

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ORIGINAL APPLICATION NO. 1187 OF 2003

ALLAHABAD THIS THE 29th DAY OF March, 2005

HON'BLE MR. D.R. TIWARI, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J

Sri Chandra Prakash Tripathi,
Aged about 38 years,
S/o late Parshuram Tripathi,
R/o Village Labnapar,
District Basti

.....Applicant

(By Advocate Shri A.K. Srivastava)

V E R S U S

1. Union of India,
Through the Secretary,
Ministry of Communication,
Department of Posts,
New Delhi.
2. The Superintendent of Post Offices,
Basti Division,
Basti.
3. The Assistant Superintendent of post Offices,
Basti Division,
Basti.Respondents

(By Advocate: sri Saumitra Singh.)

ORDER(ORAL)

BY K.B.S. RAJAN, MEMBER-J

The challenge in this case is order dated 5th September, 2003 passed by the Superintendent of Post Offices, Basti Division, Basti (Respondent No. 2) whereby the services of the applicant (and similarly situated) were sought to be terminated. At the time

of admission hearing on 7th October, 2003, by way of an interim order, the operation of the said impugned order dated 5th September, 2003 has been stayed and the applicant is serving in the post of EDDA on the strength of the said interim order.

2. The capsulated facts of the case are as under:-

(a) The applicant has been functioning since 2-9-12002 as EDDA . in Walterganj, as evidenced by the Charge report of date (Annexure A-2). The applicant is stated to have been working in that capacity and it was by an order dated 5th September, 2003 that the applicant's services were sought to be terminated, without notice.

(b) The application, of course, did not make any representation to the authorities nor have the respondents taken any preliminary objection in this regard.

(c) Immediately on receipt of the impugned order the applicant had filed this OA and as stated above, interim order was passed.

(d) The grounds of attack by the applicant, as contained in para 5 of the OA inter alia are that the applicant having been appointed by following due process of law cannot be disengaged save as per the provisions of law and the order date 5th September, 2003 was bad in law.

3. The respondents have filed their version. They had referred to the following three communications to

✓

substantiate their point that as per the orders of the higher authority, no vacant post of GDS/EDDA could be filled in any office that is two handed or multi handed until further instructions and that during leave, every GDS should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him and such approval should be in writing and that such substitute cannot be allowed to function indefinitely and further that such substitute has no legal right to claim regularization in the Department:-

- (a) Order dated 14th August, 2003 (Annex CA 1).
- (b) Guidelines dated 21st October, 2002 (Annexure CA 2).
- (c) Order dated 24th April, 2003 (Annexure CA 3).

In view of the above the OA was contested by the respondents.

4. The arguments advanced by the counsel for the parties have been heard; the documents perused and we have given our anxious consideration to the case. Admittedly the appointment of the applicant as GDS/EDDA was w.e.f.02-09-2002, though as per the applicant the appointment was by duly following the procedure, while as per the respondents it was not so. The respondents have relied upon the order dated 14th August, 2003. This was followed by order dated 8th September, 2003, for such termination. Basically this order dated 14th August, 2003 is at least 10 months after the applicant had taken over and the said order did not stipulate that the past cases should be considered in the light of the said order. Thus, in terminating the service of the applicant, the respondents have given retrospective effect to the order dated 14th August, 2003, which is not permissible. In the case of **Govind Prasad v. R.G.**

Parsad, (1994) 1 SCC 437, at page 443 the Apex Court has held, " It is settled law that an executive order of the Government cannot be made operative with retrospective effect." Equally, the order dated 24th April, 2003 cannot have any impact upon the services of the applicant. So is the case with the guidelines dated 21st October, 2002. Hence, none of the orders relied upon by the respondents could be held to lend support to the case of the respondents. Thus, the order dated 5th September, 2003 and the subsequent order based on the same i.e. order dated 9th September, 2003 are liable to be set aside.

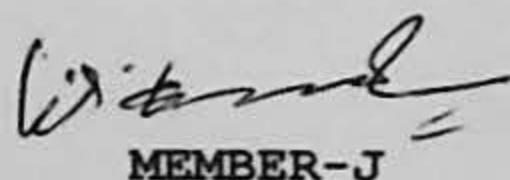
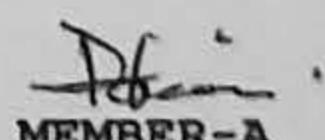
5. At the same time, it is to be seen as to what is the vested right that is available to the applicant by virtue of his appointment as GDS w.e.f. 2-09-2002. It is to be seen whether the appointment of the applicant was in accordance with the provisions of relevant recruitment rules, and if so, termination of the services of the applicant should be in accordance with relevant law and by following the principles of natural justice. As the method of appointment of the applicant as claimed by him has not been admitted by the respondent the respondents are at liberty to verify the same from the records and in case his appointment is, as contended by them, at the risk of some individual, whatever is the procedure for termination the same may be followed. Here again, the termination should not be for planting another substitute. Thus, the applicant is entitled to work

b/w

till a regular incumbent is appointed and by virtue of the applicant's already working if the rules provide for any preference/concession in the appointment as per the Rules, the same shall also be extended to the applicant.

6. In the end, the O.A. succeeds. The order dated 5th September, 2003 is quashed and set aside. Consequently, any order passed in the wake of the said order dated 5th September, 2003 would also become non-est. The applicant is entitled to continue to work as GDS provided his appointment is in accordance with the procedure, which should be verified from the records. The respondents are at liberty to take suitable steps for filling up of the post of GDS/EDDA on regular basis and in that event, the concessions/benefits as available to the substitute shall be made available to the applicant.

Under these circumstances, no order as to cost.


MEMBER-J
MEMBER-A

GIRISH/-