

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

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Allahabad this the 7th day of June 1996.

Original application No. 455 of 1993.

Hon'ble Dr. R.K. Saxena, JM  
Hon'ble Mr. D.S. Baweja, AM

Jagat Pal aged about 28 years,  
S/o Sri Murli, R/o Village Itara  
Post Sirhi Itara, District Kanpur  
Magar.

..... Petitioner.

C/A Sri Rakesh Verma

Versus

1. Union of India through the Senior Superintendent of Post Offices Kanpur City Division, Kanpur.
2. Sub Divisional Inspector (South) Sub Division, Kanpur City.

..... Respondents.

C/R Km. Sadhna Srivastava

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application under Section 19 of the Administrative Tribunals Act 1985 has been filed, praying for quashing of the impugned order dated 3.4.93 terminating the services of the applicant.

2. The applicant was appointed on 5.2.92 on the post of Extra Departmental Mail Carrier/Delivery Agent (EDDA) on establishment of new branch post office, Udaipur Kanpur after following the due process of selection vide

order dated 3.2.1992 issued by the appointing authority (annexure-A-1). Since the date of appointment on 8.2.1992, the applicant has been discharging his official duties to the entire satisfaction of his superiors. However, an order dated 3.2.1993 was issued by Sub Divisional Inspector (South) Sub Division Kanpur City, respondent No. 2 through which the services of the applicant had been terminated under Rule 6 of the Extra Departmental Agents (Conduct and Service) Rules, 1964 (Hereinafter referred to as the Rules) with immediate effect, (Annexure-A-3). The applicant has alleged that he has come to know through some sources that a complaint was made against him by one of the candidates in the aforesaid selection, and based on that on the direction of the respondent No. 1, respondent No. 2 has terminated the services of the applicant.

3. The grounds advanced in support of the prayer for quashing of the impugned order are as under :-

- (a) The respondent No. 2, the appointing authority has passed the termination order without applying his own mind on direction of the respondent No. 1.
- (b) The appointment was made after following the departmental procedure against a clear vacancy as such the right has accrued to the applicant to the said post and therefore, the action for termination could be taken against him only under Rule 7 and 8 of the Rules.
- (c) Under provisions of Rule 6 of the Rules, services are liable to be terminated only for general unsatisfactory work or for any administrative reasons. In the instant case, ~~the~~ has not been done and the impugned order dated 3.2.1993 is a non speaking order and no reasons for terminating the services have been communicated.  
*A service have not been terminated on these ground*
- (d) No opportunity has been given to show cause before terminating the services. Inquiry if any held on receipt of the complaint for misconduct has been held at the back of the applicant.

3.

In view of the above, the termination order is

punitive in nature on account of misconduct and passed in violation of principles of natural justice. The impugned order terminating his services therefore deserves to be quashed.

4. The respondents have filed counter affidavit strongly refuting the averments made by the applicant. The facts about the selection and the appointment of the applicant vide order dated 5.2.1992 and joining the post on 8.2.1992 are admitted. It is, however, submitted that a complaint had been received from one of the candidates who had appeared in the selection alongwith the applicant that the applicant is not a permanent resident of village Sidhi-Etara and in fact resident of Village Afjalpur. In the notification inviting applications, it was specifically mentioned that the candidate must be a permanent resident of Sidhi Etara. Based on the complaint the inquiry was conducted by the Assistant Superintendent of Post Offices and it was found that the complaint was genuine. In view of this, the respondent No. 1 directed the respondent No. 2 to terminate the services of the applicant as the appointment was irregular and made against the rules. In view of this, respondent No. 2 accordingly terminated the services of the applicant under Rule 6 of the Rules.

The respondents have also argued that since the applicant had not completed three years of service his services could be terminated under Rule 6 of the Rules, and under this Rule, there is no provision for giving any opportunity or show cause notice. Therefore, the order passed by the respondent No. 2 terminating the services of the applicant is perfectly legal, valid and sustainable in law. Since the applicant secured job on furnishing of wrong information, he is not entitled to remain in service and as such there is no violation of provisions of Article 311 of the Constitution.

5. Heard the learned counsel for the applicant and the respondents. Counter and rejoinder affidavits have been filed. We have carefully gone through the material placed on the record.

6. The services of the temporary employee have been terminated under Rule 6 of the Rules, as the applicant had not completed three years of service. It is also submitted by the respondents that there is no question of giving any opportunity or show cause notice to the applicant before passing the termination order as there is no provision under Rule 6 for the same. The termination order is reproduced herein below :-

"In exercising of powers conferred vide Rule 6 of the Postal ED Agent (Conduct and Service) Rules 1964, the services of Sri Jagat Pal, S/o Sri Murli EDDA/EDMC Udaipur B.O are hereby terminated with immediate effect,"

7. A perusal of the termination order would show that it is a order simplicitor. The order of the termination has to be examined on the basis of the facts and back ground of each case. If the order is challenged then on the basis of the averments made in the application and those by the respondents and facts and circumstances of the case are such that an examination is warranted, then only there may be a need for the Courts/Tribunals to find out the real nature of the order and lift the veil of the motive behind the issue of such order. The background leading to passing the termination order has been disclosed in the counter affidavit and briefly detailed in para 4. There was a complaint from one of the candidates that the applicant had given false declaration with regard to his residence in the village Sidhi Etara and in fact he was the resident of Afzalpur and this which was one of requirement of eligibility indicated in the notification inviting applications for the post. On receipt

of the complaint, an enquiry was conducted and the complaint was found genuine and the applicant was not the resident of the said village. The appointment of the applicant was found to be not as per rules and therefore irregular. In view of this the action was taken to terminate the services under Rule 6 as the employee has not completed three years. It is thus clear that false declaration with regard to the residence established through the inquiry conducted based on the complaint was the foundation for passing of termination order although it is order simplicitor is punitive in nature.

8. In view of the above background, it is necessary to go into the rival contentions, which focus <sup>on</sup> the following questions:-

- (a) Whether the appointment was irregular?
- (b) Whether the service could be terminated, under Rule 6 without giving show cause notice?

9. Taking up the first question with regard to the irregular appointment, the respondent have however submitted that the appointment is irregular as the applicant was not the resident of the required village when the inquiry was made. Copy of the inquiry report has <sup>not</sup> been brought on record. It has also not been mentioned anywhere in the counter that as to how the inquiry was conducted and whether any document submitted by the applicant were got verified and if so how and from which source. The applicant on the other hand in the rejoinder has annexed two documents as Annexure 1 and 2 giving documentary evidence of the being the resident of village Sidhi-Etarra. The applicant has, however, not stated that these documents furnished alongwith the application. These documents are issued in the year 1991 and it is presumed that these documents must have been furnished alongwith the application as the proof of his residence. The

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respondents have not specifically controverted these documents. In the absence of the adequate details being not furnished by both the parties, we are unable to go into the merits of this issue.

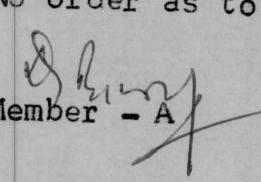
10. The foremost argument advanced by the learned counsel for the applicant is that once the applicant has been given regular appointment after due process of selection it was not open to the respondents to have taken steps to terminate services, as the applicant had acquired a valuable right except after inquiry in accordance with the relevant rules and principles of natural justice. This argument cannot be accepted in a wide sweep in which it has been made. Although it is true that a person who is given appointment after regular selection acquires a right to hold the post but the right is not absolute. <sup>but if</sup> It is perfectly within the competency of the employer to take appropriate action to terminate the services ~~if~~ of a person appointed after a regular selection in case it is discovered that the selection is vitiated by the violations of the rules or any other constitutional provision. In such an eventuality what is required to be done is to comply with rules of natural justice.

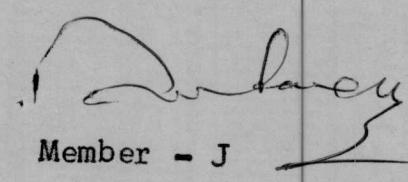
11. The respondents have averred that some inquiry was conducted based on which it was revealed that complaint made against the applicant that he was not a permanent resident of the required village was established. May be this was a fact finding inquiry but the inquiry was held by ~~not~~ association of ~~of~~ the applicant. Rather it was an inquiry held at the

back of the applicant. However it is admitted that though the termination has been done by the ~~wasted~~ powers under Rule 6, but this inquiry constituted the foundation for termination of the services. The inquiry report formed the material adverse to the applicant and the use of the same could have been justified only if the report was made available to the applicant and he was given chance to make representation against the same and to controvert the findings. This was not done. In view of the facts we have no hesitation to hold that before passing the termination order did not comply with the principles of natural justice. We conclude that the termination order through simplicitor is vitiated on account of patent violation of the rules of natural justice, and is therefore bad in law and cannot be sustained.

12. In view of the above facts, the application is allowed and the impugned termination order dated 3.4.93 is quashed. The applicant will be reinstated in service forthwith all consequential benefits. This will however not debar the respondents from initiating fresh action if so desired giving proper opportunity to show cause for giving false declaration with regard to residence.

No order as to costs.

  
Member - A

  
Member - J

Arvind.