

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 200 of 1994

THIS THE 16th DAY OF NOVEMBER, 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S.DAS GUPTA, MEMBER(A)

Bhagwan Singh Bhadauriya, son of late
Sri Ram Singh, aged about 28 years, R/o
village and post Mangalpur, District
Kanpur Dehat.

.... Applicant

BY ADVOCATE SHRI O.P. GUPTA

Versus

1. Sub Divisional Inspector, Bilhaur
Division Kanpur.
2. Supdt. of Post Offices Kanpur (M)
Division, Kanpur.
3. Union of India through Secretary,
Ministry of Communication, Govern-
ment of India, New Delhi.

.... Respondents

BY KM. SADHNA SRIVASTAVA, ADVOCATE

O R D E R

JUSTICE B.C. SAKSENA, V.C.

Through this O.A the applicant has challenged an order dated 27.1.94, by which the applicant's services were terminated under the proviso of Rule 6(b) of the P & T EDA(Conduct & Service) Rules 1964. Copy of the termination order is Annexure A-5.

2. The brief facts as averred in the O.A are that one post of E.D. Packer, Mangalpur ^{cell} ~~were~~ _{Bel} vacant and the respondent no.1 invited applications through the Employment Exchange on 17.11.93. The applicant by an order dated 19.1.94 was appointed and took over charge of the post ^{on} _{Bel} 22.1.94. After 5 days the order of termination was passed. A requisition was ~~sent~~ to the Employment Exchange calling for fresh applications. The impugned order is challenged

on the ground of being arbitrary and having been passed in colourable and malafide exercise of powers. It is also ^{bel}impleaded that one month's prior notice or one month's salary ^{bel}in ~~advance~~ in lieu of notice not been given.

3. The respondents have filed a detailed counter affidavit. The stand of the respondents in their counter affidavit ^{is} that when the post of E.D Packer Mangalpur P.O. Kanpur fell vacant, requisitions were sent by a letter dated 17.11.93. In response thereto the Employment Officer Kanpur Dehat has sent a list of five candidates through a letter dated 2.12.93. Subsequently another list of five candidates were also received from the Asstt. Employment Officer Kanpur City through letter dated 17.12.93. It is stated that the Sub Divisional Inspector, Post Offices Bilhaur, Kanpur Division instead of taking action on the list of candidates sponsored by the Employment Officer, returned both lists to the Employment Officer Kanpur Dehat on 13.12.93 directing him to send another list of five candidates only instead of 10. Another list of five candidates is stated to have been sent by the Employment Officer through his letter dated 20.12.93. In this list name of the petitioner was also sponsored including the name of 4 other candidates. It is stated that after scrutinising the applications the order of appointment was issued to the applicant. In the meantime, a complaint from one Sri Kailash Chandra Gupta was received mentioning some irregularities having been committed by the respondent no.1 in the procedure for making appointment. The respondent no.2 reviewed the cases. The Supdt. of Post offices, Kanpur through his communication dated 25.1.94, copy of which is Annexure CA-4 to the counter

affidavit has detailed some irregularities which have been committed by the S.D.I Bilhaur in processing the appointment to the post of E.D. Packer of Mangalpur. After receipt of the said letter the impugned order terminating his services was passed.

4. In the rejoinder affidavit the applicant ^{has} taking the plea that the applicants name was sponsored by the Employment Exchange in all the three lists. It has also been pleaded that the cancellation of the appointment on the basis of the complaint without affording an opportunity to the applicant violates principle of natural justice.

5. We have heard the learned counsel for the applicant Sri O.P. Gupta. The relevant facts have been noted hereinabove. Rule 6 of the EDA (Conduct&Service) Rules reads as under:

6. Termination of Services:

" The service of an employee who has not already rendered more than three year's continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice "

The said rule has been amended and instead of three year's continuous service, one year's continuous service ^{has been substituted.}

6. ^{for} The learned counsel for the applicant urged that by various circular letters issued by the Director General of P & T, certain restrictions on the exercise of power under Rule 6 have been imposed. According to the said circular it is urged/ ⁽ⁱ⁾ the services of the E.D employees can be terminated under Rule 6 if it is on medical ground and the incumbent become physically or mentally unfit to discharge his duties or;

- (ii) if the termination is due to abolition of post held by him or;
- (iii) if the services of E.D. employees is not found satisfactory.

7. It is further submitted that the Director General by his order dated 25.4.81 has subsequently directed that Rule 6 should not be invoked for dealing with specific acts of misconduct or disposal of complaints made by some aggrieved persons. The order of termination is a simplifier. The applicant had not put in one year's service, thus under Rule 6 his services could have been terminated without assigning any reasons. From Rule 6 the words ("for generally unsatisfactory work or on any administrative grounds unconnected with his conduct") which were there in the Rule as initially framed have been deleted as would be evident from the D.G.P&T's letter dated 13th April 1983 which says that it was thought fit to amend the rule and delete the said words so that the order of termination may not require any reasons to be indicated. In the said circular letter it has also been noted that the amendment has not made any change in the existing instructions and termination of services made normally may be ordered only in cases of unsatisfactory services or for administrative reasons unconnected with the conduct. The submissions of the learned counsel for the applicant ^{is} ~~indicating~~ ^{Bel} that various situations stated hereinabove were contemplated on the basis of which power under Rule 6 could be exercised. But in the instant case the termination order has not been passed for any of the said reasons ^{and} ~~and~~ ^{Bel} the circumstances indicated in the said circular are not exhaustive.

8. The respondents in their counter affidavit have annexed copy of a letter dated 25.1.94 passed by the Supdt.

of Post Offices which indicated a few irregularities which have been committed in processing the appointment. The said letter is Annexure CA-4 and is addressed to the S.D.I(P) Bilhaur. The S.D.I in his turn has passed the impugned order. The appointment of the applicant made by the respondent no.1 has been cancelled and it was ordered that a proper requisition may be made to the Employment Exchange Kanpur and it was also ordered that proper procedure may be adopted for appointment of E.D. Packer. The applicant despite the fact that the respondents have placed the order dated 25.1.94 passed by the Supdt. of Post Offices has not challenged the said order nor the reasons contained therein. The reasons indicated clearly show that there has been non-compliance of the procedure laid down in Chief Post Master General's order and instructions contained in his letter dated 9.3.93, copy of which is Annexure CA-3. Thus, we are satisfied that the impugned order has been passed for administrative reasons unconnected with the conduct of the applicant. The order cannot be termed to be punitive in any manner.

9. The learned counsel for the applicant cited before us 3 decisions:-

- (i) Raj Bahadur Singh Vs, Supdt. of Post Offices, O.A. No. 266/93 decided on 19.5.94 by a D.B of which one of us Mr. S. Das Gupta Member(A) was a member of the D.B. After

going through the order passed in the said O.A, we find that the decision in the said O.A turned on the facts of the said case. The order of appointment and the conditions indicated therein were noted and it was found that the contingency viz taking back in service of Shri Narsingh Pal or making irregular appointment which would have occasioned termination

of the applicant did not happen in the said case. In the absence of the said two contingencies contemplated in the aforesaid decision having occurred, the view taken ^{was that} ~~in view~~ ~~of~~ the order of termination was illegal. In the counter affidavit in ~~the~~ said case it appears, the stand of the respondents therein was that irregularity had been committed in appointing the applicant as the percentage of ~~the~~ marks ~~of~~ of the applicant ^{as} ~~has~~ been shown in the comparative chart prepared by the appointing authority, was found to be incorrect and thus the appointment order was cancelled. On considering the pleadings in the counter affidavit on that question a ~~view~~ was taken that the appointment of the applicant could not have been cancelled without giving him an opportunity of being heard.

10. The learned counsel for the applicant laid great emphasis on this part of the order and submitted that in the instant case also the cancellation of the appointment of the applicant for non-compliance with the procedure for making a selection contains no element of fault on his part and for that reason the applicant cannot be punished by cancellation of his appointment.

11. Rule 6 of the EDA Rules is more or less similar to Rule 5(1)(a) of the CCS(CS) Rules 1965 and the Supreme Court in a series of cases has upheld the order of termination under the said Rule 5(1) on the ground that the orders passed in exercise of the Statutory power conferred under Rule 5(1) being an order of termination simplicitor, they cannot be quashed on the ground that no reasons have been given in the order. If the order of termination

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imputes any stigma then the person effected may question the validity in the order on the ground that a stigma has been imputed to him without the conduct of enquiry and without giving any reasonable opportunity. In the present case the order is an order of termination simplicitor which has been passed in accordance with the Statutory Rule. Thus, we are not persuaded to interfere with the order.

12. The Cuttack Bench in a case reported in (1987) 2 A.T.C 16 Dharnidhar Sahu Vs. Union of India and Ors has also taken the view that the termination of service under Rule 6 without any stigma on any administrative ground unconnected with his conduct calls for no interference. It was held that the right vested in the authority under Rule 6 having been exercised without any malafide⁺ bias need not be interfered.

13. A similar view was repeated in a decision reported in (1987) 3 A.T.C 54 by the Cuttack Bench it was held in the said case that improper selection is an adequate administrative ground to warrant action under Rule 6 of the EDA Rules. In the said case also a complaint with regard to irregularities in the process of selection had been made. After enquiry a conclusion was reached that the selection was not properly done. The termination of the petitioner's services based on the said administrative grounds was well within the purview of Rule 6.

14. The learned counsel for the applicant has cited a decision of a D.B of this Tribunal in 'Prem Chandra Vs. Union of India and Ors O.A. No. 493/93. The said decision also proceeded on the facts of the said case. No proposition of law of binding nature can be found in the said order. Therefore, the said decision is not helpful.

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15. The third decision is in O.A. No. 1408/92 Ram Khelawan Vs. Union of India and Ors. In the said case since the respondents did not indicate any reason for termination, the termination order was held to be illegal and arbitrary. The only ground indicated was that only one application was received and that is why the appointment was cancelled. In view of the said facts the view taken was that the applicant cannot be blamed that no one else have submitted their candidature. The said decision is also not helpful.

16. In view of the discussion hereinabove, we see no ground to interfere with the order of termination. The order passed by the Supdt. of Post offices has not been assailed. The reasons and irregularities pointed out in the said order clearly fall within the ambit of administrative reasons unconnected with the conduct of the applicant. The power having been exercised in terms and within the purview of the provisions of Rule 6, in our opinion, cannot be said to be illegal in any manner.

17. The O.A is accordingly dismissed.


MEMBER(A)


VICE CHAIRMAN

Dated: Nov 16th 1994

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