

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 546 of 1999

Allahabad this the 19th day of March, 2002

Hon'ble Mr.Rafiquddin, Member (J)  
Hon'ble Mr.C.S.Chadha, Member (A)

Narendra Pal Bhaskar, S/o Shri Ram Gulam, R/o Shanti Vihar, Badaun Road, Bareilly.

By Advocate Shri Bechu Ram

Applicant

Versus

1. Union of India through Secretary(Posts) Ministry of Communications, Dak Bhawan, Sansad Marg, New Delhi.
2. Superintendent R.M.S. "BL" Division, Bareilly.
3. Head Record Officer, R.M.S. "BL" Division, Bareilly.
4. R.P. Singh Chauhan, Head Record Officer, R.M.S. "BL" Division, Bareilly.

Respondents

By Advocate XXXXXKm.S. Srivastava

O R D E R ( Oral )

BY Hon'ble Mr.Rafiquddin, Member (J)

R The applicant-Narendra Pal Bhaskar has made a prayer to quash the order dated 12.05.1999(ann.-1) cancelling his appointment as E.D. Mail Man, and also the order dated 13.05.99(annexure-2) passed by respondent no.3 in compliance of the order dated 12.05.99.

2. In brief the facts of the case are that

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the applicant was provisionally appointed as E.D. Mail Man vide order dated 19/20-2-98 issued by the Head Record Officer-respondent no.3(ann.-4) and in pursuance of the order the applicant has joined the post on 21.12.1998. The applicant claimed that he had been performing the duties with the entire satisfaction of his superiors without any break till the date of passing of the impugned orders.

3. We have heard the learned counsel for the parties and perused the record.

4. Learned counsel for the respondents has argued before us that the appointment of the applicant was made without using the usual formalities prescribed under rules under the pressure of the Union. It is further stated that the appointment was made for six months or till regular appointment was made whichever is earlier, and since the period of petitioner's appointment came to an end on 20/08/98 and no regular appointment was made, nor the services of the applicant were terminated after expiry of six months, the respondent no.2 has cancelled the appointment of the applicant vide order dated 12.05.99 and the respondent no.3 was asked to cancel the appointment of the applicant. It is further stated that the recruitment of the applicant was ~~was~~not made through the Employment Exchange in terms of the order dated 14.12.1987 of the Director General, Posts besides no requisition for provisional appointment was made from the open market nor any notice was pasted on the Notice Board,

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and since these prescribed formalities were not followed in the appointment of the applicant, the applicant has no ~~right~~ right to hold the post in question.

5. Learned counsel for the applicant has, however, contended that the order of cancellation was passed by the appointing authority on the direction given by the higher authority, hence the order is illegal as has been held by the Lucknow Bench of the Tribunal in O.A.No.117/91 decided on 12.07.99 and the order dated 18.07.00 passed by this Bench of the Tribunal in O.A.No. 1244 of 1999. It has therefore been urged that the order could not have been passed without given opportunity to the applicant of being heard. However, these cases referred to by the learned counsel for the applicant relate to regular appointment whereas the case before us is that of provisional appointment.

6. We, however, find that the order of termination has been passed at the behest of the superior authority and there was no application of mind on the part of the appointing authority. It is clearly mentioned in the letter in question that the services of one J.R. Sharma and the applicant have been terminated on the basis of communication received through letter dated 12.05.99 whereby the subordinate officers have been informed that they should not permit the aforesaid two persons for duty from 13.05.99. We also find force in this argument because factually it is clear from the contents of the letter that the cancellation of appointment of the applicant has been made on the direction of the

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Superintendent "EL"Division, Bareilly. Letter of Superintendent "BL"Division has not been annexed, which is not available to the applicant. It is also stated that the work which was being done by the applicant, is being performed by some other provisional appointee. This fact is no doubt denied by the learned counsel for the respondents, but the same is liable to be ascertained by the respondents whether the work is being taken on Over Time basis from E.D. employees who have been engaged on the provisional basis or not. It is, however, fully established that the appointment has been cancelled by the appointing authority on the basis of direction issued by the superior authority which is ~~per se~~ illegal because the appointing authority has not applied his mind in cancelling the appointment of the applicant and, therefore, such order cannot be sustained in the eye of law. Same view has been taken by a Division Bench of this Tribunal in which one of us (Rafiquddin, Member (J) ) was also a Member namely O.A. No. 547 of 1999 decided on 17.05.2001. We are also not inclined to take a different view in this matter.

7. We accordingly disposed of this O.A. with the direction to the respondents to take the applicant back in service and continue to take work from him subject to his satisfactory performance of duties till regular appointment on the post is made. It is, however, made clear that the post hold by the applicant can be filled up by regular selection. This direction will

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be complied with within a period of 3 months from the date a copy of this order is received by the respondents. There shall be no order as to costs.

*G. Gaudhe*  
Member (A)

/M. M./

*D. V. Reddy*  
Member (J)