

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...
Registration O.A. No. 1288 of 1993

Dated: ^{November} 10 October, 1994

Hon. Mr. S. Das Gupta, A.M.
Hon. Mr. J.S. Dhaliwal, J.M.

Suresh Kumar Yadav, son of Shri Ram
Nath Yadav, R/o Village Jagatpur,
Nahumanganj, District Allahabad Applicant.

(By Advocate Sri A.B. Lall Srivastava)

VERSUS

1. Union of India,
through the Secretary, Department
of Post, Dak Tar Bhawan,
New Delhi.
2. The Post Master General,
Allahabad.
3. The Senior Superintendent, Post Offices,
Allahabad Division, Allahabad.
4. Shri B. Lal, Line Overseer,
C/o Branch Post Office,
Jagatpur, District Allahabad. ... Respondents.

(By Advocate Sri C.S. Singh)

O R D E R

(By Hon'ble Mr. S. Das Gupta, Member(A))

In this application filed under Sec. 19 of
the Administrative Tribunals Act, 1985, the petitioner
has challenged the order dated 12.8.1993 (Annexure-A 1)
by which his services were terminated under the
revised Rule-6 and the service rules for Extra
Departmental Staff, 1964. It has been prayed that the
said order be quashed and the respondents be directed
to reinstate him in service on the post from which
his services were illegally terminated.

2. The brief facts of the case are that the

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applicant was appointed as Extra Departmental Branch Post Master (E.D.B.P.M. for short) at Jagatpur, District Allahabad vide order No. B-3/Jagatpur, Dated 6.1.1993, (Annexure- A 3), in response to which, the applicant took over charge on 14.1.1993. A copy of the charge-report is at @ Annexure- 4. The petitioner has asserted that since he took over as EDBPM Jagatpur, he had served the department with entire devotion and to the entire satisfaction of his superior without giving any cause for complaint. Yet, without any opportunity to show @ cause or any warning, his services were terminated on 17.8.1993 by the impugned order No. B-3/Jagatpur/ Loose dated 12.8.1993. This order is purported to have been issued in exercise of the powers conferred under Rule-6 of E.D.As (Conduct and Service) Rules, 1964. The petitioner contended that since the order of termination was issued without any notice or providing to him any reasonable opportunity of being heard, it is violative of the principles of natural justice, and as such, the same is liable to be quashed.

3. In the counter affidavit filed by the respondents, the facts of the case have not been disputed. It has been clarified that on the retirement of one Sri Ram Sunder, the employment exchange was addressed for sponsoring a list of candidates for filling the vacancy. Since the applications were received after the cut off date, open advertisement was issued in response to which

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applications were received from 5 candidates including that of the applicant. After getting details like the suitability of the candidates, accommodation, source of income etc, verified by S.D.I. (P) Handia Allahabad, the applicant was found to be the best of these 5 candidates and he was, therefore, appointed on the vacant post of E.D.B.P.M. Jagatpur. However, on receipt of a complaint, the case was reviewed and the appointment was cancelled by the Director Postal Services, Allahabad. Pursuant to this cancellation of the appointment, the impugned order of termination of service of the applicant under Rule-6 of E.D.A. (Conduct and Service) Rules, 1964 was issued and the charge was taken by one Sri Babu Lal, Mail Overseer of Handia from the applicant on 17.8.1993.

The amount of allowance with D.A. for one month was remitted to the applicant by money order in terms of the revised Rule-6 of E.D.A's (Conduct and Service) Rules, 1964.

4. We have heard the learned counsel for both the parties and carefully gone through the record of the case.

5. It is clear from the facts narrated above, which are ~~not~~ in dispute, that the applicant was regularly appointed to the post of E.D.B.P.M. Jagatpur after due selection. The appointment letter also does not give any indication that the appointment of the applicant was provisional

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in nature or that its continuance was contingent ^{upon} ~~against~~ any conditions, though, in para- 2 thereof, it was stated that the employment will be in the nature of contract and is liable to be terminated by either side by notifying the other in writing and was also ^{to} be governed by the E.D.A's (Conduct & Service) Rules, 1964. We quote below the contents of the appointment letter dated 6.1.1993;

" Department of Posts

Office of the Sr. Supdt. of Post Offices
Allahabad-211001 Memo No. B-3/Jagatpur dated
at Allahabad the, 6.1.1993.

Shri Suresh Kumar Yadav son of Shri Ram
Nath Singh Yadav Village and Post Office
Jagatpur, P.S. Utraon District Allahabad w.e.f.
the date of taking over the charge. He shall
be paid such allowance as admissible from
time to time.

Shri Suresh Kumar Yadav should clearly
understand that his employment will be in
nature of contract and is liable to be
terminated by him or by the undersigned by
notifying the other in writing and he shall
also be governed by the posts and telegraphs
Extra Departmental Agents(Conduct and Service)
Rules 1964 as amended from time to time.

It there condition are acceptable to him,
he should communicate his acceptance in the
exclosed proforma."

Sr. Supdt. of Post Offices
Allahabad Division
Allahabad- 211001."

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6. Since the appointment of the applicant was a regular one, his employment should ~~have~~^u not normally have come to ^{an} abrupt end as it did in this case unless he had either ~~attained~~^{attained} the age of superannuation or had been rendered surplus on account of the abolition of the post or on the happening of similar other contingencies. His services could have also been terminated on the basis of proven misconduct after due enquiry as per rules. None of the above reasons appear to have led to the termination of his service. His services have been terminated ostensibly as a discharge simplicitor in terms of Revised Rule-6 of E.D.A's (Conduct & Service) Rules, 1964.

7. In terms of Revised Rule-6 of the E.D.A's (Conduct and Service) Rules, 1964, the services of an employee who has not already rendered more than one year continuous service from the date of his appointment shall be liable to ~~be~~ termination by the appointing authority at any time without notice. In this case, the applicant had put in more than one year service and therefore, his services have been terminated by the respondents by paying him a months salary in lieu of notice. The instructions contained in the D.G.P& T Letter No. 10/1/82-Vig. III, dated the 13th April, 1983 quoted under the Director-General's Instructions-(1) under Rule-6 of the E.D.A's (Conduct and Service) Rules, 1964 in Swamy's Compilation, specifies that termination

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of service under Rule-6 may normally be ordered only in cases of unsatisfactory service or in administrative reasons ~~un~~connected with the conduct.

8. Admittedly, in this case, there is no allegation that the services rendered by the applicant was unsatisfactory. Was ~~the~~ termination of service therefore, due to any administrative reason ~~in~~ ~~un~~connected with the conduct? The answer to this question has been provided by the respondents themselves in their counter affidavit. It has been stated that a complaint was received by the respondents which occasioned review of the appointment of the applicant and it was found that the appointment of the applicant was irregular.

9. Had the termination of the services of the applicant been purely a discharge simplicitor? We would normally have no reason to probe the matter further and would have been ^{satisfied} ~~specified~~ had the requirement of the rules governing such discharge were ^{fulfilled} ~~specified~~. However, the averments made by the respondents themselves make it clear that this was not a case of discharge simplicitor since the cancellation of appointment was occasioned by a complaint.

10. It has not been made clear in the counter affidavit as to what was the nature of the complaint

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and whether it was regarding any omission/ commission on the part of the appointing authority.

11. A similar matter came up for decision before another Bench of the Tribunal in which one of us (S. Das Gupta, A.M.) was a Member. This was the case of Raj Bahadur Singh Vs. Superintendent of ATU, 1994(2), 203 Post Offices. In this case also, the applicant had fulfilled all qualifications required in the recruitment rules for appointment to the post and his appointment could not be termed as irregular. Yet the appointment of the applicant was cancelled as being irregular. It was held that such irregularity could have happened either because of some lapses on the part of the applicant in which case, the correct action would have been to proceed against him under departmental rule and thereafter imposed appropriate penalty. Alternatively, it could have been due to lapses on the part of the concerned officials for which the applicant could not have been held responsible as proper course of action would have been to take appropriate action against the erring official. It was held that the applicant's appointment could not have been cancelled without giving him an opportunity of being heard and the application was allowed.

12. A similar application also came up for decision before the Patna Bench of this Tribunal in the case of Vishnu Kant Jha Vs. Union of India (Patna) (1991) 15 ATC, 15. In this case also

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it was held that the termination of the appointment of the applicant who was an 'EDBPM' without giving him an opportunity was bad in law.

13. It is a settled principle of law that any administrative action which has civil consequences must abide by the principles of natural justice. The termination of service of the applicant in this case is by an administrative order having civil consequences. It must also, therefore abide by the principles of natural justice as otherwise it cannot be violative of the principle of 'Audi Alteram Partem'. In the case before us, admittedly, the applicant was not given any opportunity of being heard before his appointment was cancelled and the services terminated. Had the appointment of the applicant been ab initio void on account of violation of any statutory rules, there would have been no necessity of giving him an opportunity of being heard before cancelling the appointment which is ab initio void. The respondents have not made out any case that the appointment in this case was void - ab - initio. They have not quoted any statutory rule or provisions of law which is violated by appointing the applicant. Therefore, the cancellation of the ^{appointment} applicant and the termination of his services without giving him any opportunity is violative of the principles of natural justice.

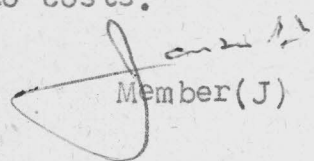
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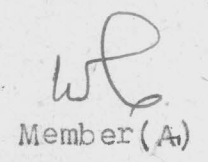
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14. We are, therefore, of the view that the impugned order dated 12.8.1993 is bad in law and must be quashed. The application is, therefore, allowed and the impugned order dated 12.8.1993 is set aside. The applicant shall be reinstated in service within a period of 1 month from the date of communication of this order and he will be deemed to have continued in service from the date of his appointment as ~~if~~ his services were never terminated. The applicant ~~was~~ ^{need} not, however, be paid any back wages and the respondents shall be at liberty to proceed against the applicant regarding any commission/omission on his part amounting ^{to} misconduct ^{in obtaining employment as EOBPM.} There will be no order as to costs.


Member (J)


Member (A)