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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO. TA. 411 Of 1986(T).

The Union of India & others.....Applicants

Versus

Shiv Nath Yadav .....Respondents.

Hon. S. Zaheer Hasan-VC  
Hon. Ajay Johri - AM

(Delivered by Hon. Ajay Johri..AM)

This appeal has been received under section-29 of the Administrative Tribunal Act No. 13 of 1985 from the court of District Judge, Azamgarh. The appellant Union of India & others have come up against the judgment and decree in Suit no. 194/83 Shiv Nath Yadav -vs-Union of India & others given on 20.11.85. The grounds of appeal are that the judgment is contrary to facts, the plaintiff has no right to continue in service as his services had already been terminated legally, he was not entitled to any allowances, necessary issues were not framed and the decision on framed issues were not given properly.

2. The plaintiff respondent was appointed as

on Extra Departmental Agent on 22.1.80 against a permanent vacancy. His services were terminated on 25.12.81 without giving him any opportunity to be <sup>3/</sup> head or a notice of termination. The background of the termination order was the wrong delivery of a money order. On the issue whether termination order amounted to removal from service and whether it was illegal, the learned trial court held that the plaintiff respondent was a holder of a civil post within the meaning of article 311(2) of the Constitution but his services were terminated for unsatisfactory work under Rule-6 of EDA Conduct & Service Rules inspite of specific mention in the Rules that where specific irregularities come to surface an institution of regular disciplinary proceeding is called for and this rule should not be used as a short cut to the full procedure.

3. In their reply to the plaint, the defendant-appellants had said that a money order which was given to the plaintiff respondent was found not paid to the payee and the blame was established on him. On this score the services of the plaintiff respondent were terminated. The other allegations made by him were baseless. It was not necessary for the defendant-appellants to give an opportunity to the plaintiff respondent to explain as his services were purely temporary. Thus the background of the termination as admitted by the defendant-appellants was a misconduct of non-delivery of the money order.

4. The termination order dated 25.12.81(39-Ga) says that termination was under Rule-6 for unsatisfactory work. According to the submissions made at the bar by the learned counsel for the defendant-appellants for termination under Rule-6 no opportunity is needed. This submission was opposed by the learned counsel for defendant-appellants on the ground that the termination order was as a result of the alleged charge of embezzlement and was, therefore, not an order simplicitor and could not be issued and the services could be terminated only after following the Discipline and Appeal procedure.

5. The learned counsel for the plaintiff-appellant has relied on a judgment in Raipada Biswas ~~vs~~ Union of India ATR.1987-CAT 587 given by the Calcutta Bench of this Tribunal. In this case the services were terminated on the grounds of irregularity of selection because the applicant did not reside in the same village. It was held that since no notice was given the termination was against principles of natural justice. The respondents should have relaxed the rule especially when the distance was negligible and they knew that the applicant was not a resident of the village and they allowed him to work for two years. This ratio can be easily distinguished. In the plaintiff-respondents' case he had created a situation whereby his continuance in the department could have resulted in further similar situation of

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-4-

embezzlement. So it does not help the plaintiff-respondents.

6. The plaintiff respondent was appointed on contract basis liable to be terminated by notifying the other and he was governed by the Post & Telegraph E.D.A. Conduct Rules, 1964. There is also no doubt that there was wrong payment of the money order and the money was ultimately deposited by the plaintiff-respondent who admitted that the payment was not made to the correct person. His explanation appears to have been given after a report about the incident was received. Thus it cannot be said that no opportunity was given to the plaintiff-respondent to explain his case. The delivery of the money order to a wrong person has been admitted by the plaintiff-respondent. The admitted guilt did not require further probing or enquiry. We see that the rule of reason which is an integral part of the principles of natural justice, has been observed in this case. Had the plaintiff-respondent denied the fact of wrong delivery a thorough enquiry would have been necessary.

7. The termination order is not strictly an order simplicitor because the termination is for unsatisfactory work. Rule-6 of E.D.A. (Conduct Services) Rules, 1964 empowers the Govt. to terminate the appointment, if the service of an employee has not been more than 3 years. Within the meaning of this rule, no notice is required. Principles of natural justice require that the delinquent should be given an

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-5-

opportunity to defend himself. We find that this was done. Though a formal charge sheet had not been issued. The plaintiff-appellant admitted his fault. Prior to 19-7-82 Rule-6 had a different ~~connection~~ and the order dated 25.12.81 was in accordance with the rule-6 as it existed then. There is no right to appeal against an order of termination. It can, however, be reviewed within 6 months. The plaintiff respondent did not chose to ask for a review against the imposition of the penalty.

8. The learned Trial court had held that no disciplinary proceeding were drawn against the plaintiff-respondent. ~~which~~ was against the rules. No complaints were made by the recipient of the money order and the report was made out by the Sub Post Master or his own on which the Deputy Superintendent, Post Offices conducted the investigation and also took the statement of the plaintiff-respondent. When some thing is obvious and proves so on self admission all these steps become secondary. Assuming that the termination order should have ~~e~~ proceeded an enquiry under CCS(CC&A) Rules and such an enquiry was not held, even if we quash the order the fact of wrong delivery would not have changed and thus no direction or order needs to be issued on this aspect. The process of the court should not be

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-6-

abused to have an executive order set aside when the door was opened <sup>3/4</sup> to the plaintiff to put up a review petition. So the findings that since no notice was given and no charge sheet was issued the termination became illegal is liable to be set aside.

9. The plaintiff-respondent had worked for merely two years. There was obviously no other complaint against him. For any pecuniary loss caused to the government, recovery from allowances can be made. In this case, the money order was delivered to the father of recipient and it was subsequently paid to the son after plaintiff-respondent had taken the money back and deposited it with the Sub-Post Master. We feel that termination order was too harsh a penalty especially when the intention was not proved as mala fide. No intention of defrauding the Government had also been established. Under the circumstances, we direct that in case the plaintiff-respondent chooses to put in a review petition within two months from the date of issue of these orders, defendant-appellants would consider it and impose any other penalty except the penalty of removal and on his reinstatement the period from the date of termination to the date of re-instatement would be treated as dies-non.

10. In conclusion, therefore, we dispose of the <sup>with the</sup> appeal in the above terms. The suit no. 194/83 is dismissed

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-7-

observations in para-supra. Parties will bear  
their own costs throughout.

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Member (A)

*J. M. S.*  
Vice-Chairman.

Dated: February 11/1988/  
Shahid.