

RESERVED

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH

ALLAHABAD

Dated the 28/11/97 Day of November, 1997.

ORIGINAL APPLICATION NO. 1497 OF 1993

Hon'ble Mr. Justice B.C.Saksena, V.C.
Hon'ble Mr. D. S. Baweja, Member(A).

Sunder Lal S/o Shri Shyam Lal,
R/o Mohalla, Bunglow Gaon,
P.S.Nagphani, P.O. and Distt. Moradabad.

.... Applicant

C / A : - Shri P. Ojha.

Versus

(1) Union of India through the Asstt.
Superintendent Post Offices North
Sub Division, Moradabad-244 001.

(2) Director, Postal Services,
Bareilly Region, Bareilly.

.... Respondents

C / R : - Km. S. Srivastava.

O R D E R

(Order By Hon'ble Mr. D.S.Baweja, Member(A))

This application has been filed seeking
following reliefs:-

(a) Order terminating the services of the
applicant be set aside.

(b) Applicant be allowed to work on the post
as per his appointment letter dtd. 22.01.91 & be paid
his salary ^{and} other allowances regularly time to time

(0)

2. The applicant was appointed as Extra Departmental Packer / Extra Departmental Mail Carrier in the Recruitment Training School Post Office, Moradabad as per order dtd.22.01.91 against a clear vacant post after undergoing the process of selection. However, the applicant was issued a Show Cause Notice dated 20.08.93 by respondent no.1, Superintendent Post Offices, North Sub Division, Moradabad as to why the services of the applicant be not dispensed with on account of irregularity in the appointment of the applicant. The applicant sent a reply to the Show Cause Notice on 18.09.93 by Registered Post. Subsequently he sent a further reply as per letter dtd.21.09.93. However, the appointment order of the applicant has been cancelled as per order dtd.21.09.93. Being aggrieved by the same, the present application has been filed on 28.09.93.

3. The applicant has assailed the impugned order on the grounds that the applicant was appointed against a clear vacancy and he was the only candidate from the list of candidates sent by the Employment Exchange, who was present at the time of interview. The appointment of the applicant has been cancelled on account of extraneous consideration. The order cancelling the appointment of the applicant has been passed even before the expiry of period of 30 days as per the Show Cause Notice without giving any reasonable opportunity of hearing and, therefore, the order is in violation of Article 16 of the Constitution of India.

4. The respondents have contested the application by filing a Counter Affidavit through Shri Daya Ram, Sr. Supdt. of Post Offices, Moradabad. The respondents ^{admin.} submit with regard to the appointment of the applicant after process of selection as per - the appointment — order — dtd.22.01.91. The respondents, however, contend that as per the extant rules, no interview is required to be held for the selection & the applicant's contention that he was the only candidate available at

A/X

the time of interview is not sustainable. The respondents further submit that on a review of the appointment of applicant by Director, Postal Services, Bareilly Region, ^{it was found} that the appointment of the applicant is irregular as a better qualified candidate having Intermediate qualification was ignored by the Appointing Authority. The Higher Authority, therefore, directed the Appointing Authority to cancel the provisional appointment of the applicant after issuing a Show Cause Notice and make a fresh appointment against the vacancy following the extant rules. Accordingly a Show Cause Notice was issued to the applicant on 20.08.93. The applicant submitted his representation dtd.18.09.93. The Appointing Authority, after consideration of his representation, passed the order dtd.21.09.93 cancelling the appointment of the applicant. The plea of the applicant that he is not given any reasonable opportunity is not tenable in view of the fact that Show Cause Notice was issued to him before the decision for cancelling the appointment was taken. In view of the facts and circumstances of the case brought out in the Counter reply, the respondents pleaded that no illegality has been committed in cancelling the appointment of the applicant and, therefore, he is not entitled for any relief as prayed for and the application deserves to be dismissed.

5. The applicant has filed Rejoinder Affidavit in which the averments of the respondents have been controverted and the grounds advanced in the Original Application have been reiterated.

6. We have heard Shri P.Ojha, learned counsel for the applicant and Km.S.Srivastava, learned counsel for the respondents. We have also gone through the material brought on the record.

(L)

7. The basic facts with regard to the appointment of the applicant and cancellation of the same are admitted. The respondents have brought out that on a review of the appointment of the applicant, it was found that an irregularity has been committed whereby a candidate, who was better qualified with Intermediate qualification as compared with VIIth Standard of the applicant was ignored. The respondents have brought the list of the candidates considered for selection and their relative educational qualification at CA-2. The applicant has claimed that he was only the candidate available at the time of interview out of those sponsored by the Employment Exchange. This contention of the applicant has been repelled by the respondents that no interview was held as the extant rules of the selection did not provide for holding of interview for the selection. The applicant has ^{not} brought out in the reply ^{any rules} as per which the interview was to be held and, therefore, we do not find any merit in the contention of the applicant that he was the only candidate to be considered for selection. On going through the list of the candidates at CA-2, we find that the candidate at Serial No.2 was XIIth pass and, therefore, better qualified and was to be given preference as per the extant rules over other candidates including the applicant. This establishes ^{the} contention of the respondents that appointment of the applicant was irregular violating the extant rules for considering the merit of the candidates based on the educational qualification.

8. Having accepted that the appointment of the applicant was in violation of the Rules of ~~the~~ Recruitment, the main ^{that} question ~~has arisen~~ ^{is} as to whether any irregularity has been committed in cancelling the appointment of the applicant. It is noted that the applicant was issued a Show Cause Notice indicating the reasons as to how his appointment was irregular and action proposed to be taken for cancellation of his appointment. The applicant submitted his representation against the same during the stipulated period. The appointing Authority has

passed the final order cancelling the appointment of the applicant after due consideration of the representation submitted by the applicant for the Show Cause Notice as is clear from the order dtd.21.01.93 which gives reference to the representation of the applicant dtd.18.09.93. The applicant has contended that the order cancelling the appointment has been passed even before the expiry of Show Cause Notice and his subsequent representation dtd.21.09.93 was not taken into consideration. This plea of the applicant is not tenable. The period of 30 days was given to submit representation against the Show Cause Notice and in case the representation has been submitted by the applicant within the stipulated period, there is no illegality in considering the representation of the applicant and passing the final order. The reasons for irregularity in appointment of the applicant ~~has~~^{ve} been shown in the Show Cause Notice and the applicant had to explain his position with respect to the same. The applicant could explain his position in the representation made and any personal hearing would not have made any difference to the situation to change the facts on record. In view of these facts, we have no hesitation to conclude that adequate opportunity ~~has~~^d been given to the applicant.

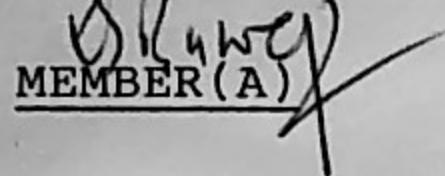
9. The issue of termination of service of the Extra Departmental Agent in case the irregularity has been committed in appointment has been gone into by the Full Bench in the case of Tilak Dhari Yadav V/s Union of India & Others in O.A.No.910 of 1994 decided on 09.07.97. The Full Bench has answered the question raised as under:-

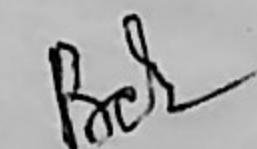
"Rule 6 of Posts & Telegraphs Extra-Departmental Agents (Conduct & Service) Rules,1964 does not confer a power on the appointing authority or any authority,superior to the appointing authority to cancel the appointment of an Extra-Departmental Agent,who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee,without giving him an opportunity to show cause."

AR
1

10. From the above, it would be seen that in case any irregularity in appointment has been found, the services could be terminated only after issuing a Show Cause Notice. In the present case as brought out above, it could be seen that the Show Cause Notice had been given and reasonable opportunity has been provided to the applicant. Keeping in view what is held by the Full Bench, we are unable to find any illegality in cancelling the appointment of the applicant.

11. In the result of the above, we do not find any merit in the application and the same is dismissed accordingly. No order as to costs.


Member (A)


V.C.

/rsd/