

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 27th day of July 2000.

Original Application no. 1734 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member  
Hon'ble Mr. Rafiq Uddin, Judicial Member

Uma Shankar,  
S/o Sri Ram Kumar,  
a/a 30 Years, R/o 383/3, (I).  
Pardewanpur Lal, Bangla Ha-rjendra  
Nagar, Kanpur-7.

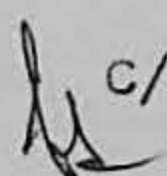
... Applicant.

C/A Shri O.P. Gupta

Versus

1. Post Master Kanpur Cantt. Head Office, Kanpur  
Pin 208004.
2. Union of India through Secretary, Ministry  
of Communication, Government of India,  
New Delhi.

... Respondents.

 C/Rs Sri S.C. Tripathi

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ORDER

Hon'ble Mr. S. Dayal, Administrative Member.

This application has been filed under section 19 of the Administrative Tribunals Act, 1985, for setting aside **termination order** dated 15.11.1994, directions have to be given to the respondents to allow the duty to the applicant as E.D. Packer in view of the appointment order dated 28.01.94 and also to grant consequential benefits of continuity of **services**, alongwith salary.

2. The case of the applicant was that Shri Bimal Dwivedi who was working as E.D. Packer Cantt. Kanpur was promoted as postman. Respondent no. 1 allowed the applicant to work on this vacancy on temporary basis w.e.f. 16.04.1993. The applicant continued to work on the said post on temporary basis till he was regularly selected vide order dated 28.01.94. The respondent no. 1 passed an order under rule 6 of EDA Rules dated 15.11.94, terminating services of the applicant. It is the case of learned counsel for the applicant that the applicant was regularly appointed by following prescribed procedure for the purpose. The termination of services of the applicant was done without giving him opportunity under rules of natural justice. The termination of applicant was done at the behest and on the direction of

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superior authorities.

3. Heard Shri O.P. Gupta, learned counsel for the applicant and Shri S.C. Tripathi, learned counsel for the respondents.

4. Respondents have mentioned that the applicant did not exhaust any department remedy, before approaching the Tribunal, therefore, this OA is not maintainable. Secondly they have stated that the termination order was under Rule 6 and the applicant was given one month's pay in lieu of the notice, therefore, the termination was in order. Thirdly, the applicant has not impleaded the person, working in his place as a party and, therefore, the OA is liable to be dismissed for non implementation of necessary party. Fourthly, while the matter of filling up the post was under consideration. The Educational Qualification was changed as class 8 with perference to be given to High School. The termination was done on a complaint of a member of Parliament regarding irregular appointment. The appointment was, therefore, reviewed by the higher authorities, who decided to dispense with the services of the applicant who was found to be irregularly appointed. It is alleged that the memo under rule 6 was sought to be served on the applicant on 15.11.94. But the applicant refused to sign the charge report on that day. In the suppl. counter affidavit the

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respondents have mentioned that the applicant was appointed by ignoring the S.C. candidate Sri Rajjan Lal and therefore his appointment was reviewed by higher authorities. It is stated in the suppl. counter affidavit that the SC and ST candidates were to be given preference under order of Directorate General of Post and Telegraph, so as to ensure minimum fix percentage as allowed in letter no. 43-117/30 Pen dated 08.10.89. The appointing authority did not follow these instructions. It is mentioned that the SC candidate did not turn up on 20.01.94 and other candidates including the applicant did not submit their applications for the post. The appointment was finalised in the absence of application and character certificates. The appointing authority before finalising the appointment should have obtained the applications from the remaining three candidates together with other testimonials and it must have given another opportunity to SC candidate to submit his application through Regd. post. It is stated that the appointing authority directed the candidates to appear in person with the applications and other documents while the recruitment rules do not permit it. The appointing authority did not get the genuineness of the educational certificates verified through the departmental agency. In this way the appointing authority misused his official position and vitiated the appointment process.

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5. We find from the averments of the parties that the services of the applicant were terminated under rule 6 by order dated 15.11.94 by the appointing authority. However, it has been admitted in the counter affidavit that his termination was on account of complaint lodged by a member of Parliament regarding irregular appointment on which it was decided <sup>by</sup> higher authorities to dispense with the services of the applicant. Learned counsel for the applicant has relied upon full bench decision Tilak Dhari Yadav versus Union of India & others (1997) 36 ATC 539 (FB), in which it has been stated that the Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules 1964 confers a power of appointing authority on 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 any opportunity to show cause. This full Bench judgment has been followed in OA 739 of 1997, between J.P. Bishan Vs. Union of India and others, in which the order was passed on 18.2.99. In this case as many as six cases have been discussed, in which termination of Extra Departmental Agents under rule 6 on the ground of selection being found irregular by the higher authorities was struck down.

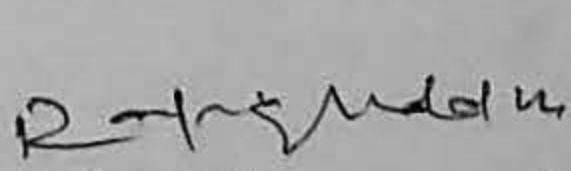
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In the case of Suresh Kumar Yadav V. U.O.I. & Ors ATJ 1995 (1) 218 and in the case of Amar Singh V. U.O.I. & Ors, ATJ 1995 (1) 64, it has been held that if the services are terminated on account of complaint without affording any opportunity of being heard, it was held that it is a violation of principles of natural justice and the order of termination was quashed on this ground. The case of Tilak Dhari Yadav V. U.O.I. & Ors has also been followed in the case of Har Prasad Mishra V. U.O.I. & Ors, 1999 (3) ATJ 550, it has been held that if the discretion vested in the appointing authority is exercised under rule the direction or in compliance of the instructions of the higher superior authority, then it will be a case of failure to exercise discretion altogether and the impugned order was to set aside.

6. Since there is admission in the present case that the order<sup>was</sup> passed at the behest of higher authority by the appointing authority, we, therefore, set aside the impugned termination order of the applicant. The applicant shall be entitled to consequential benefits, except pay for the period <sup>period for</sup> for which he has not worked. This shall be complied with within a period of three months from the date of communication of this order.

7. There shall be no order as to costs.

  
Member-J

  
Member-A

/pc/