

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD.**

Dated : This the 6<sup>th</sup> day of **May**, 2011

**Original Application No.1402 of 2004**

**Hon'ble Mr. Sanjeev Kaushik, Member (J)**

**Hon'ble Mr. Ashok Kumar, Member (A)**

Mukesh Kumar Rai, alias Mukesh Rai,  
S/o Shri Virendra Singh, R/o Village and Post Dabathua,  
District-Varanasi.

...Applicant

By Adv : Sri Anand Kumar

**V E R S U S**

1. Union of India through Secretary, Ministry of Communication, Department of Posts and Telegraph, Govt. of India, New Delhi.
2. Superintendent of Post Offices, West Division, Varanasi.
3. Sub Divisional Inspector of Post Offices, North Sub Division, Varanasi.
4. Shri Sanjai Kumar Gupta, Sub-Divisional Inspector, North Sub-Division, Varanasi (In Person).

...Respondents

By Adv: Shri R.K. Srivastava

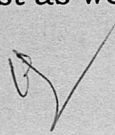
**O R D E R**

**Delivered by Hon'ble Mr. Ashok Kumar, Member (A)**

1. Heard the learned counsel for both the parties on 2.5.2011. The present Original Application has been filed against the memo dated 20.8.2005 issued by respondent No.3 by which the services of the applicant has been terminated with immediate effect, allegedly without giving prior notice of one month as well as without assigning any reasons which the applicant claims is a violation of statutory provisions of GDS (C&E) Rules 2001 as well as of Article 14, 16 and 311 of the Constitution.



2. Facts briefly stated are that the applicant was provisionally engaged against the vacancy caused by the death of one Sri Pancham Maurya. Charge was given to him on the said post on 8.9.2003 afternoon. Annexure A-2 is the charge report. This appointment of the applicant was made till the decision of the Circle Officer, Lucknow and was subject to the conduct and services governed by the Department of Posts G.D.S. (Conduct and Employment) Rules 2001. Annexure A-3 of the OA is the appointment letter dated 6.10.2003. It is claimed that the applicant worked continuously on the aforesaid post till the order of termination passed on 20.8.2005 by S.D.I. (Posts) Sub-Division, Varanasi. It is further stated that the aforesaid order of termination has been passed in compliance of letter dated 25.7.2005 of the Superintendent of Post Offices, West Division, Varanasi, and further that the respondent no.2 treated the said appointment of the applicant as "irregular arrangement" and directed the Inspector of Post Office to terminate the same with immediate effect. Copy of the impugned order dated 20.8.2005 has been filed as Annexure A-1. The said termination order is under challenge. It has been argued that the applicant claims to have worked continuously for two years without any complaint, prior notice of one month was not given before the termination order and also that the appointment has been treated as "irregular arrangement" which is wrong. The plea of the applicant is that the appointment cannot be treated as irregular but is said to be 'temporary' and thus, he has been illegally and arbitrarily terminated. The applicant has prayed that the impugned order dated 20.8.2005 (Annexure A-1) be quashed, that the respondents be directed to reinstate the applicant with all consequential benefits, including back wages and interest as well as any other order as may be deemed necessary.



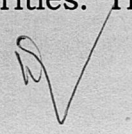
3. Counter affidavit has been filed by the respondent No.1 to 3 wherein it has been contended that instead of engaging Sri Mahendra Pratap Maurya against the said post as per letter dated 30.9.2003 the Sub-Divisional Inspector (P) North Sub Division, Varanasi engaged the applicant on 6.9.2003 provisionally without obtaining requisite permission, without going through the process of advertisement and without obtaining the order of the competent authorities and hence this engagement was completely irregular. Consequently, vide order dated 25.7.2005 the aforesaid engagement of the applicant was ordered to be terminated when this came to the notice of the department. The then Sub Divisional Inspector (P) of the concerned Sub Division terminated the aforesaid engagement vide order dated 20.8.2005. Moreover, the applicant has not completed three years of regular work and the engagement being irregular has been terminated rightly. In so far as the contention raised in the rejoinder affidavit regarding the appointment of Sri Ram Badan Yadav and Sri Durga Singh, it has been argued that they had rendered three years of service in the department and <sup>their appointment</sup> was correct as they were appointed as retrenched employee. P

4. During the arguments reliance has been placed on *2010 (9) SCC 247 in the case of State of Karnataka and others Vs. M.L. Kesari and Others* wherein the distinction between illegal and irregular appointment has been made and it has been held that appointment of qualified persons made against sanctioned posts without following process of open competition are irregular appointments. Reliance has also been placed on the judgment of the Hon'ble Apex Court in *2005(1) ATJ 671 in the case of R. Sulochana Devi Vs. D.M. Sujatha and Others*. It has been held by the Hon'ble Apex Court <sup>that</sup> when an order passed by the authority is not in

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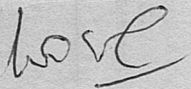
accordance with law or no notice was given to the authority concerned,  
~~The~~ order is nullity and need not be challenged in any court of law.

5. We have considered the facts, arguments and documents filed by both the parties. It appears from Annexure A-3 which is the memo dated 6.10.2003 issued by the Sub Divisional Inspector, Varanasi that the applicant was provisionally engaged against the vacant post till the decision of the C.O. Lucknow. It is clear from this order that this is a provisional engagement subject to the decision of Circle Office Lucknow. There is no document on record, which has been produced by the applicant interalia showing that this provisional engagement was approved by the Circle Office, Lucknow. It is also to be noted that the engagement was provisional and was, therefore, necessarily subject to the decision of the Circle Office. It is also apparent from the letter dated 20.08.2005 (Annexure A-1) that the order to relieve the applicant has been passed again by the Sub Divisional Inspector, North (i.e. the same authority) in compliance of the order dated 25.7.2005 of the Superintendent of post Offices, Varanasi on account of its being irregular. The applicant has not been able to justify that the letter provisionally engaging the applicant was issued by a competent level and that the official issuing that letter was competent to make such a provisional engagement. Naturally, therefore, when no decision in favour of the applicant was received and on the contrary an order was received directing the termination of the provisional engagement of the applicant, the order terminating his services was justified. The applicant cannot claim to have been appointed in a regular or legal way. The appointing authorities are specified in the GDS Conduct and Employment Rules. From the schedule of the rules it is apparent as to who are the appointing authorities. The appointment not having being made by the competent



level and not being in consonance with the procedure laid down by the same cannot be treated as valid and legal. The judgments cited by the applicant are also not relevant and in his favour. We, therefore, see no reason to interfere in the matter.

7. In result, the OA is dismissed. No Costs.



Member-A



Member-J

/ns/