

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 31st day of October, 2000

Original Application No. 1078 of 1993

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

Jagdish Narain Awasthi

S/o Shri Raja Ram Awasthi,

R/o Vill & Post-Selhupur,

Distt-Kanpur Dehat.

(Sri Rakesh Verma, Advocate)

..... Applicant

Versus

1. Union of India through
Secretary Ministry of Communication,
New Delhi.

2. The Superintendent of Post Offices,
Kanpur (M) Division, Kanpur-1.

3. The Chief Post Master General,
Kanpur.

(Km. Sadhna Srivastava, Advocate)

..... Respondents

O R D E R (O_f_a_l)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 for setting aside the order dated 11-2-1993 by which services of the applicant had been terminated by the respondent no.2. The further direction has been sought to the respondent no.2 and 3 to reinstate the applicant on the post of EDBPM, Selhupur, district Kanpur Dehat with all consequential benefits.

2. The case of the applicant is that he was selected on the vacant post of EDBPM, Selhupur, district Kanpur

on regular basis. The applicant claims that he was found the most suitable candidate. It is claimed that Gram pradhan Selhupur had made a complaint to the respondent no.3 challenging the appointment of the applicant on the post of EDBPM. The complainant claimed that Sri Shiv Chand Tewari should have been appointed instead of the applicant. It is further claimed by the applicant that Shiv Chand Tewari was also a candidate sponsored by the Employment Exchange whose candidature was considered by the respondents but he was not appointed as he was not found fit for the post. The applicant claims that on the basis of the complaint, the respondent no.3 directed the respondent no.2 to terminate the services of the applicant under Section 6 of the EDA Rules, 1964. He mentions that no show cause notice was issued to him before terminating his services.

3. Arguments of Sri Rakesh Verma, counsel for the applicant and Km. Sadhna Srivastava, counsel for the respondents have been heard. The learned counsel for the applicant has contended that cancellation of appointment under Rule 6 was made by the respondent no.2 in pursuance of the instructions given to him by respondent no.3. This is contrary to law. He places reliance on the order of the Tribunal passed in OA No.1062/1992 dated 13-9-86. There is reference to a Full Bench decision of the Tribunal in the case of Ambuzakshi Vs. UOI & Ors in OA No.57/1991 that Rule 16 of the EDA(Conduct and Service) Rules conferring power of review does not confer any power upon the departmental authority to review the order of appointment passed by the lower authority under Rule 3. In this context the order passed by the Director General Postal Services directing the termination of services of the applicant by reviewing his appointment was held to be without jurisdiction. Learned counsel for the

applicant has also relied upon a Full Bench judgement of this Tribunal in Tilakdhari Yadav Vs. UOI & Ors in OA No.910/1994 dated 9-7-1997 in which the question of law was as follows :-

"Whether Rule 6 of Posts and Telegraphs Extra-Department Agents (Conduct and Service, Rules, 1964 conferred a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee without giving him an opportunity to show cause?"

And it was held by the Tribunal that :-

"Rule 6 of Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra-Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause."

4. We have perused the order of termination of the applicant which appears to be an order simplicitor as no reference has been made to any order of higher authorities. The respondents in their counter affidavit have mentioned that the case of the review by the Post Master General, Kanpur in pursuance of the instructions of Director General of Post No.43/83/80-PN dated 4-11-1980

in which it was decided that Regional Director should carry out a scrutiny of 8% of EDA at the time of inspection. The Post Master General's approval was sought as the appointment of the applicant was not on the basis of merit and hence the services of the applicant was terminated vide order dated 11-2-1993.

5. We have carefully considered this contention of the learned counsel for the applicant. We find that the Full Bench decision of Tilakdhari Yadav lays down that the power under Rule 6 can be exercised by the appointing authority to cancel the appointment of an EDA who was appointed on regular basis for reasons other than unsatisfactory service or for administrative reasons unconnected with the conduct of the employee without giving him an opportunity to show cause. The fact that the appointment of the applicant was found to be irregular by higher authority does not by itself vitiate the order, if the order under Rule 6 has been passed by appointing authority for reasons other than unsatisfactory service or for administrative reasons unconnected with the conduct of the employees. In this case the reason for passing the order under Rule 6 has been that when the candidature of various eligible candidates was considered, it was found that one Sri Shiv Chand Tewari had obtained higher marks than the applicant and his selection was not considered merely because a letter of the Principal addressed to the Superintendent of Post Offices was produced which stated that Sri Shiv Chand Tewari was working in his School for the last two months on a temporary basis. Since the Director General Post letter No.43614/72-PN dated 22-2-1974 did not prohibit the engagement of teachers but only directed to give them last priority while making appointment as EDA, the letter of Director General Post letter No.14/23/92-ED&Trg dated 29-9-1992

stipulated that school teachers should be appointed as EDA in the exceptional circumstances with prior approval of the Post Master General. This was based on the premise that the school teachers were whole time employee of the State Government and other agencies. In the present case it appears that the candidature of Shri Shiv Chand Tewari had received the highest percentage of marks in the High School he should have been offered appointment to the post and a candidate could have been selected ^{in reserve &} in case he declined to accept the same. The procedure followed by the respondents for selection in the instant case, therefore, was not proper and the cancellation of appointment of the applicant under Rule 6 for administrative reasons unconnected with the conduct of the employee, therefore, the order of cancellation cannot be faulted on the ground that it was made on the basis of the direction of the higher authorities.

6. Learned counsel for the applicant mentions that the applicant was entitled to be given a show cause notice before the action would have been taken for cancellation of his appointment. This aspect has been considered in the Full Bench decision of Tilakdhari Yadav(Supra) in which it has been held that opportunity to give show cause notice would only be necessary when the cancellation of appointment was due to unsatisfactory service or for administrative reasons unconnected with the conduct of the appointee.

7. Learned counsel for the applicant also placed reliance on the judgement of the Hon'ble Supreme Court in Basudeo Tewari Vs. Sido Kanhu University and others, AIR 226, in which it has been held that when the conclusion that an appointment is contrary to the provisions of Act/ Statutes/Rules/Regulations is arrived at, it should be so done after an enquiry is made whether such appointment was contrary to the said provisions and the person whose

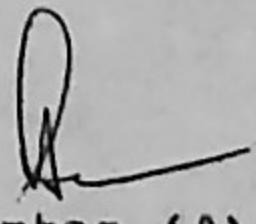
appointment was under enquiry will have to be given a notice. We are of the view that this judgement of the Hon'ble Supreme Court is not applicable to this case, because action under Section 6 of the EDA(Conduct & Service) Rules is taken in circumstances akin to those prescribed under Rule 5 of CCS(Temporary Service) Rules, 1965. The Hon'ble Supreme Court has already held in the case of Kaushal Kishore Shukla Vs. State of U.P. that an order passed without notice will not be illegal.

8. Learned counsel for the applicant mentions that the applicant was given no salary in lieu of absence for period of notice. The provision of giving such persons the sum equivalent to his basic pay plus dearness allowance for the period of notice at the same rate which he was drawing immediately after termination for the period by which the notice fell short of one month. The learned counsel for the applicant has filed the Notification as Annexure-RA-1 which is dated 2-2-1993 and which provides for payment of one month's basic pay plus dearness allowance. This contention of learned counsel for the applicant is valid.

9. The learned counsel for the applicant has also drawn our attention to para 4(xv) of the OA mentioning that respondent no.2 has initiated selection proceeding for appointment on regular basis vide requisition dated 18-6-1993. If the action of the respondents is bonafide, the appointment should have been offered to Sri Shiv Chand Tewari after cancelling the appointment of the applicant. Instead of doing that the respondents have initiated fresh proceedings of selection. The respondents have admitted that the Employment Exchange, Kanpur was addressed on 4-5-1993 and the list was received on 7-6-1993 and as such General Notification was issued on 18-6-1993 for

submission of application upto 5-7-1993. Thus, it is established that fresh proceedings for selection have been initiated by the respondents. The applicant had sought an interim order in his OA seeking a direction to the respondents not to make any appointment on the post of EDBPM, Selhupur, district Kanpur Dehat during the pendency of the case. In the alternative he has also sought direction that any appointment made on the post of EDBPM shall be subject to final decision of the case. The Division Bench has considered this in the order dated 21-9-1993 and have made selection subject to decision of the OA. Learned counsel for the applicant states that the applicant has not filed any application against the selection which was to be made by the respondents after termination of his services. If that be the case then the respondents are directed to consider the candidature of the applicant alongwith the persons who may have been considered against the names invited on 4-5-1993 and in case the applicant is found having more merit than the candidates sponsored, he shall be appointed in place of any other candidate appointed on this post on the basis of requisition. This shall be done within a period of three months from the date of receipt of this order by the respondents from the applicant. In addition the respondents are directed to pay the notice period emoluments to the applicant as per rules. This shall also be done within the period of three months. There shall be no order as to costs.

Rafiquddin
Member (J)


Member (A)