

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Allahabad : Dated this 8th day of January , 1996.

Original Application No. 254 of 1994

District : Allahabad

Hon'ble Mr T.L.Verma, J.M.

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

Sri Harish Chandra Ojha,
S/o Sri Bhaiya Lal Ojha,
R/o Village Amba, P.O. Kaundhiyara,
Via Jari Bazar, Tehsil Karchhana,
District-Allahabad.

..... Applicant

(By Sri Swaraj Prakash, Advocate)

Versus

1. Union of India through the Secretary,
Ministry of Communication.
2. Post Master General, U.P. Circle,
Lucknow, District- Lucknow.
3. Senior Superintend of Railway Mail Services,
G. Division, Gorakhpur, District-Gorakhpur.
4. Inspector, Railway Mail Services, G. Division,
Gonda, District- Gonda.
5. Spl. Record Officer, Railway Mail Services,
G.Division, Pilibhit, District-Pilibhit.

..... Respondents

(By Sri C.S.Singh, Advocate)

ORDER

By Hon'ble Mr T.L.Verma, J.M.

This application has been filed for quashing the
order dated 20-1-1994 cancelling the appointment of

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the applicant as Extra Departmental Mail Man (EDMM for short).

2. Brief facts giving rise to this application are that the applicant was appointed as substitute EDMM at Pilibhit, R.M.S. in place of Sri Nokhey Lal, EDMM, by the order dated 1.4.1992. He worked as such till 16-2-1993. Thereafter the applicant was again appointed on the said post as substitute EDMM on 24-2-1993. He continued on the said post till 23-3-1993. He was then appointed provisionally as EDMM on 9.11.93 and continued on the said post upto 10.12.1993.

3. It is stated that the appointment on the post of EDMM which was lying vacant was to be made and as immediate appointment in accordance with rules was not possible, the competent authority decided to appoint the applicant, whose name had been sponsored by the Employment Exchange, provisionally in terms of instruction issued vide letter dated 23-2-1987 by the Post Master General. The applicant was accordingly appointed by order dated 14.1.94. The applicant reported for duty on the same date. It is stated that the said appointment of the applicant has been cancelled on the direction of respondent no.3 without any justification, in violation of the principles of natural justice, without giving any opportunity to the applicant to show cause against the termination. Hence, this application for the relief mentioned above.

4. The respondents have contested the claim of the applicant. In the written statement filed on their behalf, it has been stated that the applicant was

appointed by respondent no. 4 who is the brother of the applicant in violation of the instructions issued by the department in that behalf. It has also been stated that the appointment of the applicant was purely on ad-hoc basis and liable to be terminated any time without any notice. That being so, it is stated that the applicant has no cause of action for challenging termination of his service by filing this application and the same deserves to be dismissed.

5. We have heard the learned counsels for the parties and perused the record.

6. In Para 3 of the counter affidavit it has been clearly averred that the applicant is the brother of Sri Gulab Chand Ojha, IRM, G-IIInd Sub-Division Gonda, who is the appointing authority and that the applicant was appointed as EDMM substitute Pilibhit RMS by his order dated 1.4.1992. He was also appointed by the same person on 24.2.1993 and 9.11.1993. The appointment which has been cancelled by the impugned order dated 14.1.1994 also was made by respondent no.4 who is the brother of the applicant. The appointment of the applicant by respondent no.4 is against the instructions contained in Director General P&T letter No. 43-36-64-Pen dated 17.10.1966. In the said letter it has been stated that the employment of near relatives in the same office should be avoided. The recruitment rules for EDAs and EDMM and EDM Carriers have not so far been framed under Article 311 of the Constitution of India. The recruitments in the aforesaid posts are being made on the basis of the instructions issued by the competent authority from time

to time in that behalf. A full Bench of the CAT in reported in has held that pending framing of the recruitment rules, instructions issued by the department from time to time in that regard shall have the force of rules and infraction thereof in making appointments shall vitiate such appointments. Instruction referred to above, appear to be only directory, but in spirit it appears to be mandatory and in our opinion infraction of the aforesaid rules will be against the mandatory provisions.

7. The recruitment of EDMM is required to be made through the Employment Exchange. For that purpose the appointing authority should send a requisition to the local Employment Exchange requesting him to nominate suitable candidates for the post having prescribed qualification within a period of 30 days from the date of sending the requisition to the Employment Exchange for nomination of candidates to the concerned authorities. In case, no nominations are received from the Employment Exchange, as per requirements, within the stipulated period of 30 days or if any of the candidates sponsored by the Employment Exchange is not found to be suitable, it will be open to the competent authority to make selections on the basis of the application received in response to the

circulation of notice inviting application for the post. The appointment of the applicant has not been made by following the aforesaid procedure. From the appointment letter (Annexure-4) it appears that the appointment was made provisionally for want of sufficient time to make appointment in accordance with the aforesaid procedure. Provisional appointees, it is settled law, acquire no right to hold the post. That being so, the respondents cannot be faulted in passing the impugned order cancelling the appointment of the applicant.

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8. The learned counsel for the applicant has argued that the termination of the services of the applicant without giving him any opportunity was against the principles of natural justice and as such is liable to be quashed, even if no prejudice is caused to him. In support of this argument he has placed reliance in the decision of the Hon'ble Supreme Court in Girish Chand and Others Vs. Union of India and Others reported in 1985 UPLBEC p-22. Reliance has also been placed by the learned counsel for the applicant on the decision of the Lucknow Bench of this Tribunal in Kamal Singh Vs. Union of India reported (1991)1 UPLBEC 25 (Trib). We have perused the aforesaid decisions and we find that the ratio of the aforesaid decisions is not applicable to the case before us, inasmuch as, no irregularity appears to have been alleged

in the cases cited by the learned counsel for the applicant. As against this, in the instant case, the appointment of the applicant has been cancelled on the ground that the same was ^{made} ~~got~~ against the instructions issued by the competent authority in that regard.

9. There are a number of decisions on the question of termination of an irregular appointment. In South Central Railway Vs. Veera Raju reported in 1992(2) ALJ 494 the High Court of Andhra Pradesh has come to the conclusion that no principles of estoppel applies against the Government in case of a fraudulent appointment, where the appointment on production of ~~case~~ ^{certificate} ~~certain order~~ was found to be false. In Neelamber Vs. Supdt. of Post Offices reported in (1993) 1 SLJ p-58, it has been held that there is no promisory estoppel and ~~is~~ violation of the principles of natural justice when the cancellation of the decision was due to wrong declaration of the ~~facts~~ ^{facts}. In the case of Doddasittaiah Vs. UOI reported in (1993) 6 SLR p-174, was a case of termination of an irregular appointment under Rule 6 of EDA (Conditions of Service), and the same was held to be ~~void~~ ^{valid and} ~~but~~ it was held by the Bangalore Bench that there was no need for giving an opportunity of hearing also. The Patna Bench of the Administrative Tribunal in Shanker Dayal Upadhyaya and Others Vs. UOI & Others reported in (1995) 30 ATC p-18, has held

"A government servant, it is settled law, has no right to the post held by him unless he is holding a permanent post substantively or he has achieved quasi-permanent status or he is holding a temporary post for a fixed term.

In the present case the applicants are holding temporary post of ED Mailmen terminable at will. The termination of their services at any time will therefore not attract Article 311(2) of the Constitution of India and cannot be deemed to be by way of punishment. In this case the appointments were found to be irregular. The applicants rendered less than three years of service. On the ground that it was a case of termination simpliciter for which the employer had the right under the terms and conditions of employment the order of termination of their services must be upheld."

10. From the counter affidavit filed, it appears that the respondent no.4 who happens to be the brother of the applicant had manipulated the entire ^{record} ~~file~~ in such a manner that one Shri Suresh Chand, casual labourer, who was allotted for appointment on the post of EDMM, could not join and in the meantime provisional appointment of the applicant was issued. The respondent no.4, ~~who~~ was, therefore, put under suspension for disobedience of orders and instructions of the department and charge sheet has been issued against him.

10. In view of the above, we have no manner of doubt that the appointment of the applicant was against utter disregard and violation of the instructions issued by the department in that behalf. ^{of the applicant} ~~from time to time~~. The appointment, was, therefore, irregular abinitio. ~~and~~ Therefore, the respondents were perfectly justified in cancelling the same without holding any inquiry or giving a notice to ~~show~~ cause to the applicant.

11. For the reasons stated above, we find no merit in this case and, therefore, dismiss this application. The party shall bear their own costs.

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Member (A)

Member (J)