

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 24.. DAY OF NOVEMBER, 1995

Original Application No.957 of 1995

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAYAL, MEMBER(A)

Smt. Sudha Gupta, d/o Late Shri Sita Ram
a/a 27 years, r/o C/o Khalil Ahmed Medical
Store, Wale House No. 140 Harding Road
Kanpur-4

..... Applicant

BY ADVOCATE SHRI R.P. SINGH

Versus

1. Post Master, Kanpur Cantt, H.O.
Kanpur
2. Union of India through Secretary
Ministry of Communication, Govt.
of India, New Delhi.

..... Respondents

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

This petition came up for orders as regards admission. We have heard the learned counsel for the applicant. The applicant challenges an order terminating her services passed by the respondent no.1 on 6.9.95 from the post of E.D. Office Peon, Kanpur Cantt Head Office. The case of the applicant is that due to the termination of ^{services of} one Uma Shanker Dixit, the post of E.D. Office Peon Kanpur Cantt Head office ^{had} fallen vacant. Process to fill up the said post were initiated by the respondent no.1. The Employment Exchange sponsored five names. Out of them only four persons furnished particulars for consideration for appointment. The applicant alleges that she was found most suitable candidate after

the scrutiny of relevant documents and she was selected and was given appointment on 31.5.95. Prior to appointment it is alleged that all formalities such as Medical Examination, Police Verification etc were completed and the applicant deposited the requisite security money. Copy of the appointment letter dated 31.5.95 is Annex A1. By the said order it was indicated that since the petition filed by Uma Shanker Dixit is pending finalisation before the Tribunal and a provisional appointment of the applicant is being made tenable till the case of Uma Shanker Dixit is finally disposed of by the Tribunal and he had exhausted all channels of departmental ~~judicial~~ appeal. Therefore it was also indicated in the appointment letter that/Uma Shanker Dixit is taken back in service, the provisional appointment of the applicant will be terminated without notice.2.

2. The learned counsel for the applicant urged that the O.A filed by Uma Shanker Dixit is still pending and has not been finalised and thus it is urged the contingency contemplated in the appointment order has not arisen for termination of the applicant's services. However, we find that significantly in Para 4 of the appointment order it was also clearly stipulated that:

" the undersigned reserves the right to terminate the provisional appointment any time before the period mentioned in para 2 above without notice and without assigning any reasons."

In view of the said provision the appointment of the applicant ~~xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx~~ could have been terminated without assigning any reason and notice. The period mentioned in Para 2 of the appointment letter was with regard to Uma Shanker. \

3. The learned counsel for the applicant next submitted that under Rule 6-B of the EDA Rules it has been provided as under:-

" Where the intended act of such termination has to be with immediate effect, it should be mentioned that one month's basic allowance plus dearness allowance is being remitted to the E.D. Agent in lieu of the notice of one month through money order."

He urges that the applicant's services has been terminated with immediate effect but no notices have been given. The order of termination Annexure A2 shows that it was directed that she shall be entitled to claim a sum equivalent to the amount of her basic allowance plus dearness allowance for the period of notice at the same rates at which she was drawing them immediately before the termination of her service. This stipulation in the termination order is in accordance with the provision of Rule 6(b) of the P&T EDAs (Conduct & Service) Rules, 1964. The learned counsel for the applicant, however, submitted that since one month's pay has not been given simultaneously with the order of termination, the order of termination would be illegal. In support of this proposition he placed reliance on a Supreme Court decision in S.A. Husaini Vs. Andhra Bank Limited reported in 1995 S.C.C(L&S) 573. The said decision by the Hon'ble Supreme Court is based on the interpretation of Section 25(f) of the Industrial Disputes Act. The provision in Section 25(f) aforesaid is wholly different from the provision in Rule 6 of the EDAs Rules. Rule 6 is analogous to Rule 5(1) of the CCS(TS) Rules. After the decision of the Hon'ble Supreme Court in the case of Senior Supdt. R.M.S Vs. A.B. Goonath AIR 1972 S.C 1487. The

provision in Rule 5(1) of CCS(TS) Rules was amended. The present provision is analogous to the rule 6 of the EDA (Conduct & Service) Rules. The amended provision received consideration by the Hon'ble Supreme Court and it was held that the decision in Senior Supdt. RMS Cochin's case was not good law. The subsequent decision is reported in 1975(3) SCR 963 Raj Kumar Vs. Union of India. In subsequent decisions also the Hon'ble Supreme Court has held that the order of termination would not be bad for want of simultaneous payment of notice salary (see Union of India Vs. Arun Kumar Roy (1986) 1 SCC 675 and 1986 SCC(L&S) 578 Badri Ram Vs. Union of India and Others).

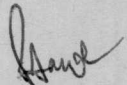
4. In view of the aforesaid decisions the plea that the notice of termination is illegal since notice salary has not been paid simultaneously fails. We now take up the other decision cited by the learned counsel for the applicant which is reported in 1994(1) ATJ 219 Ram Mohan Sharma Vs. Union of India and Others. It is the decision by the Principal Bench of the CAT. This decision was sought to be relied upon by the learned counsel for the applicant in support of his plea that in view of the fact that the O.A. filed by one Uma Shanker Dixit is still pending and only a provisional appointment would be possible to be made if all.

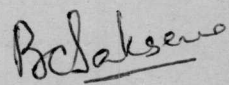
5. The replacement of a provisional appointee by some one else would be illegal. A perusal of the judgment by the P.B. highlights the distinguishing feature. In the case before the P.B. indisputedly no formal letter or notice terminating the applicant was issued. In the present case an order of termination has been issued. The said decision has no applicability to the present facts. It is not a case of substitution of one provisional appointment by another

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provisional appointment. The order terminating the applicant's services intervenes. The challenge to the order of termination has been failed. We find no ~~xxx~~ merit in the O.A., it is dismissed summarily.


Member (A)


Vice Chairman

Dated: .24. November, 1995

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