

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 7th day of April, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 823 of 2002

Dinkar Pathak S/O Sri Banarasi Pathak R/O Qr. No.94, P & T
Colony, Varanasi.....

.....Applicant.

Counsel for applicant : Sri R.A. Tripathi.

Versus

1. Union of India through Post Master General, Allahabad.

2. Senior Superintendent of Post Offices, East Division,
Varanasi.

3. Senior Post Master, Varanasi.

.....

.....Respondents.

Counsel for respondents : Sri D.K. Dwivedi.

ORDER (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri R.A. Tripathi, learned counsel for the applicant, Sri D.K. Dwivedi, learned counsel for respondents and perused the pleadings.

2. The applicant herein was initially appointed as Ex-tra Departmental Branch Post Master, Narainpur, P.O. Varanasi in the year 1984. The second respondent advertised the vacancy for the post of Postman/Village Postman in the year 1997. The applicant being possessed of all requisite qualifications, applied for the post of Postman and appeared in the written examination held on 23.11.1997 along with other candidates. It appears that the result of the examination was declared on 23.9.98 in which the applicant was declared successful and allotted Varanasi Head Office vide order dated 20.3.98. He was sent for requisite training of postman from 1.4.98 to 7.4.98 and after completion of successful training from Training Centre, he joined his duties as Postman on 7.4.1998 at Head Post Office

By

where he worked till 29.4.98 (Annexure-5). However, Senior Superintendent of Post Offices, East Division, Varanasi by his order dated 29.4.98 cancelled the result of Postman exam earlier declared on 20.3.98. Subsequently, the result was declared a fresh on 9.6.98 by Annexure 5A in which the applicant was again declared successful and allotted Varanasi Head Office. By order dated 2.5.2002, the applicant was confirmed on the post of Postman on successful completion of probation period. Subsequently a show cause notice dated 10.5.02 (Annexure-7) was served on the applicant stating therein that "irregularity" was detected in the Postman examination as a result of which the selection was "found illegal". The applicant was required to show cause why the same be not cancelled. The applicant submitted his reply dated 10.5.02 and the Sr. Superintendent of Post Offices, Varanasi cancelled the selection of the applicant for the post in question in the purported exercise of power under F.R. 31A, and by subsequent order dated 5.7.02, the applicant came to be posted as Shakha Dakpal, Handiadih Branch Post Office (Sub Post Office Chaubepur). Aggrieved the applicant has preferred the present O.A. seeking relief of quashing the order dated 5.7.2002 coupled with the direction to the respondents not to interfere in peaceful working of the applicant on the post of Postman, Varanasi Head Post Office, Varanasi and to pay him the salary and other emoluments as and when it falls due.

3. Sri R.A. Tripathi, learned counsel appearing for the applicant has submitted that the order impugned herein is illegal having been passed in breach of principles of natural justice in that neither in the show cause notice nor in the order impugned herein, alleged irregularity in the selection has been pointed out. The applicant, in the circumstances, could not get an effective opportunity to submit his explanation. It is also submitted by Sri

R.A.

Tripathi that the legality of the order is to be tested on the reasons given in the order itself and not on the basis of reasons supplemented in the affidavit. In the counter affidavit, it may be pointed out, it has been averred that applicant had been illegally declared successful in as much as he had, in fact, secured total 126 marks but in the compilation chart the grand total was shown as 132 instead of 126. It is further stated in the C.A. that one Ram Vriksha Prasad had secured a total of 128 marks in the examination. Learned counsel representing the respondents submits that the O.A. is not maintainable in view of the fact that the applicant has preferred an appeal dated 13.7.02 which was forwarded to the Director, Postal Services, Allahabad and is pending under SSPO, East Division, Varanasi on 17.7.02 for decision.

4. We have given our anxious consideration to the submission made by the learned counsel. The operation of the impugned order was stayed by the Tribunal vide order dated 19.7.02 and while passing the interim order it was observed that the nature of irregularities on which the selection of the applicant has been cancelled, was disclosed neither in the show cause notice served on the applicant nor in the order and thus, the opportunity given to the applicant was illusory and did not satisfy the rules of natural justice. We are also of the view that the respondents were not justified in cancelling the selection and appointment of the applicant without disclosing the alleged irregularity in the show cause notice. All that has been stated in the show cause notice is that irregularity was found in the Postman examination as a result of which the selection of the applicant was found illegal. Paragraph 3 of the show cause notice is quoted below :-



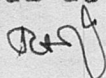
"3- श्री दिनकर पाठक तत्कालीन शाखा डाकपाल नरायनपुर
छौबेपुर वर्तमान पत्र वाहक वाराणसी मुख्य डाकघर की
उपरोक्त पत्र वाहक परीक्षा से सम्बन्धित उनके चयन में
अनियमितता पाई गई जिसके परिणाम स्वरूप पत्रवाहक पद से
सम्बन्धित उनका चयन अवैध पाया गया अतएव क्यों न उनका
उपरोक्त चयन निरस्त कर दिया जाय ।"

5. The show cause notice, in our opinion, does not satisfy the test of a valid show cause notice in as much as in the absence of specification of the alleged irregularity in the examination, it was not possible for the applicant to give any effective reply. Further, in the impugned order also, the alleged irregularity has not been pointed out in that after quoting the show cause notice and the reply submitted by the applicant, the Senior Supdt. of Post Offices has passed the following order :-

अतः श्री दिनकर पाठक तत्कालीन शाखा डाकपाल नरायनपुर
शाखा डाकघर छौबेपुर उपडाकघर वर्तमान पत्र वाहक वाराणसी
प्रधान डाकघर की पत्रवाहक पद पर अवैध चयन के परिणामस्वरूप
की गई नियुक्ति को एफ0आर031ए के अन्तर्गत निरस्त किया
जाता है ।

6. We are also of the view that FR 31A which has been invoked in passing the impugned order is not attracted to the facts of the present case. FR 31A, it may be pointed out, provides that notwithstanding the provisions contained in these rules, the pay of a Govt. servant, whose promotion or appointment is found to be or have been erroneous, shall be regulated in accordance with the general orders issued by the President in his behalf. In any case order of cancellation on vag-ue and indefinite ground cannot be sustained. It is also well settled, as held by the Hon'ble Supreme Court in Mahendra Singh Gill Vs. Chief Election Commissioner, New Delhi AIR 1978 SC 851, that legality of an order is to be judged on the basis of reasons given in the order and not on the basis of reasons supplemented by an affidavit.

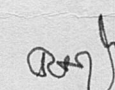
7. So far as the objection as to maintainability of



the O.A. due to the reasons that applicant has preferred appeal suffice is to say all that Section 20 of the A.T. Act, 1985 does not provide absolute bar for all that it provides is that a Tribunal shall not "ordinarily admit" an application unless it is satisfied that the applicant had availed all the remedies available to him under the relevant service rules as to redressal of grievances. The legal position is well settled that in cases where an order has been passed in breach of principles of natural justice, availability of alternative remedy will not be a bar to entertain an application under section 19 of the A.T. Act. That apart the O.A. has already been admitted vide order dated 19.7.02. The word "ordinarily" used in Section 20 gives a discretion to the Tribunal to admit an application even if applicant has not exhausted an alternative remedy available under the service rules. In view of the fact that the order impugned herein was passed in breach of the principle of natural justice, we are of the view that the Tribunal was right in admitting the O.A. vide order dated 19.7.02 and it would not be just and proper now to reject the O.A. simply because the applicant had preferred appeal and approached the Tribunal without waiting for a period of six months. In any case in view of Sub-Section (4) of Section 19, the appeal pending at the time of admission would be deemed to have been abated.

8. Accordingly the O.A. succeeds and the impugned order is set aside. The applicant is entitled to all consequential benefits. Parties are directed to bear their own cost. The respondents are directed to implement the order within a period of two months from the date of receipt of a copy of this order.


A.M.


V.C.

Asthana/