

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 23rd day of Apr 2001.

Original Application no. 1036 of 2000.

Hon'ble Mr. SKI Naqvi, Member-J

Hon'ble Maj Gen KK Srivastava, Member-A.

Baij Nath Tripathi,
S/o Late Shri Ram Prasad Tripathi,
R/o Vill & Post- Banauli,
SIDDHARATHNAGAR. (UP).

... Applicant

C/A Shri Rakesh Verma

Versus

1. Union of India through the Secretary,
Ministry of Communication,
NEW DELHI.
2. The Director Postal Services,
GORAKHPUR.
3. The Superintendent of Post Offices,
Basti Division,
BASTI.

... Respondents

C/Rs Shri S.C. Tripathi.

...2/-

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O R D E R


Hon'ble Maj Gen KK Srivastava, Member-A.

Tripathi,

The applicant Shri Baij Nath has challenged the order dated 18/21.08.2000 of Reviewing authority Respondent no. 2 (reference made in Annexure 1) directing the respondent no. 2 to cancel the appointment of the applicant and order dated 29.08.2000 of Respondent no. 3 (Annexure 1) by which his services were terminated.

2. The brief facts of the case are that a new Post Office was opened in village Banauli in the year 1999. The action was initiated for making appointment on the post of EDBPM, Banauli notifying the vacancy through open notice and endorsing the copies of the same to District Employment Exchange, Siddharth Nagar, Gram Pradhan Banauli, Post Master Siddharth Nagar etc for giving wide publicity. The vacancy was unreserved. In all 15 applications were received including 5 sponsored by Employment Exchange. After scrutinizing all the applications the appointing authority (Respondent no. 2) appointed the applicant on the post of EDBPM, Banauli vide order dated 22.12.99 (Annexure AII). These orders were reviewed by Director Postal Services (DPS) and he found the appointment as irregular and directed the appointing authority to cancel the same. In compliance of the

...3/-



direction of DPS a show cause notice under Rule 6(a) & (b) of the BDA (C&S) Rule was issued to the applicant on 29.08.2000 for termination of his services within one month and the said notice was served to the applicant on 30.08.2000.

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

4. The learned counsel for the applicant submitted that :-

i. the applicant was appointed to the post of EDBPM after adopting the due process of selection as per laid down rules. The averment of the Respondents that the appointment was provisional is not correct. There was a clear cut vacancy of EDBPM and the applicant was appointed on the said post after selection by the appointing authority i.e. Respondent no. 3. The learned counsel relies upon 1988(7)ATC226 C.A.T. Allahabad Surya Bhan Gupta Vs. Union of India & Others in which it has been held "Where appointment is made by the competent authority according to rules, mere mention of its being provisional does not really make it provisional".

ii. Also submitted that the applicant should have been afforded opportunity of being heard before cancelling his appointment by DPS, Gorakhpur, the

Respondent no. 2, as laid down by the C.A.T. Allahabad Bench in Surya Bhan Gupta Vs Union of India & Ors (Supra). Even in Shravan Kumar Jha Vs. State of Bihar & Ors 1991 SCC (L&S) 1078, the Apex Court has held "An opportunity of hearing before cancelling the appointment of the petitioner should have been afforded to him. It is well settled that no order to the detriment of a Government servant can be passed without applying with the rules of natural justice." Also quoted the case of Basudev Tiwari Vs SINDO KANHU University & Ors 1999 (1) ATJ (SC) 226 wherein the Hon'ble Supreme Court has laid down that an opportunity of hearing should be afforded to the concerned employee whose rights are affected before passing the order.

iii. It was further argued that powers to terminate the services of an EDA under rule 6 can be exercised only by the appointing authority and Director, Postal Services who is the next higher authority has not been vested with such powers. Order of termination of services by the appointing authority in compliance to the direction of the next higher authority i.e. the Director, Postal Services without applying his own mind is not sustainable in law. The learned counsel of the applicant cited number of cases in support of his contention namely 1988 UPLBEC 101, C.A.T. Allahabad (Jagdamba Prasad Pandey Vs. Union of India & Ors) 1996 (34) ATC 566 C.A.T. Ernakulam (KK Ramakrishnan Vs. Postmaster General & Ors), 1997 Vol I ATJ 279/ (Govind Singh C.A.T. Allahabad

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& Ors.

5. Learned counsel for the respondents argued that Director, Postal Services (Respondent no. 2) is the immediate higher authority of Supdt. of Post Offices (Respondent no. 3) and is empowered to review entire activities as well as orders passed by Respondent no. 3. Also submitted that the respondent no. 2 found the appointment of the applicant irregular and, therefore, ordered ^{respondent no. 3} to cancel the same. Besides the appointment was provisional and one month notice was given to the applicant for representation, the orders directing the respondent no. 3 to cancel the appointment is fully justified and legal.

6. We have considered the various arguments placed before us by the learned counsel for the parties and perused the records. Our findings are :-

i. The appointment of the applicant to the post of EDBPM, Banauli was done after adopting the due process of selection as per laid down rules, hence regular.

ii. The applicant was not afforded sufficient opportunity before the impugned order was passed violating the principles of natural justice.

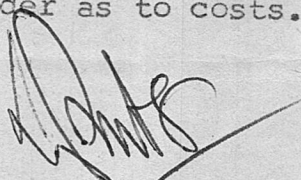
iii. The Director, Postal Services, Gorakhpur

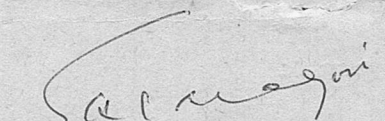


Respondent no. 2 has acted in most arbitrary manner in directing respondent no. 3 to cancel the appointment of the applicant and terminate his services. It is settled law that the review of order does not confer upon the higher administrative authority the power to revise the order of appointment passed by a lower authority.

7. In view of the above we quash the order dated 29.08.2000 passed by the Respondent no. 3 (Annexure A-1) terminating the services of the applicant with all consequential benefits. It is provided that the competent authority in the Respondent establishment may recover the loss of Government money from officers for whose arbitrary and illegal action the Government money and time has been **wasted**.

8. No order as to costs.


Member-A


Member-J

/pc/