

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No.: 1767/96
Transfer Application no.:

Date of Decision 25th May '98

Mahmood Hussain

Applicant(s)

Shri M.R. Upadhyay
Counsel for the Applicant

Counsel for the
Applicant(s)

VERSUS

Union of India & others

Respondent(s)

Shri S.C. Tripathi

Counsel for the
Respondent(s)

CORAM

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

Hon'ble Mr. S.L. Jain, I.M.

1.

1. Whether Reporters of local papers may be allowed to yes
see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether their Lordship wish to see the fair copy of
the judgment ?

6. Whether to be circulated to all Benches ?

J.L.D.

(SIGNATURE)

PIYUSH/

RESERVED

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

DATED : ALLD.ON THIS 25th DAY OF May ,1998

CORAM : HON'BLE MR. S. DAYAL, MEMBER (A)
HON'BLE MR. S.L. JAIN, MEMBER (J)

ORIGINAL APPLICATION NO. 1767 OF 1998

Mahmood Hussain S/o Mohd.Hussain R/o
272,Bada Kasaipara Sadar Bazar,Mathura.

.... Applicant

C / A : Shri M.K.Upadhyay,Advocate

Versus

1. Pravar Adhikshak, Post Office Mathura
Division Mathura.
2. Union of India through Post Master
General, U.P.Parimandal, Lucknow.
3. Director, Postal Services,
Agra Region, Agra.

.... Respondents

C / R :- Shri S.C.Tripathi, Advocate

O R D E R (RESERVED)

(By Hon'ble Mr. S.L. Jain, Member(J))

This is an application under section 19 of the Administrative Tribunals' Act, 1985 for issue of a writ, order or direction in the nature of Mandamus commanding respondent no.1 to allow the applicant to work, to implement the order of regularisation already passed by respondent no.2 and treat the applicant as regularised with all benefits available to the regularised employee of the department.

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2. There is no dispute between the parties in respect of the following facts :-

(i) The applicant was appointed vide letter no.G-1/Driver/M.M.S./85-86 dated 19.04.85 as permanent daily wages on the post of Motor/Car Driver and took over the charge on 14.04.85 afternoon-vide annexure CA-1

(ii) On 13.1.93 the applicant was removed from service due to some audit objections. However, on the application and representation by the applicant , he was again taken on service on 18.1.93 as per order of the Post Master General,Lucknow-Respondent no.2.

(iii) The respondent no.2 - Post Master General of Lucknow also ordered to regularise the service of the applicant ~~on~~ *Vide Annexure R.A-2* but respondent no.1 & 3 did not implement the said order.

(iv) The services of the applicant are terminated by oral order dated 26.8.94 by respondent no.1.

(v) The applicant made representations dated 9.9.84, 17.9.94, 26.9.94, 27.9.94 and 10.10.94 but yet not decided.

3. The applicant's case in brief is that he was appointed by Senior Supdt.of Post Office,Mathura Division, Mathura while his services are terminated by oral order by Parvar Adhikshak(*परवर अधिक्षक*)Post Office,Mathura Division,Mathura ,who has no capacity to terminate the services, hence the termination of the services are illegal, rules of natural justice have been violated, order is arbitrary and without jurisdiction. Hence, this application.

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4. As the applicant was appointed by Senior Superintendent of Post Offices, Mathura Division, Mathura and services are terminated by oral order dated 26.08.94 by Pravar Adhikshak (प्रवर अधिक्षक) Mathura, who is not of the same Rank, the termination of the services of the applicant was unconstitutional.

5. Admittedly, before terminating the services of the applicant, principles of natural justice are not followed. The applicant was not offered any hearing against the said termination. In 1993 SCC(L & S) 723 S.K.Yadava V/s J M A Industries Ltd., it has been held by the Hon'ble Apex Court of the Land :-

(i) The termination of service involves civil consequences - results in deprivation of right to livelihood implicit under Article 21. Hence to be effected in accordance with just, fair and reasonable procedure.

(ii) There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative enquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both. Article 21 clubs life with liberty, dignity or person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence.

(iii) The order of termination of service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an

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employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice.

(iv) Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of natural justice. Article 14 strikes at arbitrary action.

6. Thus the oral termination of the applicant is violative of Article 14 & 21 of the Constitution of India and hence liable to be set aside.

7. It is true that Post Master General, Agra has vide letter no.P- /1-22/90 dated 29.1.93 has ordered as under:-

"He should be taken on duty and regularised. This was the situation at the time of earlier termination of services on 13.1.93".

8. Now, we are aware by para 3 F of the counter that there exists a vacancy of Driver and the said vacancy is to be filled by holding due process of selection and departmental selection committee was formed on 10.11.94. We are not informed whether there had been any appointment on the said post or not. Hence, no direction in this respect can be issued. (1992 SCC (L & S) 825 State of Haryana and others V/s Piara Singh and others.

9. It is true that the representation of the applicant is said to be pending for consideration but in our opinion, the long pendency of the representations for years together does not disentitle this Tribunal to decide the matter.

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10. In the result, application deserves to be partly allowed and is partly allowed. The respondents are ordered to take the applicant on duty and pay the costs of this application amounting to Rs.650/- (Rs.500/- Legal Practitioner's fee and Rs.150/-expenses).

S/No 1/25/5798
MEMBER (J)

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MEMBER (A)

/rsd/