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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Allahabad this the 4th day of September 2000

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman  
Hon'ble Mr. M.P. Singh, Administrative Member

Original Application no. 718 of 1993.

Lal Mani Shukla,  
S/o Ram Kirpal Shukla,  
R/o Village and Post Office, Arai,  
Police Station Karchana,  
Tehsil Karchana, Distt. Allahabad.

... Applicant

C/A Shri A.V. Srivastava  
Shri N.K. Srivastava  
Shri S.K. Srivastava  
Shri V.S. Shukla  
Shri R.P. Shukla

Versus

1. Union of India through Secretary, Ministry of Post and Telegraph, New Delhi.
2. Post Master General, Uttar Pradesh, Lucknow.
3. Director Postal Services.
4. Senior Superintendent of Post Office, Allahabad.
5. Lovkush Kumar Mishra, S/o Sri B.P. Mishra, R/o Village PO Arai Teh. Karchana Distt. Allahabad.

..Respondents

C/Rs. Sri H.N. Shukla, Sri R.R. Shukla, Sri R.C. Joshi

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ALONG WITH

Original Application no. 1074 of 1993.

Lavkush Kumar Mishra, S/o Shri Bhagwat Prasad  
Mishra, R/o Village Arai Post Office Arai,  
Tahsil Karchhana, Distt. Allahabad.

... Applicant

C/As Sri R.R. Shukla

Versus

1. Union of Indai, through the Secretary,  
Ministry of Post and Telegraph,  
New Delhi.
2. Post Master General, Uttar Pradesh,  
Allahabad.
3. Senior Superintendent of Post Offices,  
Allahabad.
4. Lalmani Shukla, S/o Sri R.K. Shukla,  
R/o Village and Post Arai, P.S. Karchana,  
Teh. Karchana Allahabad.

.. Respondents

C/Rs Sri S. Chaturvedi,  
Sri A.V. Srivastava

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O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Questions of facts and law in the aforesaid cases are similar and both the cases can be decided by common order against which learned counsel for the parties have no objection.

2. The facts in OA 718 of 1993 are that the name of the applicant Shri L.M. Shukla was forwarded by Employment Exchange along with others for consideration for appointment on the post of Extra Departmental Branch Post Master (in short EDBPM). The applicant was selected for appointment and he joined the post on 4.1.93. However, respondent no. 4 by order dated 21.4.93 terminated the services of the applicant. Aggrieved by this he has filed this OA.
3. Respondent no. 5 Shri L.K. Mishra has filed OA no. 1074/93, questioning the appointment of Sri L.M. Shukla on various grounds. He has prayed that he should be appointed as EDBPM, Arai, Tahsil Karchana, Distt. Allahabad. Learned counsel for the applicant of Shri L.M. Shukla, has placed before us paragraph 23 and 24 of the counter affidavit filed by Shri Shyam Dhari, Senior Supdt. of Post Offices, Allahabad. To be more clear, para 23 and 24 are reproduced below :-

" 23. That the contents of paragraph 4(10)

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of the petition are not admitted as stated. Since the petitioner's appointment was illegal and defective hence the services of the petitioner were terminated under the instructions of Post Master General, Allahabad by order dated 21.4.93 in capacity of reviewing authority. The services of the petitioner were terminated by paying allowance for one month which is under Rules of the Department.

24. That the contents of paragraph 4(11) of the petition are denied. The petitioner's selection was defective, illegal hence he was terminated. The order is perfectly correct, legal and just."

4. Learned counsel for the applicant has submitted that the order of termination dated 21.4.93 is not order of termination simpliciter as contemplated in Rule 6 of P & T, E.D. Agents (Conduct and service) Rules 1964. It is submitted that on complaint made by respondent no. 5, order was passed by respondent no. 2 cancelling the appointment without giving any opportunity of hearing to the applicant. It has also been submitted that respondent no. 4 <sup>has not</sup> passed <sup>the</sup> order exercising his discretion on the basis of the unsatisfactory work and conduct of the applicant. Learned counsel has also submitted that the order cannot be sustained. He has placed reliance on Full Bench case of the Tribunal, in case of Tilak Dhari Yadav Vs. Union of India and Others (1997) 36 ATC 539 and a Division Bench Judgment of this Tribunal in case of Hari Prakash Mishra Vs. Union of India & Others (1999) Vol 3 ATJ 550.

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5. Sri J.R. Gupta learned counsel appearing for respondents no. 1 to 4, on the other hand submitted that order is <sup>an</sup> ~~simpli~~ <sup>an</sup> ~~ator~~ order of termination, it does not carry any stigma and in these circumstances no opportunity was required to be given to the applicant.

6. We have carefully, considered the submission of the learned counsel for the parties.

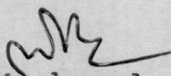
7. We find force in submission made by the learned counsel for the applicant. From the counter affidavit itself it is clear that the respondent no. 2 passed order cancelling the appointment of applicant on the complaint made by ~~the learned counsel for the~~ respondent no. 5. In such circumstances, opportunity of hearing was required to be given. <sup>an</sup> ~~The~~ <sup>an</sup> ~~Further~~ order cannot be said to be an order passed under Rule 6 in exercise of the discretion of the appointing authority. <sup>an</sup> ~~Admittedly~~ <sup>an</sup> there was direction <sup>an</sup> ~~of~~ the superior authority to terminate the services of the applicant, for this reason also the order cannot be sustained. In our opinion, the case of the applicant is <sup>an</sup> ~~squarely~~ covered by the judgments of this Tribunal mentioned above, he is entitled for the relief.

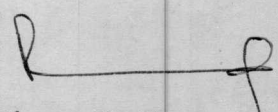
8. So far as the applicant in OA 1074 of 1993 is concern, he can be considered for appointment on the post only when there is vacancy. As OA 718 of 1993 is being allowed by this order, at present there is no vacancy and he is not found eligible for any relief at this stage.

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9. For the reasons stated above, O.A. 718 of 1993 is allowed. The order dated 21.04.93 is quashed. The applicant shall be allowed to continue on the post as he is still working on the basis of interim relief <sup>granted by</sup> ~~of~~ this Tribunal dated 05.05.93. However, the liberty is given to respondent no. 4 to pass a fresh order in accordance with law after providing reasonable opportunity of hearing to the applicant and in that event opportunity ~~was~~ <sup>should be</sup> also given to respondent no. 5 who lodged complaint against the appointment of the applicant. The order may be passed within six months from the date of communication of this order.

10. With the above direction the OA 1074/93 stands disposed of finally. There will be no order as to costs.

  
Member-A

  
Vice-Chairman

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