

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 26 DAY OF 2, 2010)

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

ORIGINAL APPLICATION NO. 1298 OF 2005
(Under Section 19, Administrative Tribunal Act, 1985)

Agnivesh Tripathi aged about 35 years son of Shri Amerish Tripathi, resident of Village Lalmanpura, P.O. Sikariganj, Distt. Gorakhpur, employed as G.D.S.B.P.M. Dehratikar in the District Gorakhpur.

.....Applicant

By Advocates:- Shri J.M. Sinha
Shri A. Tripathi

Versus

1. Union of India the Secretary Ministry of Communications & I.T. Cum D.G. Deptt. of Posts Dak Bhawan, New Delhi.
2. P.M.G. Gorakhpur Region, Gorakhpur.
3. S.S.P. Os. Gorakhpur Division, Gorakhpur.
4. Shri Anil Kumar Srivastava Son of Sri Shyam Behari Lal Srivatava R/o Village & P.O. Dehratikar (Sikariganj), District- Gorakhpur.

.....Respondents

By Advocate- Shri S. Srivastava
Shri R. Trivedi

ORDER

(DELIVERED BY: HON'BLE MR. A. K. GAUR, MEMBER-A)

By means of this Original Application, Applicant has prayed for following main relief/s:-

- (i) To issue orders quashing the impugned order Annexure No. A-1 and A-2 restraining the Respondents to remove or out the Applicant from the post without due process of law.

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- (ii) To annul the impugned order Annexure No. A-2 as a consequence of quashing the impugned order Annexure No.A-1.
- (iii) To issue orders, direction or command to the respondents as a consequence of aforesaid reliefs, not to obstruct the smooth working of the applicant on the post of G.D.S.B.P.M. Dehratkar.

2. Brief facts of the case are that the post of G.D.S.B.P.M. of Dehratkar Branch Post Office fell vacant due to retirement of Sri R.P. Lal Srivastava. The vacancy was advertised. Under the Rules the eligibility criteria were the minimum High School passed and having suitable accommodation for keeping post office in Dehratkar village. The applicant submitted his application along with necessary documents. The applicant was born on 01.04.1970 and had passed Intermediate Examination. The criteria for selection to the post was only High School and the applicant had secured 60% marks in High School Examination (Annexure A-3 & A-4). The applicant had his own income of Rs.60,000/- per annum from various sources. The applicant fulfilled all the conditions of eligibility and on the basis of merit, he was selected. He provided accommodation for P.O. & took residence in Village Dehratkar in part of the house of Shri Vishnu Lal Srivastava and the Respondent No.3 vide his memo dated 07.01.2005 (Annexure A-6) appointed the applicant to the post in question. In pursuance of the order and after completing pre requisite condition and training, the applicant joined the post on 13.01.2005 forenoon (Annexure A-7). He continued in service since 13.01.2005 and is still continuing on the post on the strength of the stay order granted by the Tribunal. According to the applicant, he

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proceeded on medical leave w.e.f 22.10.2005 for 15 days. While on leave, the applicant came to know about the orders dated 21.10.2005 (Annexure A-1 & A-2) on 24.10.2005.

3. Learned counsel for the applicant submitted that during the period when the applicant was on leave, his appointment was reviewed and the Senior Superintendent of Post Offices, Gorakhpur / respondent No. 3 terminated the services of the applicant, and appointed respondent No. 4 on the direction of Director General (Posts), New Delhi/respondent 1 , which is totally against the settled principle of law as the higher authority has no power inherent or otherwise to review or cancel the appointment, which was made by the competent authority i.e. respondent No. 3. In order to buttress the aforesaid argument, the learned counsel for the applicant placed reliance on following decisions :-

- i. N. Ambujakashi Vs. U.O.I & Ors passed by Full Bench of this Tribunal at Hyderabad in O.A. No. 57/1991 (dated 10.02.1995)
- ii. Baij Nath Tripathi Vs. Union of India & Ors. 2001 (3) ATJ 285.
- ii. R. Jambukeswaran and Ors. Vs. U.O.I & Ors. A.T.F (Full Bench) 2002-2003 page 200-201
- iii. Ravi S. Bhalakar Vs. Superintendent of Post Offices, Haveri & Ors – A.T.D Vol. 38 (2002) (3) page 104
- iv. Hari Prakash A.T.J 1993 (3) Vol 29 page 550.
- v. Tilakdhari Yadav Vs. U.O.I & Ors. – 1997 ATC Vol. 36 page 539

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4. Learned counsel for the applicant further submitted that the respondents have not issued any show cause notice or opportunity before reviewing or canceling and terminating the services of the applicant, therefore, the order dated 21.10.2005 is totally illegal, arbitrary, without jurisdiction and against the principle of natural justice.

5. On notice, respondents filed Counter Affidavit. Learned counsel for the respondents contended that to fill up the post in question, the vacancy was notified to Employment Exchange, Gorakhpur for sending the name of suitable candidates fixing the last date on 02.02.2003. The applications were also invited from open market up to 02.02.2003. No list of nomination was received from Employment Exchange, Gorakhpur. However, 22 applications were received up to scheduled date fixed on 02.02.2003. All the application including enclosures were got verified from the S.D.I. (P), Urwa Bazar Sub Division, Gorakhpur. The recommendation to fill up the vacancy was issued by Post Master General, Gorakhpur vide letter dated 09.03.2004. On the basis of verification report of S.D.I. (P), Urwa Bazar Sub Division, Gorakhpur and the application, the comparative chart was prepared on the basis of marks obtained in High School Examination as per instruction contained in D.G. (Posts), New Delhi Communication No.22-12/2001-GDS dated 17.09.2003. The chart of five meritorious candidates on the basis of marks obtained in High

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School Examination or equivalent to the High School was prepared, which is as under:-

1.	Sri Agnivesh Tripathi, S/o Sri Ambrish Tripathi, Vill. Lalmanpurva, Post 0Sikariganj, Gorakhpur.	360/600, 60%, 1 st Division, from U.P. Board, Allahabad.
2	Sri Anil Kumar Srivastava, S/o Sri Ghanshyam Biharilal Srivastava, R/o Vill & Post- Dehratiker, Gorakhpur.	719/1100, 65.36%, 2 nd Division but taken in to A/c 233/400, 58.25% from Board of Technical Education, U.P.
3	Sri Chandra Bhushan, S/o Sri Ram Payare, Vill. Dhobauli, P.O. Alawalpur, Distt. Gorakhpur.	347/600, 57.83% 2 nd Division from U.P. Board, Allahabad.
4.	Sri Narendra Nath Srivastava, S/o Sri Dharamraj Lal Srivastava Vill. & Post Dehratikar, Distt. Gorakhpur.	281/500, 56.20%, 2 nd Division from U.P. Board, Allahabad.
5	Sri Ajai Kumar Srivastava, S/o Sri Gunjeshwari Lal Srivastava, Vill & Post Dehratikar, Gorakhpur.	324/600, 54%, 2 nd Division from U.P. Board, Allahabad.

6. It is also submitted by the learned counsel for the respondents that applicant and the respondent no.4 were also fulfilling the other conditions, regarding income from other sources provision of house and self residence in post village Dehratikar etc. The character and antecedent of both candidates were got verified through Sr. Superintendent of Police, Gorakhpur and their character and antecedent were found satisfactory. Thus both the above candidates were fulfilling all the conditions of appointment. The mark sheet of the respondent no.4 relates to Group 'A' and Group 'B' and total marks obtained 719/1100 i.e. 65.36% (Annexure CA-1). As per Directorate Communication 17-34/96-ED & Trg dated 22.05.1996, the subject of Group 'B' was ignored treating additional/second language

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and only marks of Group 'A' were counted for merit i.e. 233/400 (58.25%) (Annexure CA-2). Thus the respondent no.4 was found 2nd in merit and the applicant was found at 1st position on the basis of marks obtained in High School Examination. The applicant was accordingly appointed as GDS. B.P.B., Dehra Tikar (Sikariganj) Gorakhpur vide office memo no.A/295/Ch.II dated 07.01.2005 and he has been working on this post w.e.f. 13.01.2006. The respondent no.4 lodged a complaint against the appointment of the applicant. The case with full facts was referred to D.G. (Posts), New Delhi through Post Master General, Gorakhpur. It was intimated to the office vide communication No. 16-111/2004, GDS dated 17.10.2005 through R.O. Covering letter No.RPG/Rectt/MC-13/Gorakhpur/04 dated 21.10.2005 that 'subject mentioned in Group 'B' are compulsory subject and result is declared after taking into account the marks obtained in these subjects' (Annexure CA-3). In the light of the above instructions, the marks obtained in Group 'B' were also taken into account and the respondent no.4 was considered proper for appointment as GDS BPM, Dehra Tikar on the basis of total marks obtained in Group 'A' and Group 'B' i.e. 719/1100 (65.36%). The services of the applicant was, thereafter, terminated vide this office memo no.A.295-Ch. II dated 21.10.2005 remitting one month T.R.C.A. plus DA Rs.2806 vide Gorakhpur HO MO No. C-8325 dated 22.10.2005. In compliance of the communication No. 16-111/2004, GDS dated 17.10.2005 received thorough Postmaster General, Gorakhpur letter No.RPG/Rectt/MC-13/Gorakhpur/04 dated

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21.10.2005, Sri Anil Kumar Srivastava (the respondent No.4) has been appointed as GDS BPM, Dehratikar, Gorakhpur vide this office memo no. A-295/Ch. II dated 21.10.2005 and joined his duties on 26.10.2005.

7. Respondent No.4(Anil Kumar Srivastava) has also filed Counter Affidavit. Sri Rajeev Trivedi, learned counsel for respondent No. 4 submitted that as per rules, the marks obtained in IInd language/Additional Subject taken in S.S.C./High School Examination by the candidate should be ignored and the inter-se merit should be determined on the basis of marks secured in the compulsory/effective subjects taken in matriculation examination. **This rule was circulated by D.G. Post letter No.17.34/96-ED & TRG dated 22.05.1996 (Annexure CA-1).** Learned counsel further submitted that the respondent no.4 had secured 64.67% percentage of marks in interse merit after calculating both i.e. compulsory subjects as well as additional subjects, whereas the applicant had secured only 61% mark in interse merit. Respondent No.3 wrongly ignored the mark obtained by the respondent no.4 in technical trade compulsory papers and only considered the marks obtained in Part-A to calculate the interse merit on account of which the percentage obtained by respondent no.4 came to 58.25%. Due to wrongful interpretation appointment was given to the applicant on the above noted post. Thereafter, respondent no.4 moved representation before the respondent no.3 stating therein that his marks obtained in Part-B

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subjects have wrongly not been considered for calculating the percentage of marks obtained by him. When no heed was paid by the respondent no.3 on the representation moved by the respondent no.4, he again moved a representation before the respondent no.3 along with clarification issued by Secretary, Board of Technical Education U.P., Lucknow dated 15.02.2005 by which it was clarified that to calculate the percentage of marks obtained by the candidate, the marks obtained in Part-A and Part-B are to be considered. The Directorate, Department of Posts issued clarification vide its letter no.16-III/2004- G.D.S. dated 17.10.2005 stating therein that the marks of Part-A and Part-B both are compulsory for determining the percentage of marks for interse merit and case of Secondary Technical School Certificate and the respondents after receiving the clarification issued by the department, corrected the mistake committed by them and the appointment letter was issued in favour of the respondent no.4 vide memo dated 21.10.2005.

8. Applicant filed Rejoinder Affidavit, stating therein that the respondent no.4 had got 233/400 in part A and 444/650 in part B and hence he had got 677/1050 and not 719/1000 as stated by the respondent no.4. It is further stated in Rejoinder Affidavit that the applicant was duly selected and properly appointed and took over the charge of the office he became a central civil servant and had to be governed by service rules and his services could not be terminated under Rues 8 of GDS (C&E) Rules 2001, unless the post was

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abolished or the work of the applicant was found unsatisfactory. Since both the contingency did not arise the services of the applicant could not be terminated under rules 6 of GDS (C&E) Rules, 2001. Learned counsel for the applicant submitted that once the applicant was regularly appointed after proper selection procedure and he had joined the services, it was not open to the respondents to terminate the services of the applicant arbitrarily instead, the applicant was entitled to protection of Article 311(2) of the Constitution of India.

9. In the Rejoinder Affidavit filed against the Counter Affidavit filed by the Respondent No.4 it is submitted that the instructions in Annexure CA-1 are about the subject taken in the secondary School Certificate/High School Examination and not to a technical Education Certificate. Thereafter, the subsequent clarification issued on 17.10.2005 by the department cannot affect the appointment of the applicant made on 07.01.05. It is reiterated that the circular letter filed as Annexure CA-1 by the respondent no.4 is not a clarification about secondary certificate technical course as it is neither SSC nor High School. The respondent no.4 has himself stated that the percentage of marks for inter-se merit after calculating both i.e. compulsory subject as well as Additional subject in his case is 64.67%. Thus he himself admits that this merit point is arrived at by adding marks of Additional subject and as per annexure no.CA-1 filed by him, the additional subject are not to be considered for comparison of merit position.

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10. Supplementary Counter Affidavit and Supplementary Rejoinder Affidavits have been filed by either sides reiterating the facts stated above.

11. We have heard Sri A. Tripathi, learned counsel for the applicant and Sri Saurav Srivastava learned counsel for official respondents as well as Sri R. Trivedi, learned counsel for private respondent No. 4 and carefully gone through the written arguments filed by the counsel for applicant as well counsel for official respondents.

12. Having heard counsel for the parties we find that the applicant was selected after following recruitment rules and took over the charge of the post in question, hence he became a Central Civil Servant and therefore, his services cannot not be terminated under Rues 8 of GDS (C&E) Rules 2001 unless the post was abolished or the work of the applicant was found unsatisfactory. In view of the decisions rendered by Hon'ble Supreme Court reported in **1986 SCC (L&S) 745 - Smt. Rajinder Kaur Vs. State of Punjab and another** and **2000 (2) E.S.C 932(S.C) - V.P. Ahuja Vs. State of Punjab and others**, services of the applicant cannot be terminated without affording any opportunity of hearing. Hon'ble Supreme Court in the case of Smt. Rajinder Kaur (Supra) has held as under: -

"13. On a conspectus of all these decision mentioned hereinafter, the irresistible conclusion follows that the impugned order of discharge though couched in innocuous terms, is merely a camouflage for an order of dismissal from service on the ground of misconduct. This order has been

made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause the purported order of dismissal from service and without giving any opportunity to cross-examine the witness examined, that is, in other words the order has been made in total contravention of the provision of Article 311(2) of the constitution. The Impugned order is, therefore, liable to be quashed and set aside. A writ of certiorari be issued on the respondent to quash and set-aside the impugned order dated September 9, 1980 of her dismissal from service. A writ in the nature of mandamus and appropriate direction be issued to allow the appellant to be reinstated in the post from which she has been discharged. The appeal is thus allowed with cost.....”

13. In the case of V. P. Ahuja (Supra) Hon'ble Supreme Court has further held as under:-

“6. Learned Counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant can not claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of conditions set out in the appointment order. This plea can not be accepted.

7. A probationer, like a temporary servant, is also entitled to certain protection and his services can not be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principal of natural justice.

8. The affidavits filed by the parties before the high court as also in this court indicates the background in which the order, terminating the services of the appellant came to be

passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant."

14. In the instant case admittedly the applicant has not been afforded any opportunity of hearing before passing termination order dated 1.10.2005, which is totally in violation of principles of natural justice and fair play, hence in any view of the matter the impugned order dated 21.10.2005 is not sustained in law.

15. We have also given our anxious thought to the pleas advanced by the learned counsel for the applicant that when a person fulfils all the eligibility conditions and is appointed by the competent authority, his appointment cannot be cancelled merely on the direction issued by the higher authority. In the instant case, the applicant was appointed after following due recruitment process by the respondent No. 3, his case has been reviewed by the D.G (Posts)/respondent No. 1, and in pursuance of the letter No. 16-III/2004-GDS dated 17.10.2005 issued by the respondent No. 1, the Senior Superintendent of Post Offices, Gorakhpur/respondent No. 3 terminated the services of the applicant. Learned counsel for the applicant urged that Rule 6 of Extra Departmental Agents (Conduct and Service) Rules, 1964 did not confer power upon a higher administrative authority to review or revise the order of appointment purported to have been passed by the lower authority under Rule 3 of the said Rules. The aforesaid view was also taken by the Full Bench of this Tribunal at Hyderabad In the judgment dated 10.02.1995 passed in **O.A. No. 57/1991 - N. Ambujakashi Vs. U.O.I & Ors.** In the said judgment the Full Bench relying on several decision rendered by the Apex Court has held that Rule 6 of Extra

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Departmental Agents (Conduct and Service) Rules, 1964 (for short, "the Rules") did not confer power upon a higher administrative authority to revise the order of appointment purported to have been passed by the lower authority under Rule 3 of the said rules. The higher authority has no inherent power or otherwise to revise the order of appointment passed by the lower administrative authority.

(Underlined to lay emphasis)

16. Similar view was also taken by this Tribunal at Allahabad in **Tilakdhari Yadav Vs. U.O.I & Ors. – 1997 ATC Vol. 36 page 539 (FB)** and at Madras in **R. Jambukeswaran and Ors. Vs. U.O.I & Ors. - A.T. (Full Bench) 2002-2003 page 200-201** and in the case of **Baij Nath Tripathi Vs. U.O.I & Ors reported in 2001 (3) ATJ 285**. In the case of Tilakdhari Yadav (Supra) the Full Bench of this Tribunal at Allahabad held as under: -

"6. In the light of our discussion aforesaid , we are of the view 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:-

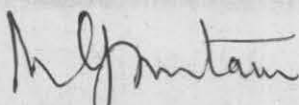
Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected

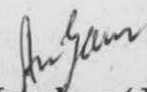
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with conduct of the appointee, without giving him an opportunity to show cause'."

17. In view of the observations made above, we hardly find any justification in the action of respondents in passing termination order dated 21.10.2005. Accordingly the O.A is allowed. The order dated 21.10.2005 (Annexure A-1 of O.A) and order dated 21.10.2005 (Annexure A-2 of O.A) passed as a consequence of Annexure A-1 of OA are hereby quashed and set aside. As the applicant is still continuing in service on the strength of the stay order dated 07.11.2005 granted by the Tribunal, the respondents are directed not to interfere with the working of the applicant on the post of G.D.S.B.P.M. Dehratikar.

18. Parties are directed to bear their own costs.


Member (A)


Member (J)

/Anand/