Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 971 of 1995
Alongwith
Original Application No. 973 of 1995

Allahabad this the 23rd day of April 1998

Hon'ble Mr. D.S. Baweja, Member (A)
Hon'ble Mr. J.P. Sharma, Member (J)

O.A. 971/95

Vijai Kumar Pandey S/o Shri S.N. Pandey, A/a 25 years C/o Sri Prem Kumar Sharma, Bunglow No. 110 Harding Road, Cantt.-Kanpur-4.

Applicant

By Advocate Sri O.P. Gupta

Versus

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

Respondents

By Advocate Sri S.C. Tripathi.

O.A. 973/95

Ram Chand, S/o Shri Jai Lal, A/a 37 years, R/o C/o Bale House No. 314, Harding Road, Cantt. Kanpur-4, Pin-208004.

Applicant

By Advocate Sri O.P. Gupta

Versus

.....pg.2/-

1. Post Master, Post Office, Kanpur Gantt.H.O. Kanpur.

2. Union of India through Secretary, Ministry of Communication, Government of India, New Delhi.

Respondents

By Advocate Sri S.C. Tripathi

ORDER

By Hon'ble Mr. D.S. Baweja, Member (A)

These two O.A.s - 971/95 and 973/95 are being disposed of by a common order as the facts of the cases and the question of law involved, are similar.

O.A. 971/95

This O.A. has been filed with a prayer for quashing the order dated 06.9.95, terminating the services of the applicant and to direct the respondents to re-instate him on the post of E.D.Letter Box Peon(for short E.D.L.B.P.) and allow all the consequential benefits of continuity of service. The facts of the case are as follows;

One post of E.D.L.B P. became vacant in the Post Office, Cantt. HO. Kanpur. For filling up the post on regular basis, the Employment Exchange was directed to sponsor the names. The Employment Exchange sponsored 5 names out of which only 3 candidates submitted their particulars for consideration for appointment. The applicant was found most suitable and was given appointment as per order dated 31.5.95. However, suddenly as per the impugned order dated 06.9.95, the services of the applicant have been terminated under Rule -6B of

.....pg.3/

Extra Departmental Agents Rules with immediate effect. The applicant contends that no money in view of one month's notice period has been paid to the applicant. Feeling aggrieved by the same, the present O.A. has been filed on 19/9/95. The applicant contends that he has come to know that some complaints were made regarding the appointment of the applicant to the higher authorities and the matter was reviewed by the Post Master General who directed the respondent no.1 (Post Master, Post Office , Kanpur Cantt., H.O. Kanpur) to terminate the services of the applicant and initiate recruitment procedure again to fill up the post. The applicant contends that higher authority has no power to review the appointment made by the competent authority. Further the applicant had been appointed on a regular basis after following the recruitment procedure and, therefore, the cancellation of appointment of the applicant without assigning any reasons and giving opportunity to defend his case, cannot be done. The termination order is, therefore, arbitrary and in violation of the principle of natural justice.

O.A. 973/95

The facts of the case are more or less similar. The applicant was appointed as E.D.L.B.P. as per the order dated 31.5.95 after following the due process of the recruitment of calling the names through Employment Exchange However, as per the impugned order dated 06.9.95, the services of the applicant have been terminated under Rule-6B of Extra Departmental Agents Rules with immediate effect. Here also the applicant contends that no payment in lieu of the notice period was made to the applicant. Feeling

.....pg.4/-

aggrieved, the present application has been filed on 20/9/95. The grounds for challenge of the impugned order of termination are the same as indicated earlier in the case of O.A. 971/95.

3. The respondents have filed the counter-affidavits in both the O.A.s. In the counter-affidavit filed in O.A. 971/95, the respondents bring out that Post Master, Kanpur placed a requisition as per letter dated 28/3/95 on the [illegible] to Employment Exchange for sponsoring the names for filling up the vacancy of E.D.L.B.P. at Kanpur Cantt., Headquarter, laying down out that the candidates should belong to Other Category with residence in the various villages as named in the notification. This notification was issued before seeking approval from Senior Superintendent of Post Offices, Kanpur City and the last date for sponsoring the names of the cadidates was also changed from 29.4.95 to 15.5.95. Out of 5 names sponsored by the Employment Exchange, only 3 responded with their particulars and the registered notices sent to 2 of the candidates were received back with the remark 'not Known'. The applicant was issued an appointment letter and he joined the duty on 02.6.95. However, subsequently there was a complaint from the Hon'ble Member of Rajya Sabha against the selection and appointment of the applicant and the matter was fully examined at the level of the Post Master General, Kanpur. It was revealed that in violation of the instructions laid down as per the order dated 07.1.94 , the Post Master, Post Office, Kanpur had stipulated the condition of residence in particular villages though as per the rules, candidates residing

...pg.5/-

beyond the area of the Post Office, were ~~not~~ eligible to apply but were required to take the residence in the area of Post Office after being appointed. Further as per the instructions laid down in letter dated 05.10.94, no specific post can be reserved for any category but in the requisition placed by the respondent no.1, it had been mentioned that only Other Category candidates are to be sponsored. Looking to these irregularities and violation of the rules in the entire selection process, the Post Master General had directed the respondent no.1 to cancel the appointment of the applicant under Rule-6B and initiate the process of recruitment again as per the extant rules. The respondents submit that action was accordingly taken by the respondent no.1 to terminate the services of the applicant immediately. The respondents also contend that the applicant refused to accept the payment in lieu of the notice period and, therefore, there was no option but to send the payment by the registered post at the known address of the applicant. The respondents also submit that the higher administrative authority is empowered to review the appointment either on its own motion or otherw-ise and vested with the power to uphold or cancel the appointment. The higher authority can direct the appointing authority to implement the orders passed during the course of review. The respondents also contend that there is no provision to give reasons for termination of the services under Rule-6B. The respondents based on these pleadings submit that the applicant is not entitled for the reliefs prayed for and the application deserves to be dismissed.

4. The averments made in the counter-affidavit in respect of O.A. 973/95 are the same as that in the O.A. 971/95.

.....pg.6/-

5. The applicants have filed the rejoinder-affidavits in both the O.A.s.In O.A.No. 971/95, the applicant has controverted the averments of the respondents and re-affirming his grounds taken in the O.A. The applicant submits that the amount of wages in lieu of the notice period was not paid alongwith the notice. The applicant further contends that if there was any violation of the rules in following the procedure for recruitment and sending notification for sponsoring of the names by the Employment Exchange without obtaining prior approval of the competent authority, does not make the appointment of the applicant as irregular as the applicant has been appointed being the most suitable candidate out of those sponsored by the Employment Exchange.

6. In the rejoinder-affidavit of O.A.973/95, the averments of the respondents have been controverted and the same pleadings as made as in O.A. 971/95, have been reiterated.

7. We have heard Sri B.P. Gupta, learned counsel for the applicant and Sri S.C. Tripathi, learned counsel for the respondents, in both the O.A.s. The material brought on record has been carefully examined. The learned counsel for the applicants has brought to our notice the order dated 28.5.97 in O.As 956/95 and 385/96 Smt.Archana Dwivedi Vs. Union of India and Others where similar controversy was involved and the reliefs had been allowed.

8. From the rival averments, it is established fact that the applicants were regularly appointed for

.....pg.7/-

calling for names from the Employment Exchange and their services have been terminated under Rule-6(B) of E.D.A. Rules as they had not completed 3 years of service on the ground that the appointment of the applicant was found not in accordance with the rules laid down by the higher authority. Such an issue had been the subject matter of the several orders of the various Benches of the Tribunal and divergent views were taken by the Benches. In view of this, the matter was referred to the Full Bench in O.A. 910 of 1994 Tilak Dhari Yadav Vs. Union of India and Others, with the following questions;

> "Whether Rule 6 of Posts and Telegraphs Extra-Department Agents(Conduct and Service) Rules, 1964 confers a power on the appointing authority or an authority superior to the appointing authority to cancel the appointment of 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?"

The Full Bench after consideration of the matter in detail has answered the question as under- in the order dated 09th July, 1997;

> "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."

.....pg.8/-

8. In the present case, it is noted that the appointing authority has cancelled the appointment of the applicant in both the O.A.s for the reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointees. The respondents have explained the reasons based on which the competent authority came to the conclusion that appointment of the applicants had been made in violation of the extant rules laid down for recruitment. The applicants have contested the claim of the respondents, stating that there is no violation of the rules and the cancellation of the appointment was motivated by the political pressure. As held by the Full Bench referred to earlier, whatever may be the reasons warranting cancellation of appointment, the same cannot be done without giving an opportunity of show-cause. In the present case, the power under Rule-6 could not be exercised for terminating the services as the cancellation of appointment was not warranted by the conditions under which the provision of Rule-6 can be availed of. It is also an admitted fact that no show-cause notice was given to the applicant in both the O.A.s. Keeping in view what is held by the Full Bench, the termination orders passed without giving any show-cause notice to the applicants, therefore, cannot be sustained and deserves to be quashed.

9. As indicated earlier the applicant, have also placed reliance on the order dated 28.5.97 of this Bench in O.A. 956/95 Smt. Archana Dwivedi, We have carefully gone through this order and noted that this O.A. has been also decided quashing the termination order referring to what is held by the Full Bench in the case of 'Tilak Dhari Yadav (supra).

...pg.9/-

10. In the light of the above, both the O.A.s succeed and orders of termination dated 06.9.95 in both the O.A.s are quashed. The applicants shall be re-instated in the service with immediate effect within a period of one month from the date of this order. However, it will be open to the respondents to take necessary action as per the law and pass suitable orders after affording opportunity of show-cause to the applicants in both the O.A.s. No order as to costs.

Member (J) Member (A)

/M.M./