

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Allahabad : Dated this 9th the day of April, 1999

Original Application No.979 of 1992

District : Mirzapur

CORAM :-

Hon'ble Mr. S.L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

Mishri Prasad Singh
S/o Late Banshi Singh,
R/o Village & Post Bhawanipur
P.S.- Chunar Distt Mirzapur.

(Sri R.C. Sinha, Advocate)

. Applicant

Versus

1. Union of India through
Superintendent of Post Offices,
Mirzapur Division, Mirzapur.
2. Sub Divisional Inspector Post Offices,
Mirzapur (Purvi Sub Division, Chuna).

(Sri C.S. Singh, Advocate)

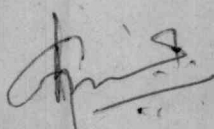
. Respondents

O R D E R

By Hon'ble Mr. G. Ramakrishnan, A.M.

This application has been filed under Section 19 of the Administrative Tribunal Act, 1985, by the applicant against the order dated 30-7-1997 through which the applicant was directed to work on the post of Extra Departmental Runner from the post of Extra Departmental Delivery Agent.

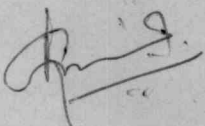
2. The facts which are not in dispute are that on a newly created post of Extra Departmental Delivery Agent (EDDA for short), Branch Post Office Bhawanipur, District Mirzapur, one Shri Ashok Kumar Pandey was given appointment. Shri Ashok Kumar Pandey was removed from service on 8-5-1981 for giving wrong date of birth and the petitioner was appointed on 13-2-1981. It had been stated in the appointment letter that his appointment as EDDA was in the



nature of contract liable to be terminated at any time by him or by the department after notifying each other and subject to the decision of the case of Shri Ashok Kumar Pandey (off duty) and that his services were to be governed by the P&T ED Agents (Conduct and Service) Rules, 1964 as amended from time to time. On the basis of an order dated 23-1-1987 passed by Superintendent of Post Offices, Mirzapur. Inspector of Post Offices (East), Chunar passed an order on 3-2-1987 directing Shri Balram Singh to work as Extra Departmental Agent ^{/Bhawanipur} and the applicant to work as Extra Departmental Runner (EDR for short). Further the Director Postal Services, Allahabad passed an order dated 6-11-1987 through which the Inspector of Post Offices (East) Chunar was directed to issue a letter and accordingly on 30-11-1987, he issued a letter to the effect that the applicant would work as EDDA and Shri Balram Singh should work as EDR. Thereafter, an order had been issued by Inspector of Post Offices dated 30-7-1991 by which applicant had been posted as EDR and Shri Bali Ram Singh had been posted as EDDA.

3. The applicant has assailed this order of 30-7-1991 through this OA on the following pleas :-

"The applicant was posted on 13-2-1981 against the post of Extra Departmental Delivery Agent against the post of Shri Ashok Kumar Pandey who was facing put off duty and Shri Ashok Kumar Pandey did not return back to his original post and as such the applicant cannot be asked to make room for any other candidate. There was no indication that his work was not satisfactory and he was working to the entire satisfaction of his superiors. The action of directing him to work in post lower than EDLA is arbitrary and malafide. Balram Singh who has



been posted as EDLA did not have a claim for the post of EDLA. He challenged the order of reversion on the grounds of arbitrariness and illegality. Further he pleaded that his pay and allowances was reduced by the transfer order.

4. The applicant sought for the following reliefs:-

- (i) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 30-7-1991 (Annexure-A-4) passed by respondent no.2.
- (ii) Issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 not to disturb the peaceful working of the applicant as Extra Departmental Delivery Agent at Bhawanipur Post Office District Mirzapur.
- (iii) Issue a writ, order or direction in the nature of Mandamus directing the respondent nos.1 and 2 to make the payment of pay and allowances to the applicant to the post of Extra Departmental Runner and Extra Departmental Delivery Agent for the period 3-2-1987 to 30-11-1987, 30-7-1991 (Annexures-A-1, A-3 & A-4) respectively till the decision of the case.

5. The respondents resisted the claim of the applicant by filing counter affidavit and stating that based on the directive dated 17-7-1991 of the Post Master General, Allahabad, Inspector Post Offices (East) Chunar issued order dated 30-7-1991 directing the applicant to work as Extra Departmental Runner and Shri Bali Ram Singh to work as Extra Departmental ^{/Delivery} Agent. Even though it was stated in the counter affidavit that the copy of the letter dated 17-7-1991 issued by the Post Master General was at Annexure-CA-5, there was no such Annexure. They

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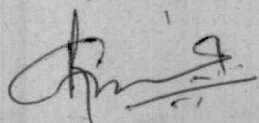
admitted that the pay of the EDR was less than the EDIA.

6. The applicant filed a rejoinder affidavit mainly reiterating his pleas as made in the OA.

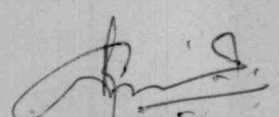
7. When the case came up for hearing, only the applicant's counsel was present and none from the respondent's side was available. The applicant's counsel was heard and respondents were given opportunity to file written submissions. Accordingly, the respondents submitted written submissions.

8. We have given careful consideration to the rival pleadings of the parties and have perused the whole record. The respondents counsel in his written submissions stated that the reliefs sought by the applicant, if agreed to, is likely to cause adverse effect on the interest of Shri Baliram Singh, who had not been impleaded as one of respondents and the petition was bad for misjoinder of the party and no relief could be given in the absence of Shri Baliram Singh. They further stated that the applicant tried to raise the issue of pay and allowances to the post of EDR and EDIA for the period starting from 3-2-1987, which was highly time barred and the same could not be clubbed with the main relief. It has been further submitted that when the order passed by the Post Master General had been brought on record and the applicant had not chosen to challenge the same, then the challenge of the consequential order was not in order. Accordingly, respondents stated that the present application was misconceived and devoid of merit and hence deserved to be dismissed with costs.

9. Though it was stated in the counter affidavit that the copy of the letter dated 17-7-1991 of the Post Master General, Allahabad, was being annexed as Annexure-CA-5, we did not find the same on record.



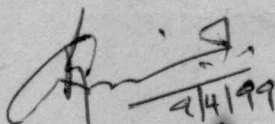
10. Respondents have admitted that the applicant had been appointed on 13-2-1981 after due process of recruitment of EDLA. The appointment had been stated to be provisional subject to receipt of satisfactory Police Report and the decision of the case of Sri Ashok Kumar Pandey earlier EDLA. Though in the order dated 13-2-1981 it was stated that Ashok Kumar Pandey was 'off duty'; in the counter affidavit it had been stated that he had been removed from service on 1-5-1981. In the absence of contrary submissions we take it that the Police report was also satisfactory. Thus, the appointment of the applicant on 13-2-1981 has become regular. Further according to the appointment he is governed by the EDA (Conduct and Service) Rules, 1964. Respondents had not indicated the statutory rules in the exercise of powers of which they had passed the impugned order dated 30-7-1991. Moreover, the assertion that the impugned order dated 30-7-1991 had been passed on the basis of the alleged directive dated 17-7-1991 of Post Master General, Allahabad, cannot be accepted because (i) the said directive is stated to be brought on record but actually the same is not on record and (ii) the impugned order does not indicate the existence of such a directive. In fact the impugned order refers to a letter dated 24-7-1991 of respondent no.1. Therefore, we hold that the respondents have not established a case for the relevance of the directive dated 17-7-1991 of the Post Master General, Allahabad apart from not placing it on record. Further the rules under which the respondent no.1 or the Post Master General, Allahabad had exercised the power had also not been brought on record. In any case the impugned order visits civil consequences on the applicant by way of reduced pay

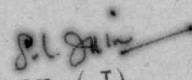


and allowances and passing of such an order, without giving an opportunity of show cause is violative of principles of natural justice, is illegal and cannot be sustained, irrespective of the fact as to which authority has passed the same. At the same time we also note the learned counsel for the respondent's argument that Sri Baliram Singh has not been made a party in this O.A.

11. In the light of the analysis made in the foregoing paras, we quash that portion of the order dated 30-7-1991 by which the applicant had been asked to work as EDR, and direct that he should be restored to the post of EDIA w.e.f. 30-7-1991 and arrears of difference in salary and allowances due to him should be paid within three months from the date of receipt of the copy of this order. We make it clear that no adverse order is passed against Sri Bali Ram Singh by us. The respondents are at liberty to continue him as EDIA against a superannuary post and deal with him in accordance with law.

12. The OA succeeds in part and is disposed of with the directions given in paragraph 11. Parties to bear their costs.


2/4/99
Member (A)


Member (J)

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