

Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

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ORIGINAL APPLICATION NO. 1610 of 1994.

this the 17th day of April 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)
HON'BLE MR. S. BISWAS, MEMBER (A)

prem Narain Chaubey, S/o Sri Harihar Prasad Chaubey, resident
of Village Madpuna Via Dhanghata, District Basti.

Applicant.

By Advocate : S/Sri M.K. Upadhyay & A. Tripathi.

Versus.

Union of India through Secretary, Ministry of Posts & Telegraph
New Delhi.

2. Director, Postal Services, Gorakhpur Region,
Gorakhpur.

3. Supdt. of Post Offices, Basti Division, Basti.

4. Sub-Divisional Inspector, Post Offices,
Khalilabad, District Basti.

Respondents.

By Advocate : Km. S. Srivastava.

O R D E R

RAFIQ UDDIN, MEMBER (J)

The applicant- prem Narain Chaubey has challenged the validity of the order dated 8.8.1994 and also the order dated 16.8.1994 passed by the Sub-Divisional Inspector (S.D.I. in short), Post office Khalilabad, District Basti. By the order dated 8.8.94, the services of the applicant as Extra Departmental Delivery Agent (E.D.D.A. in short) Madpuna has been terminated, while vide order dated 16.8.1994 a requisition has been sent for calling the names from the Employment Exchange for recruitment of the aforesaid post.

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2. The brief facts of the case are that the applicant was initially appointed as E.D.R., Madpura vide order dated 31.5.91 when the above post had fallen vacant due to retirement of one Ram Lagan Yadav. However, when the aforesaid Ram Lagan Yadav preferred an appeal against his retirement on the ground of some disputes regarding his date of birth, his appeal was allowed and Ram Lagan Yadav was taken back in service on the basis of the correct date of birth; As a result of which, the services of the applicant were automatically ceased.

3. As a result of promotion as EDBPM of one Abdul Moid, the applicant was again appointed on the post vide order took dated 9.7.92 and he l-over charge of the post on 10.7.92. It appears that the appointment of Sri Abdul Moid, EDDA, Madapuna as EDBPM Dihwa and the application as EDDA Madauna both were examined by the PMG, Gorakhpur and it was found that their appointments were illegal. The appointment of the applicant was found illegal on the ground that his father Sri Harihar Prasad was already holding the post of EDBPM, Madpauna, which was in contravention of the D.G. Post no. 43/36/94 dated 17.10.66. It was also found that the post, in question, was not advertised by the SDI concerned and the applicant was allowed to be appointed thereon without coming through the Agency of Employment Exchange. Consequently vide order dated 8.8.1994, the services of the applicant were terminated. The respondents have also alleged that the initial appointment of the applicant as EDDA, Madpauna was also irregular having been managed by his father in connivance with the concerned S.D.I.

4. The applicant has, however, challenged the action of the respondents mainly on the ground that the applicant has not been given any opportunity of hearing before terminating his services and also the appointment of the applicant was cancelled on the directions of the authority

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which is higher than the appointing authority and as such the appointment has not been cancelled in accordance with the rules.

5. We have heard the learned counsel for the parties and have also perused the pleadings on record.

6. It is not in dispute in this case that the impugned order of termination of the applicant has been passed without issuing any show-cause notice to the applicant and also without any opportunity of being heard. It has, however, been contended on behalf of the respondents that the appointment of the applicant has been cancelled in exercise of the powers conferred by rule 6 of Extra Departmental Staff (Conduct & Service) Rules 1964 (Rules 1964 in short) by the appointing authority i.e. S.D.I., Khalilabad, District Basti (respondent no. 4). It is also stated that one of the conditions of the appointment of the applicant was that his appointment shall be in nature of contract liable to be terminated by the appointing authority. Thus, the impugned order has been passed in accordance with rules and regulations.

7. We have perused the contents of the impugned order, a copy of which has been annexed as Annexure no. 1 to the O.A. We find from ~~its~~ perusal that no grounds for termination of the services of the applicant have been disclosed. The order is purported to have been passed under rule 6 of the Rules 1964. It is, however, evident from the case disclosed ^{affidavit} in the Counter/of the respondents that it is not a simple termination order. On the other hand, it has been passed on the ground that the certain irregularities have been detected in his appointment namely (i) the father of the applicant was already holding the post of EDBPM in the same post office & (ii) no requisition was sent to the local Employment Exchange before his appointment. It is also pointed-out that initial appointment of the applicant as EDDA

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from 8.6.91 to 18.6.92 was also not proper, hence the applicant cannot be treated as retrenched employee. It is neither necessary, nor desirable to give any findings on these allegations because the impugned termination order can be quashed on the sole ground that the same has been passed without giving any opportunity to the applicant of being heard. The impugned order has been passed in utter violation of the principles of natural justice, hence the same is arbitrary and un-reasonable and the same is liable to be quashed.

8. It has been consistent view of this Tribunal that even in a order passed under rule 6 of the Rules 1964, the employee should be given an opportunity of being heard before passing the punishment order. The Division Bench of this Tribunal in T.A. No. 1973 of 1987 decided on 15.5.90 had expressed the views on this point, which are as under :-

"The learned counsel for the respondents contend that Rule 6 of the EDA (Conduct & Service) Rules 1964 do not contemplate any opportunity of hearing where the termination is done within a period of three years of the initial appointment. This rule cannot override the well established principle of law which flows from the constitutional guarantee of Article 14 of the Constitution of India that a person whose civil rights are sought to be adversely affected is entitled to be heard before he is deprived of those rights ---."

9. In view of the above discussion, we allow this O.A. and quash the impugned orders dated 8.8.94 and 16.8.94. It is directed that the applicant shall be reinstated in service forthwith. It is, however, open for the respondents to take appropriate action against the applicant in accordance with law.

S. Girish
MEMBER (A)
GIRISH/-

R. Ariveddu
MEMBER (J)