

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A.No. 266 of 1993

Raj
Bahadur Singh Applicant.

Versus

Superintendent of Post Offices
and others Respondents.

...

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. T.L. Verma, Member(J)

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

Through this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has approached the Tribunal seeking the relief of quashing the impugned order dated 6.2.1993(Annexure-A 2) passed by the Superintendent Post Offices, Mainpuri Division by which the appointment of the applicant was cancelled and to direct the respondents to allow the applicant to continue in service as Extra Departmental Delivery Agent(EDDA for short), Nagla Nahar and also to pay the arrears, if any, due to the applicant in respect of his salary.

2. The facts of the case giving rise to this application are that the post of EDDA fell vacant on account of dismissal from service of one Narsingh Pal. The respondents took necessary steps described under recruitment rule to fill the said post. Three persons including the applicant were sponsored by the Employment Exchange and the applicant was offered appointment on certain conditions specified in the order dated

Wf

30.6.1991 (Annexure-A 1). After completion of all formalities like Medical Examination and Police Verification etc, the applicant was allowed to be appointed as EDDA Nagla Nahar. The applicant, it is stated, has been continuously working without any complaint in respect of his work and behaviour until his appointment was cancelled by the impugned order dated 6.2.1993.

3. The petitioner's case is that his appointment was provisional/^{and tenable} till disciplinary proceedings against Sri Narshing Pal was finally disposed of and he had exhausted all channels of departmental and judicial appeals and petitions etc. and ~~that in 1993~~ it was finally decided to take Sri Narshing Pal back in service or till regular appointment is made. The petitioner claims that neither Narshing Pal has been taken back in service nor any other regular appointment has been made, as such, the cancellation of his appointment was bad in law. He has also contended that the cancellation of the order on the alleged ground of irregularity in the appointment was without giving him any opportunity to be heard. The order is, thus, violative of rules of natural justice. Another point which has been raised by the

Wf

applicant is that while the appointing authority in respect of him was S.D.I. Post Offices and the Superintendent of Post Offices is the Appellate Authority, the impugned order has been issued by the latter.

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

5. The short point to be decided by us is whether the order of cancellation of the appointment issued by the Superintendent of Post Offices, Mainpuri was bad in law. At this stage, it ^{be} would /useful to refer to the offer of appointment of the applicant dated 30.6.1991 (Annexure-A 1). The relevant portion thereof is reproduced below;

"Where as Shri Narshingh Pal EDDA N. Nahar (Name and designation of the EDA who has been put off duty/removed dismissed) has been put off duty pending finalisation of disciplinary proceedings/judicial proceedings against him has been removed/ dismissed from service and the need has arisen to engage a person to look after the work of EDDA N. Nahar(Name of post) the undersigned (appointing authority) has ~~been~~ decided to make provisional appointment to the said post.

2. The provisional appointment is tenable till the disciplinary proceedings against Shri Narshingh Pal is finally disposed of and he has exhausted all channels of departmental and judicial appeals and petition etc (this clauses may be deleted if the vacancy

WLB

was caused by the dismissal/removal of an EDA and in case it is finally decided not to take Shri Narshing Pal(name of EDA who has been put off/removed/ dismissed) back into service or till regular appointment is made."

It will, therefore, be clear that the services of the applicant could have been terminated on the basis of either of the two contingencies viz;

- (i) Narshing Pal is taken back in service;
- (ii) regular appointment is made to the post.

Admittedly, the contingencies viz taking back in service of Sri Narshing Pal or ~~making~~ a regular appointment which would have occasioned termination of service of the applicant, did not happen in this case.

6. The respondents have stated in their counter reply that on the basis of certain complaints, the Post Master General, Agra reviewed the appointment and found that irregularity had been committed in appointing the applicant as the percentage of marks of the petitioner as shown in the comparative chart prepared by the appointing authority was found to be incorrect. They contend that the basis on which the applicant was selected out of 3 candidates sponsored by the Employment Exchange was thus wrong and hence, the order of appointment was cancelled.

7. Admittedly, the applicant was regularly sponsored by the Employment Exchange and had

Sp.

fulfilled all the qualifications required in the recruitment rules for appointment as EDDA. His appointment, cannot, therefore, be termed as irregular. The alleged mistake with regard to the marks obtained by the candidates could have happened in either of the following two manners. Either respondents themselves incorrectly prepared the comparative statements of marks ^{case} in which/the applicant cannot be held responsible, and the only action that can be taken in such a case is not cancellation of the applicant's appointment but taking appropriate action against the officials guilty of negligence or worse. Alternatively, if the mistake was due to the applicant having furnished false informations, the termination of the applicant's services would necessitate holding an enquiry under the rules, giving an opportunity to the applicant to defend himself. We are not aware about the exact nature of the complaint. However, in any view of the matter, the applicant's appointment could not have been cancelled without giving him an opportunity of being heard. This view of ours is fortified by the decision of the Supreme Court in the case of Shirdhar son of Ram Dular Vs. Nagar Palika, Jaunpur and others, (1991)15 ATC,851. In this case, the Municipal Board, Jaunpur issued an advertisement inviting applications for appointment to the post of Tax Inspector. The advertisement stated that the existing employees of the Revenue Department of the Municipal Board were eligible for consideration

56.

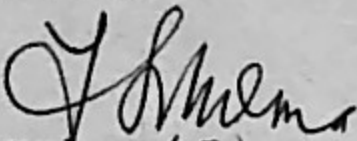
along with outsiders. One of the departmental candidates was called for interview, but he refused to appear in the interview on the plea that the post of Tax Inspector should have been exclusively filled by promotion and as he was the senior most Tax Collector he should be promoted without considering any outsider. Ignoring his claim, the Municipal Board selected the appellant and appointed him to the post of Tax Inspector. The aggrieved departmental candidate filed a representation to the Commissioner, Varanasi challenging the appellant's appointment and thereupon, the appointment of the appellant was cancelled on the ground that the departmental candidate was entitled to promotion. On the basis of these facts, the Supreme Court inter alia held that;

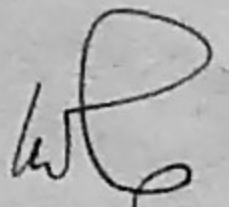
"it is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's order had been passed without affording any opportunity of hearing to the appellant, therefore, the order was illegal and void."

8. In the result, we are of the view and we hold that the impugned order dated 6.2.1993 cannot be sustained and is, therefore, quashed and set

W.C.

aside. The applicant shall be reinstated back in service as EDDA within a period of one month from the date of communication of this order. He shall be deemed to have continued in service as if his services were not terminated. We do not, however, order payment of back wages. The respondents, may however, be at liberty to take action on the basis of the complaint received against the applicant in accordance with law and the observations made in the foregoing paragraphs. There will be no order as to costs.


Member(J)


Member(A)

Dated: 19 May, 1994.
(n.u.)