

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.CORAM : HON. MR. S. DAYAL, A.M.  
HON. MR. S.K.I. Naqvi, J.M.

OA NO.1131 of 1995.

Allahabad, this the 12<sup>th</sup> day of Nov. 2001.1. Awadhesh Kumar Mishra s/o Sri Prem Nath Mishra r/o  
Village 158/8, Babu Purwa, New Labour Colony, Kanpur  
city. .... .... Applicant.

Counsel for applicant : Sri M.K. Upadhyay.

Versus

1. Union of India through Secretary, Ministry of Posts and Telegraphs, New Delhi.
2. Director General of Post Offices, Sansad Marg, New Delhi.
3. Chief Post Master General, UP Circle, Lucknow.
4. Post Master General, Agra Region, Agra.
5. Director Postal Services, Kanpur.
6. Senior Superintendent Railway Mail Services (UP), Division, Kanpur.
7. Smt. Anju Nigam, Senior Superintendent Railway Mail Services (UP) Kanpur Division, Kanpur.

..... Respondents.

Counsel for respondents : Km. Sadhana Srivastava.

O R D E RBy Hon'ble Mr. S. Dayal

This application has been filed for seeking the relief of declaring the alleged resignation letter of the applicant as false, forged, fictitious and ~~untrue~~ <sup>non-existent</sup>. A prayer has also been made for issuing directions by way of setting aside the termination of services dated 17-19, 94.

Prayer has also been made for direction for re-instatement of applicant in service with all financial benefits and back wages. The applicant has claimed in his O.A. that inspite of his hard working, satisfactory service and conduct and grant of temporary status, his

services were terminated on ~~account~~ of personal grudge of respondent No;7 who asked the applicant to perform <sup>domestic</sup> work at her house which he refused. In consequences she got the applicant beaten up by her staff Sri A.K. Tiwari, Stenographer and Sri Shukla, Driver and handed over to the police ~~and~~ of P.S. Kotwali, Kanpur Nagar. It is alleged by the applicant that a plain paper was got signed which was later on converted into the alleged letter of resignation.

We have heard Sri M.K. Upadhyay for applicant and Km. Sadhana Srivastava for respondents.

On account of allegation of malafide against Smt. Anju Nigam, Sr. Supdt. of RMS, Kanpur Division, Smt. Anju Nigam has been impled by name. The order passed by the Sr. Superintendent RMS, Kanpur Division, Kanpur dated 17.2.1994 reads as follows :-

"Shri A.K. Mishra, Casual labour H.R.O. ~~RMS~~ 'KP' Dn. Kanpur vide his application dated nil has intimated that he is not willing to serve in RMS 'KP' Dn. on the ground that he has joined other service.

The resignation of Shri A.K. Mishra, casual labour H.R.O. RMS 'KP' Dn. Kanpur is here by accepted and he is allowed to be relieved with immediate effect. "

The applicant was engaged as casual labour w.e.f. 1.4.86. He was conferred temporary status as on 29.11.89 by memo dated 14.8.91. He was casual water man attached to the office of Head Record Officer, RMS, Kanpur Division, Kanpur. It is mentioned by the respondent that after the applicant got temporary status, he became a regular source of nuisance causing disturbance and dislocation in the office. The applicant's explanation was called for gross negligence of duty and disobedience of the order of Head Record Officer and others and also absenting <sup>himself from</sup> ~~himself from~~ duty without intimation. He neither submitted his explanations nor showed any improvement. The respondents have annexed the

complaints received against him on 24.3.93, 30.4.93, 3.6.93, 8.6.93, 25.6.93, 2.7.93 and two complaints on 6.7.93. The applicant was not allowed further duties as casual labour w.e.f. 6.7.93 when he did not submitted explanation to notices issued to him by the office incharge on 30.4.93, 1.5.93 and 3.7.93. The applicant was allowed duties in Dece.93 on account of the fact that there was a country-wide strike call and the services of applicant was required. The applicant again absented from duty from 25.1.94. On 15.2.94, the applicant intimated that he was not willing to serve in RMS, Kanpur Division as he had joined other service. The resignation of the applicant was accepted. It is stated that the cased file~~s~~ in the office of Sr. Superintendent, Railway Mail Service is missing and original resignation letter of the applicant is not in the respondent's record but photo copy of the resignation letter which was sent to Post Master General, Kanpur has been obtained. It is stated that the undated application of resignation of the applicant was in his own handwriting and it was given to Sr. Superintendent of RMS, Kanpur Division on 15.2.94.

We find from Annexure A-III which is a report U/S 151/107 and 116 Cr.P.C. ~~wi~~ that the applicant was found abusing the officers and employees of the Head post office by Sub-Inspector when he was on patrolling duty. The time of incident is stated to be 5.30 p.m. and the place of incident was main gate of the post office.

The record of service of the applicant is also highly tainted as can be seen from the counter reply.

We find that the ground on which the services of the applicant were terminated was that he had submitted his resignation. The file containing the original letter of resignation is not available with the respondents. The resignation has been accepted by order dated 17.2.94. *It is a* *the*

fact that the applicant has been continuously representing against the voluntariness of his letter of resignation and had lodged report to police on 19.2.94 which has not been denied by the respondents. He has been representing to various authorities in the department from 21.2.94 onwards which again has not been <sup>specifically</sup> denied by the respondents. The conduct of the applicant shows that he had not submitted his letter of resignation voluntarily. The respondents should have considered this aspect in dealing with his representations but they appeared to have simply disregarded all the representations. The respondents have not replied to his representations on account of their view expressed in the counter reply that the withdrawal of resignation could only have been accepted with the consent of the Government of India and, therefore, no reconsideration was possible by the respondents. The applicant has also shown that the letter was not given by him to his officer incharge who was Head Record Officer, RMS, Kanpur Division but was directly taken by the Sr. Superintendent of RMS, who terminated the services of the applicant.

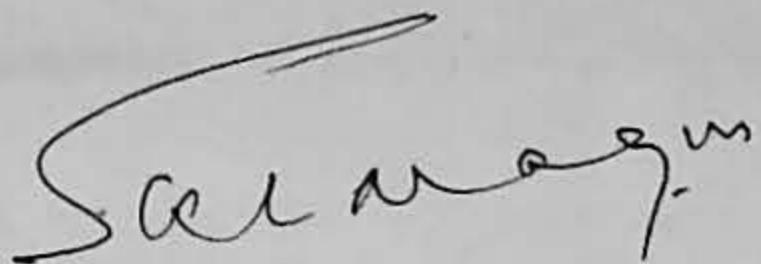
We have given our anxious consideration to the facts of the case. We are unable to convince ourselves that the letter of resignation was given voluntarily. The respondents have not terminated the services of the applicant on any other ground except submission of letter of resignation by him.

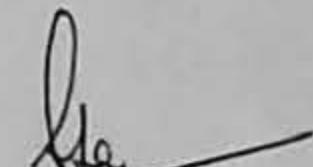
We, therefore, set aside the letter dated 17.2.94 which accepts the resignation of the applicant and order <sup>the reinstatement of</sup> ~~rejoining~~ the applicant with immediate effect.

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The applicant shall be given back wages and seniority as casual labour with temporary status within three months from the date of receipt of copy of this order. His case for regularisation shall be considered w.e.f. the date of regularisation of his juniors. The nature of his performance upto 17.2.94 shall be considered at the time of regularisation. The respondent shall also be free to take any disciplinary action against the applicant for acts of misconduct.

There shall be no orders as to cost.

  
J.M.

  
A.M.

Asthana/