

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 21st DAY OF AUGUST, 1997

Original Application No. 629 of 1995

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

HON. MR. D. C. VERMA, MEMBER (J)

Suraj Pal Singh, s/o Sri jangali prasad
R/o village and P.O. Kaytha
District Etah posted as Branch Post
Master, P.O. Kaytha, District Etah

.. .. Applicant

(By Advocate Sri K.S. kushwaha)

Versus

1. union of India through ministry of
Postal Department of India, New Delhi
2. Superintendent of Post offices
Etah Division, Etah
3. Assistant Supdt. of Post offices
(West Sub-division) Etah,
District Etah.

.. .. Respondents

(By Advocate Km. Sadhana Srivastava)

O R D E R (oral)

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

Under challenge in this OA filed is an order dated 31.3.95 passed by the respondent no.2 by which the letter of appointment issued to the applicant as E.D.B.P.M, Kaytha district Etah was cancelled. He has sought quashing of the impugned order dated 31.3.95 and a direction to the respondents not to interfere in the working of the applicant as EDBPM.

2. The admitted facts in this case are that the applicant was earlier working on a regular basis as E.D.D.A in the branch post office at Kaytha district Etah. It appears that on 31.10.86 the then incumbent on the post of EDBPM of the branch post office died and the applicant was allowed to work as officiating EDBPM for some time on that post. Later a regular selection was held and the applicant was given a letter of appointment dated 3.7.89. The appointment was on

a provisional basis.

2. Since then the applicant had been working on this post and there has been no complaint regarding his performance. However, by the impugned order dated 31.3.95 his appointment which was made by the order dated 3.7.89 was cancelled. The applicant refused to hand over charge of the post office. Ther respondents thereafter opened ^a the parellel post office and started operating from that post office.

3. The respondents have contested the case by filing counter in which it has been stated that in accordance with the rules of the department the applicant ought to have resigned from the post of E.D.D.A before taking ~~wp~~ appointment as EDBPM. Since he did not submit his resignation on the post of EDDA, his appointment on the post of EDBPM was irregular and therefore it was rightly cancelled. The applicant has a filed a rejoinder in which he has submitted that no such rule exists under which he was required to submit resignation from the post of EDDA.


4. The case was taken up for hearing at the stage of admission with the consent of both the parties. During the course of arguments the learned counsel for the respondents pointed out that in terms of the rules contained in Section III of the E.D.A Service and Conduct Rules, an E.D agent selected for a new post should resign from the previous post. It is this rule which is stated to have been contravened by the applicant by not resigning from the post of EDDA.

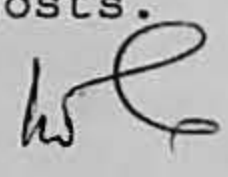
5. It is now settled position of law which has been enunciated in the Full Bench decision in OA No.910/94 Tilakdhari Yadav Vs. Union of India and Ors that the termination of services ^{or} of cancellation of appointments of E.D Agents shall abide by the principles of natural justice. No doubt, an appointment which is void ~~of~~ abinitio can be cancelled even without giving a notice . In the present case however, we are not convinced that there was any infirmity in the appointment of the applicant which goes to the root of

the validity of the appointment making it void abinitio. Therefore before cancellation of the appointment of the applicant it was necessary that he was given an opportunity. Admittedly no such opportunity was given and the appointment of the applicant itself was cancelled six years after he had taken over charge on being regularly selected. The only irregularity which has been pointed out by the respondents is that he had not submitted his resignation. The instructions which has been quoted in the EDA Service and Conduct Rules only indicates that ED agents selected for new posts should resign from the previous post. It is not the case of the respondents that the applicant refused to submit resignation on being asked to do so. If this requirement was mandatory in nature it was the responsibility of the respondents to ask the applicant to resign and ^{not having done so,} they cannot take a stand that the appointment of the applicant was ~~void~~ irregular.

6. In view of the foregoing discussion the ^{Cancellation of} appointment of the applicant is arbitrary and illegal. The impugned order dated 31.3.95 is accordingly quashed. The applicant shall be reinstated on the post of EDBPM Kaytha, district Etah forthwith. He shall also be entitled to backwages for the entire period he has been kept out of service.

7. Parties shall bear their own costs.


MEMBER(J)


MEMBER(A)

Dated: 21st August, 19976

Uv/