

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 6th day of June, 2002.

Original Application No.694 of 2002.

CORAM :-

Hon'ble Maj Gen KK Srivastava, A.M.

Hon'ble Mr. AK Bhatnagar, J.M.

Jay Singh S/o Shri Ram Khetawan Singh,

R/o Village Surjhanpur, Post Office Dhata,
District Fatehpur.

(Sri Bechu Ram/Sri A. Tripathi, Advocates)

..... Applicant

Versus

Union of India through Secretary (Postal),

Department of Posts, India,

Ministry of Communication, Dak Bhawan,

Sansad Marg, New Delhi.

2. Superintendent of Post Offices,
Fatehpur Division, Fatehpur.

3. Sub Divisional Inspector (Postal), Khaga
Sub Division, Khaga, Fatehpur.

(Sri R.C. Joshi, Advocate)

..... Respondents

ORDER (Original)

By Hon'ble Maj Gen KK Srivastava, A.M.

In this DA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order of respondent no.2 dated 10-2-2000 (Annexure-A-1), show cause notice dated 5-1-2001 (Annexure-A2) and the termination order dated 16-2-2002 (Annexure-A-3) passed by respondent no.3 and has also prayed that the above orders be quashed.

2. The facts giving rise to this DA are that the applicant was selected on the post of Extra Departmental Male Peon (In short EDMP), Belain, Dhata, Fatehpur by

order dated 1-12-1998 and the applicant joined on the post of EDMP, Belain, Dhata, Fatehpur on 3-9-1998. The applicant's appointment was cancelled by the Superintendent of Post Offices by order dated 10-2-2000. In pursuance of the order of the Superintendent of Post Offices dated 10-2-2000 the applicant was served notice by respondent no.3 on 28-2-2000 (Annexure-A-8). The applicant replied to this notice on 10-3-2000 and approached this Tribunal on 6-3-2000 seeking relief through the OA No.305/2000 seeking relief to the effect that the impugned order dated 28-2-2000 be set aside. The OA No.30/2000 filed by the applicant was decided by this Tribunal on 29-8-2000 setting aside the impugned order dated 28-2-2000 giving liberty to the respondents to take fresh steps in accordance with rules. The respondents thereafter issued show cause notice on 5-1-2001 (Annexure-2) and passed the impugned order on 15-2-2002 cancelling the appointment of the applicant.

3. We have heard Sri Avnish Tripathi, counsel for the applicant and Sri GR Gupta, counsel for the respondents and perused the record.

4. The relevant paragraph of the order of this Tribunal dated 29-8-2000 passed in OA No.305/2000 reads as under :-

"Under the circumstances, we are not in a position to maintain this impugned order which is set aside accordingly. However, the respondents are not precluded from taking fresh steps in accordance with rules in this regard and take care that in case show cause notice is the requirement then the order shall follow the show cause, not show cause to follow the order."

5. In order to meet the requirement as observed by this Tribunal in the order dated 29-8-2000 respondent no.3 issued show cause notice on 5-1-2001 (Annexure-2) and



thereafter passed order dated 15-2-2002 terminating the services of the applicant giving reasons for the same. It is relevant to mention here that the show cause notice dated 5-1-2001 has been issued by the respondent no.3, the appointing authority and thereafter the order dated 15-2-2001 has been issued by the appointing authority. On perusal of the impugned order dated 15-2-2002, we find that the following has been mentioned : -

"The appointment file was got reviewed by the higher authorities and the appointment of Shri Jai Singh S/o Sri Ram Khelawan r/o Vill-Surjhanpur P.O. Dhata, Fatehpur was not found in order."

6. From this it appears that the appointing authority has again taken action based on the decision already arrived ⁱⁿ _{in} ⁱⁿ _{in} back by the Superintendent of Post Offices, Fatehpur i.e. respondent no.2. Since the appointment was found to be irregular by respondent no.2 the show cause notice should have been issued only by respondent no.2 and not by respondent no.3. Respondent no.2 could not have ordered for the cancellation of the appointment without issuing show cause as already observed by this Tribunal in the order dated 29-8-2000.

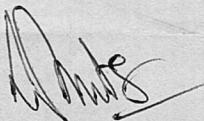
7. The short question of law which comes to our mind is that whether the appointing authority could review before issue of show cause notice on the basis of review done by the higher authorities. Our answer to this is categorical ^{in his own discretion} _{Not} ^{Therefore} _{not}. The show cause notice as well as the impugned order of cancelling the appointment of the applicant cannot sustain in the eyes of law and are liable to be quashed.

8. On over all consideration, the DA is allowed. The order dated 10-2-2000 passed by respondent no.2 (Annexure-A-1) the order dated 5-1-2001 (Annexure-A-2) passed by respondent no.3 and the order dated 15-2-2002 (Annexure-A-3) passed by

respondent no.3 are quashed. We direct that the respondents shall restore the applicant on the post of EDMP, Belain, immediately. The applicant, however, will not be entitled for back wages during the period he has not worked with the respondent's establishment. He will be entitled for other consequential benefits.

2. There shall be no order as to costs.

 Member (D)

 Member (A)

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