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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

Allahabad : Dated this 21st day of December, 2001  
Original Application No. 1737 of 1993.

CORAM :-

Hon'ble Mr. Justice RRK Trivedi, V.C.

Hon'ble Maj Gen KK Srivastava, A.M.

Pyare Lal Son of Shri G. Singh,

Ex. E.D. Packer, Amapur Etah,

(Sri M.K. Upadhyay, Advocate)

.....Applicant

Versus

1. Sub Divisional Inspector (Postal)

Kasganj Sub Division, Etah.

2. Supdt. Posts, Etah

3. Union of India through the

Secretary Ministry of Communication, New Delhi.

4. Veer Pal Singh, R/o Vill & Post-Amapur, Etah.

(Km. Sadhna Srivastava, Advocate)

(Sri A. Tripathi, Advocate)

.....Respondents

ORDER (O\_r\_a\_l)

By Hon'ble Mr. Justice RRK Trivedi, V.C.

By this UA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 29-3-1993 by which the termination of the applicant from the post of E.D. Packer of Village Amapur, district Etah, has been made.

2. The facts giving rise to this application are that the respondents sent requisition to the Employment Exchange for forwarding names for appointment as E.D. Packer in the aforesaid Post Office. The Employment Exchange forwarded names of five candidates including the name of the applicant. The requisition sent to

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Employment Exchange on 14-5-1993 contained specific condition that the applicants should be residents of Amapur. On the basis of the list supplied by the Employment Exchange, the applicant also applied for appointment and he mentioned his address as Pyare Lal C/o Rakesh Pal, Mohallah Dadwara, /Amapur, district Etah. The applicant was selected for appointment and joined the post on 13-6-1983. The Inspector of Post Offices, however, by order dated 19-7-1985 terminated his services under Rule 6 of E.D. Agents (Conduct & Service) Rules, 1964. Aggrieved by the said order the applicant filed UA No.267/1987 in this Tribunal which was allowed vide order dated 6-11-1992. The UA was allowed vide order dated 6-11-1992 with the following directions:-

"....the principle of natural justice enjoins a duty upon the respondents to give an opportunity of hearing to the applicant, accordingly the application deserves to be allowed and it is allowed and the order dated 19-7-85 is quashed. However, it is open for the respondents to hold an enquiry and the enquiry be concluded within a period of three months from the date of communication of the order. In case, after enquiry, the applicant is reinstated, he shall not be paid back wages. However, he will be deemed to be continuing in service. No order as to costs."

3. In pursuance of the aforesaid order of the Tribunal, the applicant was served with a show cause notice dated 17-2-1993 (Annexure-3). The applicant was given seven days time to file reply. The applicant submitted his reply on 27-2-1993 (Annexure-4). After considering reply of the applicant, respondent no.1, Sub Divisional Inspector passed the impugned order dated 29-3-1993 maintaining termination of the applicant, aggrieved by which the applicant has filed the present UA.

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4. Learned counsel for the applicant assailing the impugned order has submitted that E.D. Packer is not necessarily required to be the resident of the same village under Rule 5 and approach of the respondents in terminating the services of the applicant was illegal. The second submission is that the order of this Tribunal was to hold a departmental enquiry with regard to misconduct of the applicant, which has not been done in the present case and the impugned order cannot be sustained. It has also been submitted that the order of this Tribunal dated 6-11-1992 has not been complied with. Lastly it has been submitted that the termination of the applicant under Rule 6 for misconduct cannot be done under Rule 6 of the E.D.A.(Conduct & Appeal) Rules, 1964.

5. Km. Sadhna Srivastava, counsel for the respondents on the other hand submitted that the order passed against the applicant is fully justified as in his reply to respondents show cause notice, he has not stated anything. In fact he raised no defence in his reply and the order does not suffer from any error in law.

6. We have considered carefully the submissions of the counsel for the parties.

7. Sri MK Upadhyay, counsel for the applicant placed before us Rules/Departmental Instructions laying down criterion of the resident of E.D. Packer. It has been provided that E.D. Packer should, as far as possible, be resident of the nearby place from the place of work. In the present case, the requisition sent to the Employment Exchange was very clear that the candidate should be resident of Amapur village. It is not disputed that the applicant was not resident of Amapur and thus

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as per requisition he was not entitled for appointment. However, he mentioned his address showing himself care of Rakesh Pal resident of Amapur. Learned counsel submitted that he was tenant of Sri Rakesh Pal. However, no such defence was raised by the applicant in his reply <sup>at</sup> filed in <sup>u</sup> ~~his~~ response to show cause notice. A person could reside in a rented house, but the facts for being accepted by the authorities, should have been <sup>mentioned in u</sup> replied, which in the present case has not been done. The respondents, in the light of the rules placed before us, could very well make it a condition that the candidates should be resident of Amapur. In the circumstances the submission of learned counsel for the applicant cannot be accepted.


8. The second submission of the learned counsel for the applicant is that there should have been fullfledged disciplinary enquiry with regard to misconduct of the applicant. This submission of the learned counsel for the applicant deserves rejection as it is clear from the order of the Tribunal that termination of the applicant from service was on the basis of the fact that he gave wrong information about his residence <sup>a</sup> and secured appointment. It was by way of cancellation of appointment. The misconduct, if any, was prior to his joining the service. The disciplinary proceedings <sup>a</sup> could be with regard to misconduct committed during service. This Bench while allowing the earlier OA clearly observed that before passing the order of termination it was necessary to observe the principles of natural justice. The enquiry directed by the order was for this purpose and not for holding a fullfledged disciplinary proceeding as contemplated by rules. The submission of the learned counsel for the applicant was that termination could not be ordered under Rule 6. The legal position in this regard is very well settled. Merely mention of wrong

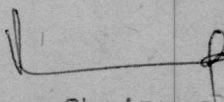
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provision in the order does not render it illegal for want of authority, if the authority has <sup>power</sup> ~~failed~~ to pass order under some other provision. It is not disputed before us that respondent no.2 has power to cancel the appointment if it was secured on the basis of misconduct or wrong information. The respondent no.2, after giving opportunity to the applicant has found that the applicant gave wrong information regarding his residence and he is liable to termination from service which was in effect cancellation of his appointment for which an opportunity was necessary. The applicant did not raise any plea with regard to his residence in his reply. The authority has no option but to pass the order. The order cannot be said to be illegal because Rule 6 has been mentioned in it.

9. For the reasons stated above, we do not find any ground, ~~for~~ calling for interference by the Tribunal in the impugned order. The application has no merits and is dismissed accordingly. There shall be no order as to costs.

  
Member (A)

  
Vice Chairman

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