

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.

Dated: Allahabad, the 17th day of May, 2001.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION NO. 547 OF 1999

Jai Ram Sharma,
s/o Sri Jayanti Swaroop,
r/o Mohalla Chak Old City,
Bareilly.

. Applicant

(By Advocate: Sri Bechu Ram)

Versus

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

. Respondents

 (By Advocate: Km. Sadhna Srivastava)

O_R_D_E_R (ORAL)

(By Hon'ble Mr. S. Dayal, AM)

This application has been filed for setting aside the order of cancellation of appointment of the applicant by letter dated 12.5.99 passed by Respondent no.2. A further direction is sought to set aside the order dated 12.5.99 passed by Respondent no.3 in compliance of the order passed by Respondent no.2 for terminating services of the applicant. A further direction has also been sought for setting aside the order dated 13.5.99, in which compliance of the order dated 12.5.99 of the Respondent no.2 has been reported.

2. The case of the applicant is that he was working as E.D. Mailman, by virtue of his appointment by order dated 19.2.98. It is admitted that the order dated 19.2.98 states that the post of E.D.M.M. R.M.S. Bareilly has become vacant and it is not possible to make regular appointment. Hence, provisional appointment for a period of six months was being made. It is also on record that the appointment was to be made for a period of six months from 21.2.98 or till the regular appointment is made, whichever period is shorter. It is also on record in the order of appointment (Annexure No.A-4) that the Respondents had a right to terminate provisional appointment at any time before the period mentioned in para-1. The Respondent no.2, however, cancelled the appointment of the applicant by order dated 12.5.99 and the Respondent No.3 passed an order in compliance of

the order of the Respondent No.2 and sent a report by letter dated 13.5.99 to the Respondent No.2

3. The arguments of Sri Avanish Tripathi, brief holder of Sri Bechu Ram for the applicant and Km. Sadhna Srivastava for the Respondents have been heard.

4. The learned counsel for the applicant has made three points before us. The first one is that the order of cancellation was passed by the appointing authority on the basis of directions given by the higher authority. He, on the authority of the order of the Lucknow Bench of Central Administrative Tribunal in OA No. 117/91 decided on 12.7.99, has contended that the termination order is not maintainable. He has also cited the judgment of the Allahabad Bench of this Central Administrative Tribunal in OA No.1244 of 1999 dated 18.7.2000. He has contended on the basis of judgments cited above that such an order could not have been passed without giving an opportunity to the applicant of being heard. A perusal of the order of Lucknow Bench of the Tribunal in OA No. 117/91 shows that the said order was passed on the ground that a better candidate was available, who had secured higher marks in the High School. However, the Tribunal found that the alternative candidate did not have any premises and did not show that he had any regular income and, therefore, the services of the applicant could not have been terminated. In the other case cited before us by

the learned counsel for the applicant in OA No.1244/99, the order of termination was passed on the ground that another candidate was the best among 7 candidates. It appears that other candidates had not furnished Income Certificate on the date of selection and, therefore, he could not be selected. The order of termination was cancelled, as no opportunity was given to the applicant in that case to show as to why the services should not be terminated. These cases relate to the regular appointment and the case before us is of provisional appointment. The learned counsel for the respondents has, on the other hand, relied on the case of Brij Mohan Singh Vs. Union of India and others in J.T.2000(4) S.C. 436, in which in the case of an Extra-Departmental Delivery Agent who was terminated, the Tribunal came to the conclusion that there have been some gross irregularities and manipulation in the procedures adopted for making appointment, in question. The Hon'ble Supreme Court held that since the applicant had not completed more than 3 years continuous service on the date of order of termination, the employer unequivocably is authorised to terminate the services at any time by a notice under Rule 6 of the Recruitment Rules. The Hon'ble Supreme Court has also held that where 3 years are not completed, the requirement would only be in terms of Rule 6 and at best the delinquent would be entitled to a month's basic pay and allowances plus D.A. for the period of notice.

5. We find in the case before us that the applicant has only been provisionally appointed. The learned counsel for the respondents relies on the case of Superintendent/ Post Offices and others Versus E. Kunhiraman Nair Muliyan 1998 SCC (L & S), 956, in which it has been held that in case of temporary and provisional appointments, termination simplicitor cannot be challenged on the ground that the applicant was not allowed an opportunity to show-cause, because the order simplicitor does not cast any stigma and would not ~~attract the~~ provisions of Articles 14 and 16 of the Constitution of India, if termination is on the administrative ground.

6. The learned counsel for the applicant has contended that the order of termination has been passed at the behest of superior authority and there was no application of mind on part of the appointing authority. We find that Respondent No.3 in Annexure No.1 has mentioned the names of Sri Jai Ram Sharma and Sri Narendra Pal Bhaskar as two of the several persons mentioned in the list whose services had been terminated and it has been specifically mentioned that this was being done on account of the letter of Superintendent of BL Division No.B-2/132/ED/Misc/99 dated 12.5.99 and the subordinate officials were informed that they should not take these two persons on duty from 13.5.99. The action taken is Annexure No.A-1, which was reported to the

6.

B.L. Division, L
Superintendent, ~~D.M.W.~~ Bareilly by Respondent No.3. Therefore, the contention of the learned counsel for the applicant is that the cancellation of appointment of the applicant had been made by Respondent No.3 only on the direction of the Superintendent, BL Division, Bareilly, for no other reason is borne out by the documents on record. The letter of the Superintendent, BL Division Bareilly has not been annexed by the learned counsel for the applicant on the ground that it was not available to him, as it was simply an internal correspondence between the two officers. The learned counsel for the respondents has also not chosen to file a copy of the said order of Superintendent, BL Division, Bareilly.

7. The learned counsel for the applicant has alleged that the work, which was performed by the applicant is being taken by other provisional appointees. The Respondents have denied the same in their counter reply. However, this plea on the matter has to be factually ascertained by the Respondents as to whether the work is being taken on Over Time basis from E.D. employees who have been engaged on the provisional basis or not.

8. Since the appointment has been cancelled at the behest of superior authority and before making regular appointment, which was the condition mentioned in the order of appointment of the

applicant barring his termination within a period of six months from the date of appointment, we direct the Respondents to take the applicant back in service and continue taking work from him, subject to his satisfactory performance of duties till regular appointment of the post is made. It is made clear that the post occupied by the applicant can be filled up by regular selection. This shall be complied with within a period of three months from the date a copy of this order is received by the respondents.

There shall be no order as to costs.


(RAFIQ UDDIN)
JUDICIAL MEMBER


(S. DAYAL)
MEMBER (A)

Nath/