

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 22nd day of December 1995.

Original Application no. 763 of 1993.

Hon'ble Dr R.K.Saxena, Judicial Member

Hon'ble Mr S. Dayal, Administrative Member.

Prem Shanker Tiwari, R/o Village and Post Ghoorpur,
District Allahabad.

..... Applicant.

C/A Sri R.P.Singh.

Versus

1. Union of India through the Senior Superintendent
of Post Offices, Allahabad.

2. Shashi Kant Diwedi, S/o Sri Lok Nath Dwivedi,
R/o Village and Post Ghoorpur, Distt. Allahabad.

..... Respondents.

C/R Sri N.B.Singh, Sri A.K.Gaur.

ORDER

Hon'ble Mr S.Dayal, Member-A.

This application has been filed under section 19
of the Administrative Tribunal Act, 1985. The applicant
was a candidate for the post of Extra Departmental Sub-
Post Master in Ghoorpur Post Office of Allahabad Division.

He claims to be a graduate and claims to have sent his

candidature for the post which fell vacant. The applicant was selected and appointment letter was issued to him vide Memo no. B-3/Ghoorpur/II dated 08.02.93. The charge of the post of Extra Departmental Sub Post Master was made over by Sri Subey Lal Bishkarma on 15.02.93. He claims to have been performing duty to the fullest satisfaction of his employer. The formality of medical examination was also completed after issuance of the letter of appointment and before taking over charge on 15.02.93. The respondent has suddenly issued a letter dated 22.04.93 informing the applicant that his services would be terminated.

2. The applicant claims the relief of quashing of order dated 24.04.93 with award of all benefits, privileges and continuation of service and also award of the cost of litigation.

3. The ground on which the relief has been sought for are:-

- i. The order of termination of the applicant's service is made without application on mind and is arbitrary.
- ii. The order gives no reason.
- iii. No opportunity was given to the applicant before termination order was passed.
- iv. The applicant is still working on the post of Extra Departmental Sub Post Master and has not handed over the charge to the new incumbent.
- v. No termination under Rule 6 has been passed in his case after proper application of mind.

4. One Sri Shashi Kant Dwivedi filed supplementary affidavit claiming that he was one of the candidates considered for the post of Extra Departmental Sub Post Master, Ghoorpur and was placed at Sl. no. 1. He was, however, not appointed on the report of Inspector to the effect that he was not a resident of village Ghoorpur and the applicant in this case who was at serial no. 2, was given appointment. He made a representation to the Director Postal Services who cancelled the appointment of the applicant. The applicant in this O.A., thereafter, approached the Tribunal through this application and obtained an ex parte stay order.

5. The respondents have stated in their CA that the termination of the applicant was made under the provisions of section 6 after giving one month's notice. The respondents had admitted that they had no complaint against the applicant in the discharge of his duties but there was a representation against his appointment to higher authorities. He has stated that the case of the appointment of the applicant was reviewed by the Director, Postal Services, Allahabad who found the appointment to be irregular and directed the respondent no. 1 to take action under rule 6 of the EDA's (C&S) rules, 1964. Thereafter, the notice was issued to the applicant before terminating his services. It is stated that the respondents have obeyed the order of termination, ^{passed by higher authority}. They have stated that rule 6 does not contemplate provision of furnishing of reasons of termination in the show cause notice to be given to the incumbent but simply requires one month's notice to the

applicant. This has been done. Another Counter Affidavit has been filed by Shri Shashi Kant Dwivedi, in which it has been mentioned that the facts brought on record in the Supplementary affidavit given earlier were correct. It was further stated that the name of respondent no. 2 could not find place in the voters list of the village Ghoorpur because Pradhan is the brother of the applicant in this OA. The Tahsildar of Tahsil Bara has given certificate to the effect that the answering respondent is a resident of village Ghoorpur. He has a large no. of Khasaras and Khataunes to show that he is a resident of Ghoorpur and that the village Pradhan got his name deleted from the voter's list of the village with an ulterior motive. It has been mentioned that the applicant has obtained the stay order by concealing material facts from the Tribunal.

6. The applicant in his rejoinder reply has stated that the selection of the applicant was made after full enquiry and verification of his property, home residence, income, education, character and other concerned aspects in accordance with the method of recruitment. He denies that he concealed any facts from the Tribunal. He claims that he was found most suitable candidate after the enquiry by the inspector of Post Offices. He claims that cancellation of the order of appointment on complaint of respondent no. 2, who was not a resident of Ghoorpur and has several criminal cases pending against him, was done with ulterior motive and against principles of natural justice. He has alleged that the Senior Superintendent of Post Office passed impugned order against the applicant at the instance of the Director of Postal Services and incompliance of his

order. He has said that the rule 6 can be applied only when the post is abolished or upgraded. He has cited the judgement in following cases for grant of relief sought by him:-

1. 1991 ATC Vol 15, page 15 of Patna Bench, Baikunth Nath Jha Vs. Union of India and others.
- ii. 1991 ATC Vol 15, page 20 of Patna Bench, Ganesh prasad Singh Vs. Union of India and others.
- iii. ATJ, page 452 of Chandigarh Bench, Tininder Kumar Vs. Union of India and others.
7. The respondent no. 2 filed supplementary affidavit to prove his claim. He has filed yet another affidavit. He has stated that documents which have been annexed with the rejoinder were forged and fabricated. It has been mentioned that RA-1 giving the extract of K~~h~~atauni on 02.12.92 shows the occupancy of Prabhu Kant who died on 17.03.91. It is mentioned that the said Khatauni does not give names of a number of persons of the family who became occupants. It is mentioned that RA-4 is fictitious document which is claimed to have not been issued by the Pradhan. It is mentioned that the applicants name is at serial no. 3, while the respondent who made this affidavit was at sl. no. 1. It is also said that the applicant obtained ex parte stay order behind the back of respondent no. 2.
8. In order to ascertain veracity of the claim made by the applicant and respondent no. 2, the original papers connected with the appointment of the applicant to this post were called for, have been perused by us. We

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have also heard the arguements of Shri R.P. Singh on behalf of the applicant and Shri N.B. Singh on behalf of the respondent no. 1 and Sri A.K. Gaur on behalf of the respondent no. 2. A number of cases were cited by the learned counsel for the applicant in support of the applicant claim. They are as below:-

- i. 1991 (15), ATC 20 (Patna)
- ii. 1991 (15), ATC 15. (Patna)
- iii. 1994 (26), ATC 159 (Ernakulam)
- iv. 1991 (16) ATC 937. (Supreme Court)

Learned counsel for the respondent no. 1 chose to rely on the judgement of Supreme Court in case of temporary appointment in which the ratio was that no notice need be given before termination of temporary Government servant. It has also been argued by him that rule 6 was complied with by giving notice and, thereafter, there is no irregularity in the order. Learned counsel for the respondent no. 2 said that the principle of Natural Justice was not violated and cited 1987 (3) ATC 54 Cuttack in support of his arguements

9. The learned counsel for the applicant has cited a catena of judgments in his favour to show that the order was bad in law. In Bishnukant Jha vs. Union of India and others (1991) 15 ATC 15, it was held that although appointment order stated that the appointment was provisional, the appointment was made after due enquiry and verification on a vacant post and there was no illegality in the appointment order which made it ab initio void. Since the cancellation of appointment was made on a complaint, the applicant should have been given notice and opportunity to be heard. The

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order of termination was set aside.

10. In Ganesh Prasad Singh versus Union of India and others, (1991) 15 ATC 20, it was held that appointing authority could cancel the appointment of E.D.B.P.M. for patent illegality after giving him an opportunity to be heard but it could not be done by virtue of powers of higher authority which was only supervisory. An appointment would be void ab initio only if essential requirements concerning eligibility to be appointed were not fulfilled.

11. In Bhulan Singh vs Union of India and others, TA no. 3 of 1987, it was decided by Allahabad Bench on 13.05.91 that order of termination based on a complaint of a competing candidate that he was a better candidate as he had obtained higher percentage of marks in matriculation, was bad in law because higher marks was not a sole criterion for selection of candidates, because no opportunity or notice was given to the applicant as envisaged in Rule 16 of EDA (Conduct and Service) Rules, 1964 although the order of cancellation of appointment was passed under that rule and that no order under rule 6 of EDA (Concuct and Service) Rules 1964 could be passed because the work of the applicant was satisfactory.

12. In Suresh Kumar Yadav Versus Union of India and others, OA no. 1288 of 1993, it was decided by Allahabad Bench on 10.11.94 and it was held that termination of service under Rule 6 of EDA (Conduct and Service) Rules, 1964, could only be for unsatisfactory service or for administrative reasons unconnected with the conduct. Since the action was

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taken on a complaint regarding the applicant's conduct, terminating without opportunity to be heard was held violative of the principles of natural justice.

13. In T.G. Gowrakutty Vs. Supdt of Post Offices, Alapuzha and other, (1194) 26 ATC 159, it has been held that just because the applicant was informed at the time of appointment that his services were liable to be terminated, does not confer any right on a public authority to act on whims and Caprice.

14. The Supreme Court in Shravan Kumar Jha and others Vs. State of Bihar and others (1991) 16 ATC 937 had held that in case of cancellation of appointment order of Assistant Teachers because of non competence of authority making appointments, because of bypassing of reservations and because of non compliance of condition of appointment, holder of appointment order were entitled to opportunity of hearing before cancellation of their appointment in the facts and circumstances of that case. The ratio of that case will not be applicable to the present case because of specific provisions of rule 6 of EDA (C & S) Rules.

15. Learned counsel for the official respondents has cited judgement in OA 200 of 1994 of this tribunal dated 16.11.94 in which termination simplicitor has been upheld by finding an analogy with Rule 5 (1) of CCS (Temporary service) Rules, 1965 and the judgements of Supreme Court in termination, simplicitor of temporary employee. The counsel for the respondent no. 2 had drawn our attention to Prahalad Charan Swain vs Union of India and others, (1987) 3 ATC 54. In this case the services of the applicant who was an Extra Departmental Watchman were terminated on the basis of findings in enquiry that selection was not properly done. There was no stigma or imputation on the conduct of the

applicant. His services were terminated under Rule 6 of Extra Departmental Agent (Conduct and Service) Rules, 1964 on administrative grounds. The order of termination was upheld as there was neither procedural flaw nor bias in the order.

15. The ratio of above judgement can be summed up by saying that termination of service of Extra Departmental Agent should be done after giving them opportunity of being heard in cases where termination is resorted to on grounds related to the conduct of the petitioner and the order is penal in nature. Notice is not necessary in other cases including appointment which are ~~are~~ ab-initio void due to appointed candidate not fulfilling any of the conditions of eligibility. Another exception is where action for termination is taken under provisions of Rule 6 of EDA (Conduct and Service) Rules, 1964 and cases of termination under this rule are unsatisfactory service or administrative ground unrelated to the conduct of the applicant.

17. In the instant case, the original file of selection was called for. The names of candidates sponsored by the Employment Exchange and who applied directly are listed in a statement on pages 25/C, 25-1/C, 25-2/C and 25-3/C. The statement mentions that candidates at serial nos. 1, 2 and 3 had applied directly while as a matter of fact only candidate at serial no. 2 had applied directly and the names of other candidates had been received from the employment exchange. The endorsement in red ink against names of all candidates except Shri Prem Shankar Tiwari at Serial no. 6 mentions that they were non local candidates. Thus it is

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clear that the only variable which made Shri Prem Shankar Tiwari eligible and all other candidates ineligible was their place of residence. It appears that the Senior Supt. of Post Office asked the sub-divisional Inspector of Post Offices to verify original residence, character, caste, source of income and accommodation for a post office of eight candidates and recommend. This letter is available on page 27/C of the file. The report of the Assistant Supdt. of Post Offices, south sub Division Allahabad, placed on page 46/C of the file shows that Shri Gyan Chandra, Shri Arvind Kumar Kesavani, Shri Prem Shankar Tiwari, Shri Diwakar and Shri Moti Lal were local residents of village Ghoorpur. After those verification a note was submitted which was partly based on some information received from one Kamla ~~Shankar~~, Gram Pradhan of village Ghoorpur, saying that the name of Shri Gyan Chandra was not in voters list of village Ghoorpur. This note which is placed on page 49/C of the file also states that ASPOS South had ^{not} indicated the location of Ghoorpur Post Office nor the number of Gram Sabha in Ghoorpur and their distance from one another. Inspite of this note dated 04.02.93, the Sr. Supdt. of Post Offices appointed Shri Prem Shanker Tiwari on 05.02.93. Shri Shashikant Dwivedi sent an application against the report of Sub Divisional Inspector verifying the facts contained in the applications of candidates and this application was received on 11.02.93 and is available on page 53-1/C to 53-3/C of the file. The note dated 17.02.93 on page 54/C shows that this application was filed on the ground that the applicant had admitted that he belonged to Chaksaripur village but it conveniently ignored the claim that the applicant had become original inhabitant of village Ghoorpur

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although he originally belonged to Chaksaripur. A complaint against appointing authority was made by Shri Gyan Chandra on 15.02.93. It is available on page 56-1/C in the file. This was recommended for being filed by the Senior Supdt. of Post Offices vide his report on page 65/C of the file. The Senior Superintendent of Post Offices was informed by the Post Master General vide letter placed on page 66/C of the file that the D.P.S. had reviewed the case and cancelled the appointment order made by the Senior Superintendent of Post Offices. The Senior Superintendent of Post Offices after some queries issued the show cause notice placed on page 75/C of the file and gave one months notice to the applicant for termination of his services. This notice has been challenged in the application before us.

18. The first issue ^{which} has been raised in this case by the applicant is that an order of appointment can not be reviewed under Rule 16 of the EDA (C & S) Rules, 1964. The rule contemplates review after an enquiry is held or a disciplinary case is conducted and review of any such order can be made under the Rule. Since it is not a case of enquiry or disciplinary proceedings, Rule 16 of EDA (C&S) Rules, 1964 is ^{not} applicable. However, Rule 6 of EDA (C&S) Rules 1964 is applicable.

19. The order of termination has been assailed on the ground that it is made without any application of mind. This ground is untenable as the file of appointment produced before us shows that the Senior Superintendent of Post Offices deliberated whether reasons have to be revealed in the order under rule 6 and passed the order only after clarification

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was provided to him by the office of the Post Master General. The file also shows that serious injustice was caused to a number of candidates because they had been categorised as not belonging to Ghoorpur for extraneous reasons and this was within the knowledge of the Senior Superintendent of Post Offices from whose office this file has come. Therefore, the circumstances as revealed in the file show that the order under Rule 6 of the EDA (Conduct and Service) Rules 1964 was made after due application of mind.

20. The order of termination has also been assailed on the ground that it is a non-speaking order. The order of discharge simpliciter is made so as not to cast any aspersions on any person. An order under Rule 6 of the EDA (Conduct and Service) Rules, 1964 can be passed for administrative reasons as was the case here and no reasons need be given in the order. Therefore, this ground also fails. It is ^{not} necessary to give an opportunity to be heard to the applicant before passing order under the aforesaid rule 6 and since the motive behind passage of this order is not to take action but to terminate the services of an employee for unsatisfactory performance or for administrative reasons, it is ^{not} necessary to give an opportunity of hearing in the case under consideration before us. The only requirement is a month's notice under Rule 6 which has been given in this case.

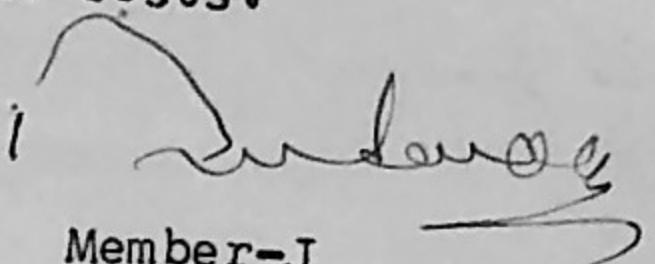
21. We, therefore, find no reasons to interfere with the order of termination of the applicant. The application is, therefore, dismissed. The respondents are directed to make a fresh selection from amongst the candidates sponsored

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in 1993 by the Employment Exchange considering their current place of residence.

22. There shall be no order as to costs.


Member-A


Member-J

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