

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 3rd day of June, 2002.

Original Application No. 327 of 2000.

C O R A M :- Hon'ble Maj. Gen. K.K. Srivastava, Member- A.
Hon'ble Mr. A.K. Bhatnagar, Member- J.

Tripurary Prasad Pandey a/a 26 years
S/o Sri Raghunath Prasad Pandey. R/o Vill and Post-
Ban, Tappa Pachwara, Pargana- Haveli, Tehsil-
Campierganj, Distt. Gorakhpur. Formerly employed
as EDDA, Ban Post Office in the district Gorakhpur.

.....Applicant

Counsel for the applicant :- Sri Avanish Tripathi

V E R S U S

1. Union of India through the Secretary,
M/o Communication, Dept. of Posts, Dak Bhawan,
New Delhi-110001.
2. Post Master General, Gorakhpur Region,
Gorakhpur- 273009.
3. Sr. Supdt. of Post Offices, Gorakhpur Region,
Gorakhpur- 273001.
4. Sub-Divisional Inspector, Post Offices,
Anand Nagar Sub Division, Anand Nagar,
Distt. Mahara jganj- 273155.

.....Respondents

Counsel for the respondents :- Sri A.K. Singh

O R D E R (oral)

(By Hon'ble Maj. Gen. K.K. Srivastava- Member- A)

In this O.A under section 19 of the Administrative
Tribunals Act, 1985, the applicant has challenged the
order dated 25.02.2000 terminating the services of the

applicant (annexure A- 1) and has prayed that the same be quashed and treat the period from 28.02.2000 to date of re-instatement as duty for all purposes including pay and allowances.

2. The facts giving rise to this application are that the post of Extra Departmental Delivery Agent (EDDA), Ban fell vacant and notification was issued on 19.04.1999 to fill the post. The applicant applied for the same and was appointed as EDDA, Ban vide order dated 23.08.1999 and he assumed charge on 24.08.1999. The services of the applicant have been terminated vide impugned order dated 25.02.2000. Aggrieved by this, the applicant has filed this O.A which has been contested by the respondents.

3. Sri Avanish Tripathi, learned counsel for the applicant submitted that the selection of the applicant has been made after following due process of selection. In pursuant to the notification dated 19.04.1999, several candidates submitted applications directly. The applicant was at the top of merit and, therefore, the respondent No. 4 issued the appointment letter.

4. ⁱⁿ The learned counsel submitted that no show cause notice given to the applicant as per the instructions of D.G's Circular dated 13.11.1997. In support of his argument, the learned counsel for the applicant submitted that higher authority has no power to review the selection made by the competent authority. In the instant case, the respondent No. 2 i.e. P.M.G, Gorakhpur Region has reviewed the selection and ⁱⁿ order for cancellation of appointment of the applicant. Learned counsel has placed reliance on the Full Bench decision of this Tribunal in Tilak Dhari Yadav vs. U.O.I and also the judgment of this Tribunal dated

21.03.2002 passed in O.A No. 1000/2001 Vinod Kumar Verma Vs. U.O.I and Ors. The learned counsel further submitted that law laid down on the subject has been decided by the Cuttuk Bench of this Tribunal in Saroj Kumar Mohanti vs. U.O.I and Ors. 2001 (1) ATJ 161 in which three Full Bench decisions of this Tribunal including Tilak Dhari Yadav, ^{Full Bench of} N. Ambjakshi Vs. U.O.I and Ors. decided by/Hydrabad Bench of this Tribunal and the judgment of Bangalore Bench of this Tribunal in R.N. Gurumurty vs. Supdt. of Post Offices, ^{Based Upon} Bellari Division and Ors. have been relied. The learned counsel for the applicant has also relied on the judgment of Hon'ble Supreme Court in Basudev Tiwari vs. U.O.I and Ors. 1998 (2) SC 358 in which it has been held that an appointment would be terminated if met contrary to the provisions of Act, Statutes, rules of regulations or any irregularity or unauthorised manner but it cannot be terminated at any time without notice as per the provisions. The Apex court held that since the notice had not been given to the applicant when ordering termination of his services, the impugned order cannot be sustained.

5. The learned counsel for the applicant finally submitted that in view of the law laid down on the subject, termination of services of the applicant is bad in law and the termination order is liable to be set aside as it has been done at behest of the superior authority.

6. Contesting the claim of the applicant, the respondents have filed counter reply. In para 4 of the counter reply, the respondents have submitted that the appointment ^{fully} reviewed by the S.S.P.O, Gorakhpur/ P.M.G, Gorakhpur and found that correct procedure as laid down in the D.G's letter dated 19.08.1998 has ^{not} been

followed. Therefore, the order of cancellation of appointment is correct in the eyes of law.

7. We have heard the learned counsel for the parties and have perused the records.

8. Perusal of order dated 25.02.2002 shows that the notice of termination has been given by the appointing authority to the applicant under rule 6 of EDDA (S&C) Rules, 1964. The order appears to be simplicitor in nature. However, in response to para 4.7 of the O.A, the respondents have stated in para 4 and 8 of the counter reply that the appointment of the applicant has been reviewed by the higher authority and order of termination has been passed because the appointment has been made without following correct procedure as laid down in D.G (Posts) Circular dated 19.08.1999. There should have been wide circulation of the notification as per instructions contained in D.G circular dated 19.08.1998. We find no substance in this argument because from perusal of the notification dated 19.04.1999, it is clear that the notification has been issued to various authorities including Employment Exchange inviting the names of the willing candidates. Number of candidates applied and the applicant has been selected after due process on the basis of merit and being most suitable ^{in a fact} which has not been denied by the respondents at any stage.

9. From the perusal of the records, we find that no opportunity has been given to the applicant before terminating the services under rule 6 of E.D.D.A (S & C) Rules, 1964. In the judgment of Apex Court in the case of Basudev Tiwari (Supra) it has been held that issue of show cause notice is necessary condition before any action of termination is taken. In various judgments cited by the learned counsel for the applicant, similar view has been taken.



Even the D.G (Post) has also passed instructions in this connection vide ~~his~~ ^{his} circular dated 13.11.1997, the relevant para reads as under :-

"(ii) In regard to appointment which was made in contravention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/ instructions whether statutory or administrative/ executive, as otherwise, it would amount perpetuation of the mistake and would be detrimental to the larger interests of Government. However, in these cases the principles of natural justice should be complied with by giving the ED Agent a show-cause notice and opportunity to be heard before passing any order adversely affecting him. There is no need to invoke ED Agents (Conduct and Service) Rules, while passing final orders in such cases.

(iii) Cases of erroneous appointments should be viewed with serious concern and suitable disciplinary action should be taken against the concerned officers and staff responsible for such appointments."

10. In view of the above discussion the impugned order of termination not only suffers from serious error of law but has also been passed illegally. Simply giving the ground that, correct procedure was not followed, is not enough. The applicant was selected for the post after due process of selection and, therefore, he is entitled to work on that post. The impugned order of termination dated 25.02.2000 is bad in law and is liable to be quashed.

11. On over all consideration, the O.A is allowed. Termination order dated 25.02.2000 is quashed. The respondents are directed to re-instate the applicant.

However, the applicant shall not be entitled for any back wages for the period he has not worked in the respondents establishment. The period from the date of termination to the date of re-instatement will be treated as on duty for the purposes of seniority and other benefits except back wages. The direction will be complied with within a period of one month from the date of communication of this order.

12. There shall be no order as to costs.

AJ

Member- J.

Adarsh

Member- A.

/Anand/