IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD.

Civil Suit No.960 of 1985 (364/86 (T)) Decided on_____

Surya Bhan Gupta ..... Applicant

Versus

Senior Superintendent of Post Offices and others ..... Respondents.

Coram: Hon'ble Justice J.D.Jain, Vice-Chairman.
Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: Mr. Shashi Nandan, Advocate.

For the respondents: Mr. Ashok Mohiley, Advocate.

JUDGEMENT: (Judgement delivered by Hon'ble Justice J.D.Jain, Vice-Chairman)

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The controversy in this case lies in a narrow compass. The undisputed facts of the case are that pursuant to an advertisement dated 26th February, 1985 issued by the Sub Divisional Inspector (Post Offices) P.O. Sohnaria (District Deoria) East, inviting applications for appointment of Extra-Departmental Delivery Agent (for short "EDDA"), the applicant submitted his application to the concerned Employment Officer on 23rd of March, 1985, 26th of March, 1985 being the last date for receipt of such applications. Three more applications were received by the Employment Exchange and the same were duly forwarded to the concerned Sub Divisional Inspector (PO) for necessary action. The applicant, Shri Surya Bhan Gupta was selected

by the Sub Divisional Inspector (PO) and a letter of appointment was issued to him on 1-4-85, of course, it indicated that his appointment was provisional. Later on vide order dated 18th June, 1985, the Senior Superintendent of Post Offices, respondent No.1, cancelled the said appointment on the ground that some more applications including one made by Shri Ram Lal Thakur, respondent No.4 were not duly considered by the Sub Divisional Inspector (PO) and, therefore, the appointment of the applicant was illegal and invalid. The necessity for such consideration on the part of the Senior Superintendent of Post Offices arose because of a notice said to have been served by respondent No.4 on him under section 80 C.P.C.... Consequent upon the cancellation of the appointment order of the applicant by the Senior Superintendent of Post Offices, the Sub Divisional Inspector (PO) issued order dated 22nd June, 1985 informing him that his appointment vide letter dated 1-4-85 as EDDA had been cancelled because on scrutiny of the appointment file by the Senior Superintendent of Post Offices, it transpired that the appointment of the applicant was not in order and was, therefore, liable to be set aside. It appears that before such order could be served on the applicant, he rushed to the Court and instituted a Civil Suit, being No. 960 of 1985 in the Court of Mun-sef Deoria praying for a decree for permanent injunction restraining the respondents from cancelling his appointment. He averred that the respondents No. 1&2 were threatening that his appointment would be cancelled in view of the

notice served by Shri Ram Lal Thakur under section 80 of C.P.C. on them. However, he failed to obtain ad-interim injunction as prayed. The suit was resisted by the respondents, who asserted that the suit was not maintainable. In the written statement filed by respondent 1 and 2, it was averred that the appointment of the applicant as an EDDA had been made only on provisional basis and the same not being in order because certain other applicants had not been considered by the Sub Divisional Inspector (PO), was cancelled and an order to this effect had been issued by the appointing authority on 22-6-85. However, getting scent of the same, applicant absented himself from duty from 26th June, 1985 onwards leaving one Shri Ram Chander Parsad as his substitute, without any permission from the department. In particular, it was averred that the application made by Shri Ram.Lal Thakur for appointment as EDDA was received by the Sub Divisional Inspector(PO) on 28th of March, 1985 alongwith some other applications, but, the same were not considered by the Sub Divisional Inspector(PO) on the ground that they were received after the expiry of the prescribed date viz.26.3.85. However, on verification it was found that respondent No.4 as also some other persons had submitted their applications in the concerned Employment office on 26.3.85 which was the last date for receiving such applications. However, the same could not be delivered to the Sub Divisional Inspector(PO) in time because he was not available in his office when the messenger of the Employment office

went there alongwith those applications on 26th March and again on 27th March,1985. Hence the Senior Superintendent of Post Offices was of the considered view that those applications should have been considered alongwith the applications which were actually considered by the Sub Divisional Inspector(PO).

On the coming into force of the Administrative Tribunals Act,1985 (for short"the Act"), the said suit was transferred to this Tribunal by virtue of section 29 of the Act and it has been listed as 364/86(T).

In view of the plea raised by the defendent-respondents that an order of cancellation of the appointment of the plaintiff-applicant had already been made on 22nd of June,1985, the plaintiff-applicant was allowed to amend his plaint. In the amended plaint/application, he has challenged the legality and validity of the cancellation order dated 22.6.85 on the ground that no opportunity had been afforded to him by the appointing authority before it was passed. Secondly, he urged that the said order was not passed by the appointing authority himself, but was passed under orders of the Senior Superintendent of Post Offices, who was not competent to cancel his appointment.

The learned counsel for the respondents has placed on record photostat copies of certain documents inter-alia including letter dated 14th/18th of June,1985 written by the Senior Superintendent of Post Offices Deoria to the Sub Divisional Inspector(PO), Deoria,East. Its perusal would show that three applications for appointment to the post of EDDA were received on 22nd of March,1985, while four applications were received on 28th of March,1985 by the Sub

Divisional Inspector(PO). However, appointment of the applicant was made only from amongst the former three applications/while the later applications were not considered on the ground that the same had been received subsequent to the last date prescribed for this purpose. However,from the office notings on the file, it transpired that the aforesaid four applications had been received by the Employment office in time and the same were despatched to the Sub Divisional Inspector (PO) on 26th March,1985 as well as 27th March,1985 through a special messenger, but the same could not be delivered because the Sub Divisional Inspector (PO) was not available in the office. The Senior Superintendent of Post Offices highlighted that it was the duty of the Sub Divisional Inspector(PO) to make himself available for receiving the said applications and his failure to do so could not deprive the aforesaid four applicants from being considered for appointment to the post of EDDA. So the appointment of applicant Shri Surya Bhan Gupta was vitiated by irregularity which went to its root . Hence the Senior Superintendent of Post Offices directed the Sub Divisional Inspector(PO) to cancel the appointment of the applicant as EDDA.

The submission of the learned counsel for the respondents who appeared before us after the learned counsel for the applicant had concluded his arguments, precisely is that the termination of the services of the applicant had been caused in exercise of the powers conferred by rule 6 of the

Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules,1964 and as such the impugned order is perfectly valid especially when the very appointment of the applicant to the post in question was provisional. It is of course not disputed that in view of the decision of the Supreme Court in The Superintendent of Post Offices vs. P.K.Rajamma 1977 AIR/SC:1677, an Extra Deoartmental Agent holds a civil post although such a post is outside the regular civil services. So the only question which falls for determination is whether an opportunity should have been afforded to the applicant to represent against the cancellation of his appointment in consonance with the principles of natural justice. In order to appreciate the argument advanced by the learned counsel for the respondents in correct perspective, we may reproduce below rule 6:

> " 6. Termination of Services: The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice".

It may be pertinent to notice here that prior to its amendment vide D.G.,P&T,N.D.No.10/1/82-Vig-III, dated 19-7-82, the following words existed subsequent to the last word "notice" in the said rules " for generally unsatisfactory work or on any administrative grounds unconnected with his conduct"

The implications of amendment to rule 6 have been explained vide Director General of Post Offices and Telegraphs letter No.10/1/82-Vig.III, dated 13th April,1983 as under:-

" Implication of amendment to Rule 6 :- The words which have been delted from Rule 6 of the P & T E.D. Agent (Conduct and Service), Rules, 1964 (i.e. " for generally unsatisfactory work or on any administrative grounds unconnected with his conduct") created some legal complications and in one case the court gave an adverse verdict. Accordingly, it was thought fit that the rule should be so amended that order for termination of services may not require any reasons to be indicated. Otherwise, this amendment has not made any change in the existing instructions and termination of services may normally be ordered only in cases of unsatisfactory service or for administrative reasons un-connected with the conduct."

Obviously from the departments' point of view, no fundamental or basic change has occured by deletion of the foregoing words from rule 6. Assuming, however, for the sake of arguments that the services of an employee i.e. EDDA can be terminated on any and every ground before he completes three years' continuous service and no reason need be assigned for the same, the question which still looms large is whether the principles of natural justice ought to have been complied with or not.

The principle of Audi alteram partem is a basic concept of principles of natural justice. No one should be condemned with-out hearing is the essence of justice. Hence Courts of Law apply this principle to ensure fair play and justice in judicial, quasi-judicial and even administrative actions which come up before them for judicial review.

It is now well settled that the principles of natural justice are applicable even to administrative orders which involve civil consequences (See State of Orissa Vs. Dr.(Miss) Binapani Dei and others AIR 1967 SC 1269.) Non-compliance with the principles of natural justice may vitiate an administrative order notwithstanding that prejudice caused to the aggrieved party is not separately established because non-observance of natural justice is by itself a sufficient proof of prejudice. As observed by Lord Denning M.R. in his speech in Annamunthodo vs. Oilfields Workers' Trade Union (1961) 3 All ER 621,625, "Counsel for the respondent Union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man to be denied justice".

These observations were quoted with approval by the Supreme Court in S.L.Kapoor Vs. Jagmohan & others (1980) 4 Supreme Court Cases 379. Observed their Lordships that:

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any may and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.

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As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs".

Hence in our view the respondents ought to have complied with the principles of natural justice especially the principle of Audi alteram partem enabling the applicant to represent against the proposed cancellation of his appointment. We need not say ~~obviously~~ whether that would have led the Sr. Superintendent of Post Offices to a different conclusion but one cannot be oblivious to the fact that the Sr. Superintendent of Post Offices has proceeded on the assumption that the applications by respondent No.4 and three other persons were submitted in the Employment Office on 26th of March,1985 and the same could not be delivered to the Sub Divisional Inspector (PO) either on 26th of March or on 27th of March,1985 because he was not available in his office. Surely, it would have been open to the applicant to challenge the veracity/correctness of this assumption and prove that the applications were in fact received by the Employment Office on 28th of March,1985. Any how the point for consideration is that justice and fair play in action demanded that before the applicant was deprived of his valuable right by cancellation of his appointment, he should have been afforded an opportunity to show a cause against the same. That not having been done, the impugned order has to be quashed as being illegal and invalid. The fact that under rule 6, termination of service can be effected

without notice does not in our considered view detract from the legal position elucidated above. We are fortified in the view we have taken by a Division Bench decision of Allahabad High Court in Girish Chandra Vs. Union of India, 1985 Uttar Pradesh Local Bodies and Educational Cases (UPLBEC)page 22. That case too was of termination of services of an Extra-Departmental Mail man. Their lordships observed:

> "Since the petitioners had been appointed after their selection and they had been working for more than two years, they had acquired a right to continue in service unless the same was terminated in accordance with service Rules. If there was any irregularity committed in the selection and if the authority proposed to cancel the selection, the petitioners should have given opportunity of hearing. Admittedly, no opportunity was given to the petitioners as a result of which principle of natural justice was clearly violated. An order passed in breach of the principles of natural justice is rendered null and void, and it is not necessary to demonstrate any prejudice".

We are in respectful agreement with the view expressed by their Lordships. See also Rajendra Kumar Vs. Union of India 1988 UPLEBC (Tri) 22, which is a decision of this Tribunal.

The learned counsel for the respondents on the other hand has placed strong reliance on the State of Punjab Vs. Jagdip Singh & others, AIR 1964 SC 521; Arya Kanya Pathashala and another 1971 ALJ 983; a Division Bench judgement of Allahabad High Court and Ashwani

Kumar Vs. Union of India, Regn.No.1422 of 1986(T), decided by this Tribunal on 4th of March,1987, in support of his contention that the impugned order of appointment of the applicant being illegal and invalid it can be set aside by the competent authority on its own and there was no necessity of issuing a show cause notice to the applicant against the proposed cancellation, the argument being that an authority which is competent to make appointment is also competent to rescind it. However, on a perusal of these authorities, we entertain no doubt in our mind that the ratio of the decisions in the said cases is not at all attracted to the facts of the instant case. What happened in State of Punjab Vs. Jagdip Singh & others, was that certain officiating Tehsildars in the erstwhile State of Pepsu were confirmed by the Financial Commissioner vide notification dated 23rd October,1956 with immediate effect. However, no posts of the Tehsildars were available at that time in which the respondents could be confirmed. To overcome this legal hurdle, the Rajpramukh of Pepsu sanctioned the creation of supernumerary posts of Tehsildars to provide liens for the Tehsildars who had been confirmed under the Notification. On Ist of November,1956, the State of Peopsu was merged with the State of Punjab by virtue of operation of the States Re-organisation Act,1956 and from that date the respondents became the servants of the Punjab State. The Punjab Government re-considered the action taken by the erstwhile State of Pepsu and on 31st of October,1957, the Govt. of Punjab made a notification de-confirming the respondents. The later challenged the ~~acti~~ action taken by the Govt. of Punjab as being illegal and invalid. However, a Constitution Bench of the Supreme Court upheld the action of the Punjab Govt. with the obversations that " the order of the Financial Commissioner had no legal foundation under the Punjab

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Tehsildari Rules(as applied to the former State of Pepsu), there being no vacancies in which the confirmations could take place. The order of the Financial Commissioner dated 23rd October,1956 confirming the respondents as permanent Tehsildars must, therefore, be held to be wholly void. - Moreover there is no rule which empowered the Financial Commissioner to create a post of Tehsildar. There was neither a substantive vacancy nor an anticipated vacancy in the cadre of permanent Tehsildars on October 23,1956. The creation of supernumerary posts appeared to be an after-thought and was of no avail as a means of validating the original order of confirmation."

Following this authority, a Division Bench of Allahabad High Court set aside the appointment of respondent Smt. Manorma Devi Agnihotri as Head Mistress Arya Kanya Pathashala Higher Secondary School in 1961 ALJ 983. It was held by their Lordships that Section 16-F (1) of the Intermediate Education Act,1921 which provides that "no person shall be appointed as a Principal unless, inter alia the selected candidate for the post has been approved by the Regional Deputy Director,Education" was mandatory and not directory in nature. Hence if a person is appointed as the Principal of an Institution without prior approval of the Regional Deputy Director, Education, the appointment is, in the eye of law, no appointment at all. Accordingly the appointment was held to be void.

Evidently both these authorities are not at all attracted to the facts of the instant case in as much as the appointment of the Tehsildars in

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the former case and that of the Head Mistress in the second case were totally in contravention of the service rules and as such were held to be void ab-initio. In law there is a clear distin-ction between a void and voidable action. Where an order is made in contravention of statutory provisions, or where the authority making such an order lacks competence/jurisdiction to make an order under the rules, such an order has no legal foundation whatsoever and, therefore, it can be set aside/quashed any time being null and void. However, where, as in the instant case, an order does not suffer from any inherrent or intrinsic infirmity like one of competence or jurisdiction, it cannot be said to be void. It may at worst be voidable and may be set aside at the instance of the aggrieved party. No doubt on complaint the/xxxxx of respondent No.4 challenging the legality of order of appointment of the applicant xxx the same could be set aside by the concerned authorities on the ground that respondent No.4 and other applicants who had made applications within the prescribed time should also have been considered for appointment. Their non-consideration for appointment certainly entitled them to challenge the legality of the order of appointment of the applicant. All the same it being nobody's case not that the applicant had/been appointed by a competent authority or that he had been appointed aginast the statutory rules, the order of his appointment cannot be said to be void abinitio by any stretch of reasoning. Under the circumstances, it was incumbent on respondents 1 & 2 to afford an

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opportunity to the applicant to be heard before cancelling his appointment in as much as he had acquired a valuable right and he could not be deprived of the same.unilaterally or arbitrarily.

On a parity of reasoning, the decision of this Tribunal in Ashwani Kumar Sharma Vs. UOI, too will have no bearing on the facts of this case.

The learned counsel for the respondents laid great stress on the fact that the appointment of the applicant being provisional only, it can be terminated any moment without assigning any cause or giving any notice. Having regard to all the facts of the case, we don't think that the appointment of the applicant as EDDA can be said to be provisional in its true sense. Admittedly, there was a clear vacancy of EDDA and he was appointed to the said post by the Sub Divisional Inspector (PO), who was the competent authority under the rules. It is nobody's case that the appointment had to be ratified by any higher authority for instance, the Sr. Superintendent of Post offices. However, it bears repetition that appointment was made after considering other applicants also. As per instructions issued vide D.G., P&T Letter No.43-4/77/Pen., dated 18th May,1979:

"(i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.

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(ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment".

So looked at the matter even from the point of view of the department, the appointment of the applicant cannot by any stretch of reasoning be said to be provisional. It would not become so merely because the nomenclature "provisional" has been given to it.

To sum up, therefore, we hold that the impugned order of cancellation of appointment of the applicant is illegal, null and void and as such it cannot have the effect of terminating his service as EDDA. It is accordingly quashed and the applicant shall be entitled to all the consequential benefits including salary etc. in accordance with law. However, we make it clear that it shall be open to the respondents 1 & 2 to re-consider the complaint made by respondent No.4 against the appointment of the applicant and decide it afresh after giving proper opportunity to the applicant to show cause against the same.

8/4/88

(Birbal Nath)
AM.

J Dain

(J.D.Jain) 8.4.88
VC.