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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 8th day of Oct 2010

Original Application No. 518 of 2002

Hon'ble Mr. S.N. Shukla, Member (A)

Neel Kamal Singh, S/o Sri Sardar Singh, Biharaon Ka Mandir, Kajari Sarai, B4 / 243, Distt. Moradabad.

..... Applicant.

By Advocate: Sri B. Tiwari & Sri A.R. Tripathi

V E R S U S

1. Union of India, Ministry of Communication, Department of Post of India, New Delhi through its Secretary.
2. The Director, Postal Training Centre, Saharanpur.
3. The Chief Post Master General, UP Circle, Hazratganj, Lucknow.
4. Sr. Superintendent of Post Offices, Moradabad.

..... Respondents.

By Advocate: Shri S.N. Chatterji

ORDER

This OA has been filed seeking the following reliefs:-

- i. Issue an order or direction quashing the impugned order dated 29.07.1999 (Annexure 1 of compilation No. 1), passed by the Sr. Superintendent of Post Offices, Moradabad, in violation of principle of natural justice and also against the eye of law.*
- ii. Issue order or direction in the nature of Mandamus commanding the respondents to resolute complete the rest training and after then not interfere in the peaceful function of the applicant on the post of Postal Assistant in Moradabad Division.*
- iii.*
- iv.*
- v."*

2. Briefly stated the facts of the caser are that the applicant was selected as Postal Assistant against Ex-servicemen quota vide order dated 09.06.1998. He was to undergo the induction training of 75 days at Postal Training Centre (PTC), Saharanpur w.e.f. 05.10.1998 to 18.12.1998. It was

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alleged that the applicant misbehaved with a lady official of PTC, Saharanpur and was found in drunken state. Accordingly, the induction training of the applicant was terminated forthwith by Director, PTC, Saharanpur and he was relieved w.e.f. the afternoon on 19.11.1998 vide order of the same date. Thereafter, the applicant was served upon a show cause notice as to why his candidature may not be cancelled vide memo dated 06.05.1999 and given 15 days time to submit his reply which was done on 13.05.1999. The applicant accepted his misbehavior as alleged. On appearing the applicant's explanation and other documentary evidences received from the PTC, Saharanpur the candidature of the applicant was not found fit to be appointed in the Postal Department and accordingly, his candidature was terminated vide impugned order dated 29.07.1999 (Annexure A-1 to the OA). Annexure A-3/Compilation II is show cause notice dated ? issued to the applicant by the Administrative Officer PTC, Saharanpur directing him to show cause as to why his training be not terminated for misbehaving with lady staff Smt. Shyama Devi as reported by her in writing. Annexure A-4/Compilation II is show cause notice issued by Senior Superintendent of Post Offices (SSPO), Moradabad Division directing the applicant to show cause as to why his candidature for the post of Postal Assistant not be cancelled. Annexure A-5/Compilation II is reply of the applicant dated 13.05.1999 to the SSPO, Moradabad stating that the applicant was falsely implicated and his training was terminated and he was even manhandled as a consequence he has lost his mental balance and did not remember anything. When he regained his memory he wrote this representation and requested to send him to any other training centre for completion of remaining part of the training.

3. At Page 21 of the counter affidavit is photocopy of explanation of the applicant in Hindi which reads as under:-

“सेवा में
प्रशासनिक अधिकारी

४३

आपके पत्रांक दिनांक 19.11.98 के सम्बन्ध में श्रीमान् मुझसे जो गलती दिनांक 17.11.98 को हुयी और जो मेरे द्वारा स्वीकार की जा चुकी है इसके लिये मैं क्षमा प्रार्थी हूँ और आपसे लिखित अनुरोध करता हूँ कि भविष्य में कभी इस तरह की गलती को नहीं दोहराऊगा। अतः श्रीमान् से अनुरोध है कि मुझे माफ करे भविष्य में कोई शिकायत का मौका नहीं दूगा।"

4. From the internal noting on the relevant file placed at page 20 and 21 of the Counter Affidavit it looks that the applicant's apology was received on 19.11.1998. it was considered on the same date and an exemplary action was taken to terminate the training of the applicant. Page 24 of the Counter Affidavit is a statement of S/Sri Narendra Singh Rana, Chandra Lal and Satya Pal to the effect that on earlier occasion also a liquor bottle was found with Sri Neel Kamal Singh and this matter was reported to the authorities. Page 22 and 23 of the Counter Affidavit consists of the statement of the applicant in which he expressed his apology for his misbehavior towards the lady employee and assured for better behavior in future.

5. In the oral/written submissions learned counsel for the applicant submitted that due to unfounded complaint of a lady chowkidar the training of the applicant was terminated without fair and proper opportunity and without reference to the training rules. It was only after the lapse of about 06 months that the SSPO, Moradabad (appointing authority) issued a show cause notice regarding cancellation of candidature of the applicant. A detailed explanation dated 13.05.1999 and representation/petition dated 02.07.2000 sent to the Principal Chief Post Master General, Lucknow was also not responded.

6. It is further submitted that appointing authority cannot terminate of a regularly recruited candidate for any alleged compliant during training period without full fledged inquiry and also without the alleged charged being proved. It is claimed that the applicant came to know of his written submission having been recorded on 17.11.1998 only through Counter Affidavit. Further that there is no admission of any misbehavior or using any

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filthy language of a lady staff. The applicant simply stated that he was apologizing and this should not be construed as any misbehavior.

7. Reliance was placed at several rulings such as **AIR 1962 SC 602 : Krishna Chandra Vs. Central Tractor Organization, AIR 1978 SC 597 : Maneka Gandhi Vs. Union of India, AIR 1962 SC 630 : Union of India Vs. P.K. Khare, AIR 1985 SC 941 : Surya Narain Yadav Vs. B.S. Electricity Board & AIR 1997 SC 645 : Air Indian Corporation Vs. United Labour Union** in support of the arguments that the selected / recruited candidate posted for required training cannot be deprived of employment / posting order in violation of Article 14, 16 and 21 of the Constitution of India.

8. It is also submitted that the memo dated 06.05.1999 seeking explanation of the applicant is vague and devoid of detailed alleged misbehavior and devoid of the mention of any specific rules violated by the applicant. Reliance was also placed to **State of A.P. Vs. S.R. Rao : AIR 1963 SC 1723, AIR 1993 SC 2285**, wherein the Hon'ble Supreme Court has held that recruitment rules are mandatory and cannot be invoked to favour / prejudice a particular individual. The Hon'ble Supreme Court has also held that **Justice should not only be done but should manifestly be seen to be done, other side must be heard and afforded to natural justice with fair play in the action** vide **AIR 1985 SC 1416 : UOI Vs. Tulsiram Patel**. The Hon'ble Supreme Court has also held that **Pecuniary bias, personal bias, official bias to prejudice and spoil the service career and to deprive the livelihood can not be allowed. AIR 1993 SC 3155 : Ratan Lal Sharma Vs. Managing Committee, AIR 1999 SC 2583 : M.C. Mehta Vs. Union of India**. The natural justice, common sense and conscience of a fair play must be based on human values **AIR 2003 SC 2042**. Reliance was also placed on **AIR 1967 SC 1427 : SG Jaisinghani Vs. Union of India, AIR**

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2006 SC 2432. It is settled law that recruitment is a process leading to eventual appointment in service vide **1993 (1) SLR 565 (SC) : Prafulla Kumar Vs. Prakash Chandra, 2002 (4) SLR (CAL) Bhuttu Lal Mahto Vs. State of West Bengal and another.** It is settled law that penalty imposed must commensurate with gravity of misconduct. Disproportionate penalty is violative of Article 14 of Constitution of India **AIR 1983 SC 454 : Bhagat Ram Vs. State of Himachal Pradesh.**

9. Learned counsel for the respondents on the other hand relied upon Hon'ble Supreme Court decision in the case of **S. Govindarajan Vs. The Karnataka State Road Transport Corp. an another : (1986) SLJ 470 (SC).** Wherein it has been held as under:-

"In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to any opportunity of explanation, through no elaborate enquiry would be necessary." In the instant case a Show Cause notice seeking explanation from a temporary appointee for his misconduct was given and while replying the applicant has confessed to his misconduct. Hence, there was no necessity to hold a full fledged enquiry after admission of charged by the applicant (Para 10 of Suppl. Counter Affidavit)"

10. It was also submitted that as per Clause 9 of Rule 10 of Department of Posts Gramin Dak Sevak! (Conduct and Employment) Rules 2001, inquiry is not necessary when charge is admitted.

11. Heard learned counsel for the parties, considered the pleadings and written submission placed on record. In the Counter Affidavit an expression "temporary Government Servant" has been used for the applicant. There is no material on record to substantiate the stand of the respondents that the applicant was a temporary employee. Similarly, there is nothing brought on record to explain as to whether or not any rules existed for dealing with the disciplinary cases of the trainee candidates and if yes which are those rules? Similarly, in the so called show cause notice to the applicant there is no mention of the rules which are alleged to have been violated and whether or

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not the department had intension of inflicting major penalty of dismissal from service.

12. Admittedly, the applicant had given a submission that he was found in the state of drunkenness and that under the influence of liquor he conducted himself in an unbecoming manner and he was regretting his conduct and that he assured no repetition of such conduct in future. Even if for a moment the alleged guilt under influence of alcohol, the confession and apology under the same state of drunkenness are all required to be seen in prospective particularly when the action taken is in the nature of serious and major penalty and accordingly, the least respondents needed to place on record the rules under which such action was taken. That has not been done.

13. The applicant in para 4.14 of the OA has pleaded that he had sent an appeal before the Appellate Authority. On 23.07.1999 vide registered post No. 8336 dated 12.07.2000 which remains to be dealt with. Counter Affidavit avers that no such representation was ever received.

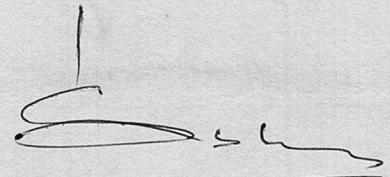
14. Considering the fact that the issue involves a substantive right of livelihood of an individual, the extreme penalty from dismissal from service can be done only if it is provided as per rules and procedure laid down in his behalf. There being no indication of stating the disciplinary rules violated by the respondents. In the interest of justice and fair play it is considered appropriate that the applicant be allowed to file appeal before the competent authority putting forward his case and defence. Accordingly, the applicant is allowed to file appeal before respondent No. 3 i.e. Chief Post Master General, UP Circle, Lucknow within a period of 04 weeks from the date of receipt of a certified copy of this order. if such an appeal is received, the respondent No. 3 on his own or through any other competent authority on

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this behalf shall consider and decide the appeal of the applicant by passing a reasoned and speaking order as per rules dealing with all the contentions which may be raised by the applicant, within a period of three months from the date of receipt of such representation alongwith certified copy of this order.

15. The OA is accordingly disposed of. No cost.



Member (A)

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