

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 4th day of April, 2002.

Original Application No. 01 of 1995.

CORAM:-

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Hon'ble Maj Gen KK Srivastava, A.M.

Hon'ble Mr. AK Bhatnagar, J.M.

Kedar Nath Gupta Son of Sri Sheo Ram

Resident of Village Pandhari Post Pandhari,

District Hamirpur.

(Sri S.N. Yadav/Sri M.Upadhyaya,Advocates)

. Applicant

Versus

1. The Union of India through
General Manager Post.
 2. Director Post and Telegraphs Office,
Kanpur Division, Kanpur.
 3. Superintendent of Post Offices,
Band District Banda.
 4. Assistant Superintendent of Post Offices,
Hamirpur District Hamirpur.
 5. Sri Shyam Singh S/o Shiv Lal Singh,
Village & Post Pandhari District Hamirpur.
- (Km. Sadhna Srivastava, Advocate)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Maj Gen KK Srivastava, A.M.

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 10-12-1994 of respondent no.3 terminating the services of the applicant as E.D.B.P.M. Pandhari and has prayed that the said order be quashed with ^{the} direction to the respondents to allow the applicant to continue in service and ^{to} ~~do~~ ^{appoint him} him as a regular E.D.B.P.M. with all consequential benefits.

2. The facts, in brief, giving rise to this OA are that the applicant was appointed on the post of E.D.B.P.M. Pandhari on 30-6-1993 when the regular incumbent Sri Mahabir Prasad was put off duty as he was involved in disciplinary ^{in case} ~~proceeding~~. The applicant worked as E.D.B.P.M. from 30-6-1993 to 10-12-1994. Then by the impugned order dated 10-9-1994 his services were terminated. Hence, this OA which has been contested by the respondents by filing the counter affidavit.

3. Heard Sri S.N. Yadav, counsel for the applicant and Km. Sadhna Srivastava, and Sri Anupam Shukla, counsel for the respondents and perused ^{the} ~~the~~ records.

4. Sri S.N. Yadav, learned counsel for the applicant submitted that the applicant was appointed as E.D.B.P.M. Pandhari vide order dated 30-6-1993 (Annexure-A-2) on two conditions that the provisional appointment of the applicant will be tenable till the disciplinary proceedings against Sri Mahabir Prasad were finally disposed of or till the regular appointment is made in case it is finally decided not to take Sri Mahabir Prasad in service after conclusion of proceedings against him. Learned counsel for the applicant has assailed the action of the respondent no.3 because neither condition given in the appointment letter dated 30-6-1993 has arisen. Another ⁱⁿ ~~the~~ submission made by the learned counsel is that the applicant worked ^{in and} on the post satisfactorily for about 18 months, terminating services without giving any opportunity or notice is totally illegal. There is no case of misconduct on the part of the applicant and, therefore, the action of the respondents is arbitrary which needs to be quashed.

5. Sri S.N. Yadav, learned counsel for the applicant



submitted that respondent no.5 Sri Shyam Singh has been appointed vice applicant. It is settled principle of law that an ad hoc cannot be replaced by another ad hoc as laid down by the Hon'ble Supreme Court(Full Bench) in the State of Haryana Vs. Pyara Singh. In In Para 44 (1992 (2) UPLBEC 1356) the Hon'ble Supreme Court has decided that an ad hoc ^{hu} employee ^{hu} or temporary ^{hu} employee ^{hu} should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. This is to avoid arbitrary action on the part of appointing authority.

6. Sri SN Yadav, learned counsel for the applicant further submitted that though respondent no.5 was higher in merit, ^{hu} ~~while~~ ^{but} he was ignored because of unsatisfactory Police verification report. Learned counsel for the applicant also contended that since regular incumbent Sri Mahabir Prasad is still facing trial in the Court of Chief Judicial Magistrate, Hamirpur, the respondents ^{hu} have ^{hu} no right to terminate the services of the applicant, more so, when there has been no allegation against him, as admitted in the counter reply by the respondents. The applicant should have been allowed to continue.

7. The respondents have resisted the claim of the applicant by submitting that the impugned order dated 10-12-1994 is an order simplicitor and is not stigmatic. Respondent ^{hu} no.3, Superintendent of Post Offices, Banda has authority to issue this order as ^{hu} / ^{hu} per ^{hu} further condition laid down in the paragraph no.4 of the appointment letter dated 30-6-1994. In support of her arguments Km. Sadhna Srivastava, counsel for the respondents relied on the judgement of the Hon'ble Supreme Court in Supdt. of Post and Others Versus E. Kunhiraman Nair Muliayar, 1998 SCC(L&S) 756. Learned counsel for the respondents submitted that there was irregularity in the appointment of the applicant. Since respondent no.5 who was at the

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top in the merit was ignored by the appointing authority incorrectly, action was taken by the respondents to rectify the irregularity committed by them. Km. Sadhna Srivastava, argued that it is not a case of substitution of ad hoc by another ad hoc but the impugned order is that of termination passed by the respondents because the appointment of the applicant was found irregular. Sri Anupam Shukla, learned counsel for the respondent no.5 submitted that the respondent no.5, Sri Shyam Singh, was top in the merit and it was advised by the higher authority concerned that irregularity had been committed which required to be rectified. The respondents corrected the same and in the place of the applicant appointed respondent no.5 removing the applicant. Sri Anupam Shukla also submitted that respondent no.5 is working on the post since 24-11-1995, it will not ~~not~~ be in the interest of justice to remove him at this stage.

8. We have considered the submissions of the counsel for the parties and have closely perused the record. Learned counsel for the applicant pointed out that the appointment of respondent no.5 is subject to the decision in the present OA as per the order of the Tribunal dated 6-11-1995. The main controversy in this case is whether the action of the respondents removing the applicant from the post of E.D.B.P.M. Pandhari without giving any notice or opportunity is correct or not. We refer to paragraph no.4 of the appointment letter which reads as under:-

"The SPOs Banda Division reserves the right to terminate the provisional appointment any time before the period mentioned in para 2 above without notice and without assigning any reason."



9. There is no doubt that the appointment of the applicant was purely provisional and it was to continue till the disciplinary proceedings against the regular incumbent Sri Mahabir Prasad were finalised or regular

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appointment was made. However, from perusal of paragraph no.4 of the appointment letter it is clear that respondent no.3 did have powers to terminate services of the applicant before any of the two conditions did occur. We find force in the submission of the learned counsel for the respondents that the respondents had to correct their action as they had committed irregularity in the appointment of the applicant by not appointing respondent no.5. Our attention was invited to para 3 of the counter affidavit in which it has been averred that superior candidate has been ignored as no satisfactory Police Report was received. It appears from this that the Police verification report was not complete and, therefore, the claim of the respondent no.5 was ignored. The impugned order dated 10-12-1994, in our opinion, is an order simplicitor and not stigmatic because the order of termination of applicant is on administrative ground unconnected with his conduct. This is in consonance with the decision of their Lordships of the Hon'ble Supreme Court in Supdt. of Post Offices and Ors Vs. E.Kunhiraman Nair Muliya^hr(supra) holding that, "The services of an ^hemployee shall be liable to termination by the appointing authority at any time without notice for generally unsatisfactory work within three years from the date of appointment or any administrative ground unconnected with his conduct."

10. We also agree with the submission of the learned counsel for the respondents that the present case is not of substitution. This was purely a provisional appointment with power to terminate the services without assigning any reason or notice and the administration took corrective measure to undo the irregularity committed. The decision of the Hon'ble Supreme Court in Pyara Singh case (supra) relied upon by the applicant is easily distinguishable and will not be helpful.

11. In view of our aforesaid discussion the OA is devoid of merit and is accordingly dismissed. However, we would also like to direct the respondents to take action for regular appointment in case disciplinary proceedings against Sri Mahabir Prasad have been finalised. There shall be no order as to costs.


Member (J) 
Member (A)

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