts stated and reasons given above, the judgments and decrees of the first Appellate Court as well as the High Court are set aside and the judgment and decree of the trial court are restored with the modification that the appellant shall not be entitled for any back wage. In other words, the judgment and decree of the trial court except to the extent of modification stated above, shall stand restored. Appeals are allowed to the extent indicated. Parties to bear their own costs."

10. The respondents in defence of their action have pleaded that the action of the SDI, in not offering an opportunity to Sri A.K. Tripathi, the first candidate in the merit list to provide the alternative accommodation in the first instance was wrong. The contention of the learned counsel for the respondents was that at first an offer should have been made to him in which he could have been called upon to provide particulars of the accommodation of the village Post Office. This was not done and on the basis of the statement of Ashrafi Devi he was disqualified for the post of BPM and the job was offered to the second candidate i.e. the present applicant. Therefore, the PMG

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Gorakhpur, respondent No. 1, was quite justified in canceling the appointment of the applicant. The job was offered to the candidate on 24.06.2004. On the very next date i.e. 25.06.2004, Sri A.K. Tripathi, informed the respondents that he was ready to offer a suitable accommodation. The present applicant had still not joined the post (he joined subsequently on 10.07.2004), so there was enough opportunity for the respondents to verify the genuineness of the claim of Sri A.K. Tripathi and offer him the job. This was not done. Therefore, the action of the PMG, Gorakhpur in rectifying this mistake was quite in order.

11. The learned counsel for the respondents has further stated that there is no irregularity in the order of termination of the appointment of the applicant in the light of the relevant provisions of the GDS (Conduct and Employment) Rules i.e. Rule 8, which is cited below:

"8. Termination of Employment

1. The employment of a Sevak who has 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;

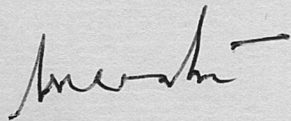
2. The period of such notice shall be one month:

Provided that the employment of the such Sevak may be terminated forth with and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment, or, as the case may be, for the period by which such notice falls short of one month.

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Note.- Where the intended effect of such termination has to be immediate it should be mentioned that one month's Time Related Continuity Allowance plus Dearness Allowance as admissible is being remitted to the Sevak in lieu of notice of one month through money order."

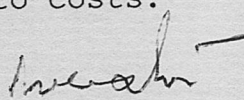
12. The points which have to be considered for decision in this case are whether the respondents were right in acceding to the claim of the applicant Sri A.K. Tripathi to the post of GDSBPM after lapse of one year when the present applicant had already rendered over one years service. On this the learned counsel for the respondents strongly pleaded that action of the respondents in not giving Shri Tripathi the opportunity him to offer a suitable accommodation for the Post Office was wrong. This wrong has been set right by the PMG, Gorakhpur who had competent to do so. Moreover, Sri A.K. Tripathi offered alternative accommodation for the Post Office in his letter dated 25.06.2004, which was much before the present applicant was allowed to join the post. The respondent No. 3 should have considered that Sri A.K. Tripathi being the first person in the merit list should be called upon to fill up the post after he was ready with an accommodation. So respondent No. 3 had shown unseemly haste in offering the job to the applicant. Having considered this matter we are of the view that the points adduced by the respondents in this regard are reasonable.




(19)

13. The second point for consideration is whether the action of the respondents in terminating the appointment in the manner it was done was consistent with the rules. Learned counsel for the respondents have drawn our notice to Rule 8 of GDS (Conduct and Employment) Rules which stipulates that appointment of GDS employees having less than three years of service can be terminated with one month's notice without assigning any reason or one month's pay in lieu thereof.

14. We find from the copy of the notice which was served to the applicant that suitable directions have been given for payment of one month's salary in lieu of notice period. For this reason we are satisfied that the requirements of the rules have been complied with. Therefore, the present OA does not succeed and is, therefore, dismissed with no order as to costs.



Member (A)


Member (J)

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