

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

(This the 5<sup>th</sup> day of June 2009)

Present

Hon'ble Mr. A.K. Gaur, Member-J

Hon'ble Mr. S.N. Shukla, Member-A

Original Application No.492 of 2005

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

Anilesh Kumar Tripathi s/o Late Sri Parash Nath  
Tripathi, Aged 39 years, r/o 481-H, Gujaini Kanpur,  
U.P.

...Applicant.

By Advocate : Shri O.P. Gupta

V E R S U S

1. Union of India, through its Secretary,  
Ministry of Communication, Govt. of India,  
New Delhi.
2. The Sub-Divisional Inspector of Post  
Offices, South Sub Division, Kanpur City,  
Kanpur.
3. Ajai Kumar, S/o Sri Ram Autar, R/o Vill. &  
Post- Kathara, Kanpur City and working as  
E.D.D.A, Bidhnoo, Kanpur.

...Respondents

By Advocate : Shri R.K. Tiwari

O R D E R

(Delivered by : Hon'ble Mr. A.K. Gaur, Member-J

The applicant Through this O.A filed under section 19 of  
Administrative Tribunals Act, 1985 has prayed for quashing the  
orders dated 16.04.2005/Annexure A-5 of O.A passed by the  
respondent No. 2 terminating his services as EDDA and  
25/26.04.2005/Annexure A-6 of O.A appointing respondent No.

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2. The facts of the case, in brief, are that in response to the requisition sent by the respondent No. 2 for filling up the post of EDDA, Bidhanoo, the Employment Exchange sent certain names but as name of the applicant was not sponsored by the Employment Exchange, he sent his application directly to respondent No. 2 on 12.08.1998. According to the applicant, the respondents, ignoring the candidature of the applicant, appointed Sri Ajai Kumar on 05.10.1998. Aggrieved by inaction of the respondents, several O.As (1047/98 1300/99 and 181/2000,) were filed by the candidates including the applicant, whose candidature were ignored. The applicant filed O.A No. 181/2000. During the course of hearing of O.A No. 1047/98, the respondents admitting the appointment of Sri Ajai Kumar as illegal sought permission for cancellation of his appointment, which was allowed by the Tribunal and the respondents vide order dated 04.11.1999 cancelled the appointment of Sri Ajai Kumar, who also filed O.A No. 1444/1999.

3. According to the learned counsel for the applicant, O.A Nos. 181/2000, 1444/1999, 1047/1998 and 1300/1999 were decided by a common judgment and order dated 10.07.2001/Annexure A-2 of O.A in following terms: -

"In the light of the above facts, we consider it appropriate to direct the respondents to invite applications for filling up the post of EDDA, Badhunu, Kanpur City, afresh. The applicants will have an opportunity to compete for the same in response to the notice, if they so wish. The respondents shall carry out a fresh selection after inviting application for the said post. The O.A is disposed of with the above direction."

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Aggrieved by the aforesaid order, Shri Vinay Trivedi and Anay Kumar filed the Writ Petition No.29413 of 2001 and 30266 of 2001 before Hon'ble High Court, which were decided by a common judgment and order dated 19.3.2004 in following terms :

*"Taking into consideration the facts and circumstances as brought on record both the Writ Petitions are disposed of finally providing that the impugned directions issued by the Tribunal shall be taken to be limited to the consideration of the eligible candidates whose names had been sponsored by the employment exchange or whose applications had been received by the last date fixed for the purpose of consideration as indicated herein above.*

4. Learned counsel for the applicant submitted that in compliance of order of Hon'ble High Court (referred to above) the respondents considered the candidature of all those who applied within the stipulated period either through employment exchange or directly and found the applicant most meritorious candidate and appointed him vide order dated 6.8.2004 after completing all requisite formalities i.e. Medical Examination, Police Verification, Verification of testimonials etc.

5. The grievance of the applicant is that the respondent No.2 vide order dated 6.4.2005/Annexure-A-5 of OA, had terminated his services under Rule 8(2) of GDS (Conduct & Employment) Rules, 2001 without assigning any reason or opportunity of hearing and appointed one Shri Ajay Kumar/respondent No.3 vide order dated 26.4.2005/Annexure-A-6 of OA. Learned counsel for the applicant argued that appointment of respondent No.3 has been made without following selection process. Learned counsel for the applicant further argued that

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in the appointment letter dated 26.4.2005 issued in favour of respondent No.3, it has been stated that the services of the applicant has been terminated due to forged UPC. The ground of challenge of the order dated 16.4.2005 and 26.4.2005 is that prior to passing the termination order no reason has been disclosed to the applicant; respondents prior to appointment of applicant never stated that application form of the applicant was not reached within time or UPC is forged the applicant was selected on over all merit and after selection all required formalities were completed therefore, according to the learned counsel for the applicant the termination order dated 16.4.2005 is not in accordance with the provisions of Rule 2 of Rule 8 of GDS (Conduct & Employment) Rules, 2001. In order to buttress his pleas, learned counsel for the applicant placed reliance on decision 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** and submitted that services of the applicant cannot be terminated without affording any opportunity of hearing.

6. Respondents have filed their counter affidavit stating therein that the appointment of the applicant was not as per the recruitment rules and as per the procedure laid down in service rules. Learned counsel for the respondents invited our attention to order dated 25/26.4.2005 (Annexure A-6 of the OA) and submitted that after appointment of the applicant it was detected that the applicant indulged himself in submitting his application by forged UPC in connivance with the officials of

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Postal Department and therefore his services were terminated by the competent authority under Rule 8 of GDS (Conduct & Employment) Rules, 2001 under which neither any reasons nor opportunity of hearing is required to be given. Learned counsel for the respondents further argued that for the aforesaid act, of connivance of forgery with the applicant, a disciplinary proceeding under Rule 14 of CCS (CCA) Rules 1965 has been initiated against Shri S.L. Yadav, the then C.I. Kanpur H.O. and a charge sheet dated 17.12.2007 has already been issued to him.

7. The applicant filed Rejoinder reiterating the contents of Original Application.

8. Learned counsel for the respondents invited our attention to para 3 of the Supplementary Counter Affidavit and submitted that after termination of services of the applicant, Sri Ajai Kumar /respondent No. 3 being the next meritorious candidate, as per tabulation chart, was appointed. Learned counsel for the respondents argued that the application for the post in question was submitted by U.P.C against the terms and conditions of notification dated 29.07.1998. Learned counsel for the respondents further argued that not only the envelop containing the application form/Annexure SCA-5, was tampered but the date of dispatch and the date of delivery were also manipulated, therefore, the law/equity does not allow that a person adopting unlawful means should be encouraged.

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9. We have heard Sri O.P. Gupta, learned counsel for the applicant and Sri R.K. Tiwari, learned counsel for the respondents and perused the pleadings as well.

10. The sole ground of challenge of the order dated 16.04.2005 is that the competent authority did not afford any opportunity of hearing before terminating the services of the applicant. The respondents without assigning any reason appointed respondent No. 3 in a illegal manner and without following due process of selection. Moreover there is no provision for preparing any waiting list. Learned counsel for the respondents on the other hand submitted that no selection committee is required to be formed as Sri Ajai Kumar /respondent No. 3 being next meritorious candidate, as per tabulation chart, which was prepared in compliance of the direction of Hon'ble High Court dated 19.03.2004, has been appointed on the post in question. Learned counsel for the respondents further argued that application for the post in question was submitted through U.P.C by adopting certain manipulations in connivance with the official of postal department, which has been detected subsequently, therefore, neither any reason nor an opportunity of hearing was required to be given to the applicant.

11. Be that as it may that the allegation against the applicant is that he adopted fraudulent means by submitting application through U.P.C, it was incumbent on the respondents to provide opportunity of hearing to the applicant and then to pass an order detrimental to the interest of the applicant in accordance

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with law. In the instant case, prima facie, we find that the applicant has not been afforded any opportunity of hearing as well as the order dated 16.04.2005/Annexure A-1 of the O.A does not disclose any reason for terminating the services of the applicant. Inasmuch as the respondents No. 2 while issuing appointment letter in favour of the respondent No. 3 has stated that ".....the candidature of Sri Anilesh Kumar Tripathi was considered on the basis of forged UPC and accordingly his appointment was terminated on 16.04.2005."

12. 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 pass. 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."

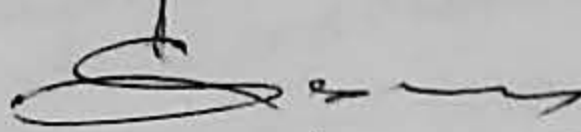
14. In the instant case admittedly the applicant has not been afforded any opportunity of hearing before passing termination order dated 16.04.2005, which is totally in violation of principles of natural justice and in any view of the matter can not be sustained in the eyes of law.

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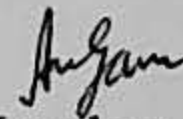


15. In view of the observations made above and settled principle of law the O.A. is allowed. Order dated 16.04.2005 terminating the services of the applicant is hereby quashed and set-aside. The respondents are directed to reinstate the applicant on the post in question within a period of one month from the date of receipt of the certified copy of this order. As far as the order dated 25/26.04.2005 issued in favour of the respondent no 3 appointing him as EDDA-1 Bidhnoo-PO is concerned, the respondent no. 2 is directed to act in accordance with rules.

16. There will be no order as to costs.



Member(A)



Member (J)

/Anand/