

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 23rd day of May, 2001.

C O R A M :- Hon'ble Mr. S. Dayal, Member- A.
Hon'ble Mr. S.K.I. Naqvi, Member- J.

Contempt Petition No. 65 of 1996

IN

Original Application No. 655 of 1995.

With

Original Application No. 655 of 1995.

Krishna Deo Pandey S/o Sri R.K. Pandey
R/o 173, Bharatpari, Karwi, Distt. Banda.

.....Applicant.

Counsel for the applicant :- Sri K.P. Srivastava.

V E R S U S

1. Union of India through the Secretary (Posts),
M/o Communication, Govt. of India, New Delhi.
2. The Director, Postal Services,
Office of the P.M.G, Kanpur.
3. The Supdt. of Post Offices,
Banda Division, Banda.
4. The Sub Postmaster (LSG), Karwi Post Office,
Karwi, Distt. Banda.

.....Respondents.

Counsel for the respondents :- Km. Sadhna Srivastva

O R D E R (Oral)

(By Hon'ble Mr. S. Dayal, A.M.)

This application has been filed for setting aside the impugned verbal termination order dt. 19.04.96 and direction to the respondents to re-instate the applicant as E.D. Runner, Karwi, Distt. Banda w.e.f 19.04.1996 with consequential benefits. A direction is also sought to the respondents to regularise the services of the applicant as Runner.

2. The case of the applicant is that he is continuously working as E.D. Runner from 01.12.1992 in Post Office Karwi, Distt. Banda. The applicant has filed a charge memo in the office having worked on the post from 01.12.92 onwards. The post of Runner was lying vacant due to termination of services of previous incumbent Sri R.C. Yadav. The names were called from Employment Exchange for appointment of E.D. Runner and the posts were advertised and applications were invited. The applicant has referred to the notification dt. 23.11.1992 in this connection. Employment Officer, Banda was forwarded a list of 10 candidates on 26.12.1992 from the applications invited through the advertisement. The applicant has also submitted his application. He attended the interview and cycling test. He was duly selected for the post of E.D. Runner and was given appointment order on 01.02.1993. In the appointment order there was a condition that if re-engagement of Sri R.C. Yadav is considered to be legally necessary, the applicant will have to vacate the post for Sri R.C. Yadav. It is claimed that when the Superintendent of Post Offices, Banda was replaced by another officer and the other officer reviewed the action of his predecessor and passed the order dt. 15.06.1995. The order states that appointment of the applicant was not on merit as the claim of meritorious candidates has been

ignored. It is also stated that there was gross violation of rules and instructions on the subject and so many irregularities have been committed in making appointment. The addressee, who is Sub Post Master, Karwi, was requested to terminate the services of the applicant from E.D. Runner under rule 6 (b) of the E.D Conduct and Service Rules, 1964 immediately without quoting any official reference. S.P.M, Karwi in compliance of the order and direction dt. 16.05.1995, issued the order dt. 20.06.1995 terminating the services of the applicant. The applicant claimed that the order dt. 20.06.1995 was never served upon him. The applicant approached the Tribunal in the present O.A and the applicant was allowed interim relief to the effect that if any provisional appointment of E.D. Runner is made in Karwi Post Office, in the administrative exigencies, it will be made only after consideration of candidature of the applicant. It is also stated that if Sri R.C. Yadav was to be restored to his post, the order would not stand in his way. The applicant claims that he served the order dt. 13.07.1995 upon respondent No. 4 and respondent No. 4 re-instated and restored the applicant's services by order dt. 25.07.1995. It has been stated that services of Sri R.C. Yadav were finally terminated and order dated 25.07.1995 was issued by the appointing authority for final termination of services of Sri R.C. Yadav. The applicant claims that he was not allowed to perform his duties on 19.04.1996 on account of confidential letter thereby respondent No.3 ~~was~~ directed ~~to~~ respondent No. 4 to release the applicant at once and also submit the report of compliance. The applicant moved a representation dt. 19.04.1996 which was not considered by respondent No. 4 and thereafter he represented to respondent No.3 on 04.05.1996

that respondent No.4 has expressed his helplessness in ~~seeking~~^{granting} regularisation of the services on the ground that he had served for more than three years and had become overaged for other job. He sought regularisation as his selection in-pursuance of notification dt. 23.11.1992 was made after following procedure for regular selection.

3. We have arguments of Sri K.P. Srivastava, learned counsel for the applicant and Km. S. Srivastava, learned counsel for the respondents.

4. We find that the applicant was appointed on provisional basis on account of termination of services of Sri R.C. Yadav, previous incumbent of the post. However, the termination of services of the applicant was by letter dt. 15.06.1995 of respondent No. 3, who is superior to the appointing authority. Similarly the termination of services of the applicant by verbal termination order dt. 19.04.1995 also appears to be on account of the direction of superior authority. Learned counsel for the respondents has contended that the D.G, P&T vide letter No. 43/82/80-pen dt. 04.11.1980 has decided that Regional Director should carry out a scrutiny of 10% appointments made to E.D. posts at the time of inspection. She claims that review of the appointment of the applicant was made in response to the said order. She contended that termination of the applicant was on account of provisions of Rule 6(b) of E.D Conduct and Service Rules, 1964.

5. However, the law laid down by the Full Bench of this Tribunal in the case of Tilak Dhari Yadav in O.A No. 910/94 dt. 09.07.1997 that Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 does not confer a power on the appointing authority or

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 an opportunity to show cause. In another Full Bench order in the case of A. Ambujakshi Vs. U.O.I & Ors, it has been made clear that superior authority can not review the appointment made by the subordinate authority and can not direct the subordinate authority for the same.

6. We, therefore, set-aside the termination of services of the applicant who was appointed on provisional basis. The applicant shall continue to be engaged on provisional basis shall be liable to be paid of the payment for which he has performed work.

7. We find that applicant had filed contempt petition against the interim order which was granted in O.A and which reads as follows :-

"We have heard the learned counsel for the applicant for interim relief. We provide that if any provisional appointment of E.D. Runner is made in Karwi Post Office, in the administrative exigencies, it will be made only after considering the candidature of the applicant. It is further provided that in the event Sri R.C. Yadav being restored to his post, this order will not stand in the way. Interim relief as prayed is refused."

A copy of this order will be given to the learned counsel for the applicant. "

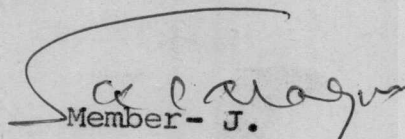
8. It is contended by learned counsel for the respondents that the applicant by making wrong representation

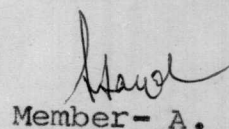
through an application addressed to S.P.M, Banda obtained re-engagement as E.D Runner. We find from annexure A- 1 that the applicant had stated that the Tribunal has passed an interim order requiring the applicant to be taken back in the service. It is also mentioned in the same that a certified copy of the order of Tribunal is being submitted. It appears that the interim order of the Tribunal was not seen and order was passed by Sub Post Master, Karwi, stating that order dt. 20.06.1995 terminating services of the applicant had not been served on the applicant and the applicant was being re-engaged on the post on account of the order of the Tribunal.

9. We do not find that the applicant had any intention of mis-guiding the authorities as he had mentioned that copy of the order of Tribunal was being furnished. It was for the respondents to obtain and see the order of the Tribunal and take action.

10. In any case, since the appointment of the applicant was on provisional basis and the services of the previous incumbent Sri R.C. Yadav had finally been terminated on 25.10.95, there is need to make a regular appointment on long term basis on the post of E.D. Runner, Karwi. The respondents shall make an appointment on the post by following due procedure for appointment and consider the applicant along-with others for the post at the time of making appointment. With this direction the OA stand disposed of. The contempt petition, filed against the respondents No.3&4 is also dismissed and notices issued to the respondents are discharged.

11. There will be no order as to costs.


Member - J.


Member - A.