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[RESERVED]

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ORIGINAL APPLICATION NO.344/03

Dated this the 27th day of May, 2011.

CORAM:

HON'BLE SHRI S.N. SHUKLA, MEMBER (A)

HON'BLE SHRI SANJEEV KAUSHIK, MEMBER (J)

Jado Ram, Son of late Sri Madan Lal,
R/o Village Pienna, P.O. Pienna,
District Muzaffarnagar, posted as
R.D.S.P.H. 'Up Dakpal) at Pienna,
Post Office, Pienna, District Muzaffarnagar

... Applicant

(By Advocate Shri Ajit Kumar)

Versus

1. Union of India through Secretary,
Ministry of Communication (P&T),
Sansad Marg, "Dak-Bhawan",
New Delhi 110 001.

2. Director, Postal Service Office
Post Master General,
Bareilly, U.P.

3. *Sri Suprat or Post Office, Muzaffarnagar Dist. Muzaffarnagar* Respondents.
(Respondents by Shri R.K. Srivastava, Counsel for the Union of India.)

Added as per order dt. 26/8/11

ORDER

PER MR. SANJEEV KAUSHIK, MEMBER (J):

The applicant is aggrieved against the order of his removal dated 28th October, 1993 (Annexure A.1) and order dated 23rd September, 2002 vide which his statutory appeal has also been dismissed (Annexure A.2).

Signature

2. Brief facts of the case are that the applicant was initially appointed as Extra Departmental Mail Peon at Pienna Post Office (District Muzaffarnagar) on 31.7.1986 regular basis. Thereafter he was engaged as Up Dakpal, temporarily against leave vacancy (Annexure A.3). It is submitted that even after joining of Ravindra Kumar who was earlier on leave against which the applicant was appointed, the applicant was allowed to continue to work as Extra Departmental Sub Post Master as said Ravindra Kumar was engaged elsewhere. While the applicant was working at Pienna Respondent No.3 invited names from District Employment Exchange Officer, Muzaffarnagar for regular appointment to the post of Sub Post Master against which the applicant was working. The applicant also states to have submitted application in response to that. The District Employment Exchange Officer, Muzaffarnagar sponsored five names to Respondent No.3. Instead of making regular selection and to consider names forwarded by Employment Exchange and of, the Inspector of Post Office appointed one Shri Indra Jit Singh S/o Vikramajit Siongh, R/o Vikramajit Singh, on temporary basis vide its order date 1st December, 1982 (Annexure A.4). In consequence of appointment of Indra Jit Singh the applicant was put off duty on 5th December, 1982. Against order dated 5.12.1982 the applicant approached this Tribunal by way of Original Application No. 31/1993. During the pendency of the above stated original application the respondents filed Supplementary Counter Affidavit on 17th November, 1996 wherein they first time averred that the applicant had already been removed from service

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vide order dated 28th of December, 1993. It is averred that for the first time on 17.11.1996 the applicant came to know that he has been removed from service after conducting an inquiry, as neither chargesheet nor he was associated in the inquiry proceeding. Even order of removal was not served upon him. It is submitted that all the proceedings has been conducted behind his back. This Tribunal vide its order dated 17.8.2000 directed the respondents to supply copies of necessary documents to applicant so as to enable him to file statutory appeal against the order of removal. In terms of the above order the applicant made a representation on 15.10.2001 for supply of documents (Annexure A.5). On 19.10.2001 respondent No.3 informed the applicant that all documents have already been supplied to him. Thereafter, the applicant is stated to have moved another applications on 3.11.2001, 15.12.2001, 21.1.2002 and 14.2.2002 reiterating his request for supply of documents. It is alleged that Respondent No.3 vide its letter dated 2.11.2002 refused to supply the documents referred in the charge-sheet. (Annexure A.8). By another letter dated 31.5.2002 respondent No.3 categorically informed the applicant that he was not obliged to give any other documents as demanded by the Applicant (Annexure A.9). In absence of the documents and in terms of the order passed by this tribunal, the applicant filed appeal against the order of punishment before the appellate authority i.e. Respondent No.2 (Annexure No.10). On 23rd September, 2002 Respondent No.2 rejected the statutory appeal (Annexure A.1). Hence the Original Application.

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3. Upon notice the respondents filed detailed Counter Affidavit by which they contradicted the averments made by the applicant in the Original Application. It is averred that on 14th of May 1992, some serious irregularities were found and the applicant was put off duty. Thereafter on 18.1.1993 charge-sheet was issued under Rule 8 of EDA (Conduct & Service) Rules 1964 (for brevity "1964 Rules) which was sent to him by registered post but the same was received back with remarks "Addressee refused to accept". Enquiry officer was appointed. After receiving the enquiry report, a show cause notice was issued on 7.10.1993 to the applicant, which was also sent through registered post. Ultimately, acting upon the report the competent authority passed the order of removal. The applicant has also filed the rejoinder in which he has specifically denied the averments made by the respondents in the counter affidavit regarding refusal of letter.

4. Respondents have also filed the Supplementary Affidavit in which they tried to justify that every efforts were made to serve charge-sheet upon the applicant and thereafter even the information was given to the applicant to associate in the enquiry proceedings. With regard to Indrajit Singh it is averred that Indrajit Singh was appointed in pursuance to notice on 5.11.2002.

5. We have heard Shri Ajit Kumar Learned Counsel for the applicant and Shri R.K. Srivastava, Learned Counsel for the respondents. Learned Counsel for the applicant has argued that the impugned order dated 28.12.1993 (Annexure A.I) is illegal, arbitrary and violative of Article 14 of the Constitution of India as before

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passing the impugned order neither the charge-sheet was served upon the applicant nor the applicant was associated in the enquiry proceedings and straightway behind his back alleged enquiry was conducted which resulted in passing the impugned order of removal. Therefore, the same is liable to be set aside. He further argued that even his statutory appeal has been rejected on 23/9/2002 by passing non speaking order, which is also liable to be set aside as no reason whatsoever has been recorded while dismissing his statutory appeal. It is urged that in terms of the order dated 17.8.2010 passed in the earlier round of litigation this Tribunal directed the respondents to supply the necessary document mentioned above so that the applicant may file appeal before the appropriate authority. It is further pointed out by the learned Counsel for the applicant that the charge-sheet under Rule 8 of the 1964 Rules issued on 18.1.1993 was never served upon the applicant and he never refused to take delivery of the same. He submitted that the envelope of the letter did not have the complete address of the applicant. Therefore, no question arises for refusal of the same.

6. On the other hand, Learned Counsel for the respondents have challenged the locus of the applicant in filing the instant Original Application on the ground that the applicant was earlier put off duty and subsequently removed from service, therefore, he is not having any *locus standi* to challenge the appointment order of the individual which was made after following due procedure as he was not in service at the relevant point of time. The Learned Counsel for the

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respondents also supported the impugned order of removal and submitted that every effort was made by the respondents to service the charge-sheet upon the applicant but whenever letter was sent by the respondents the same was received back with the remarks that applicant refused to take delivery. With regard to supply of documents it is argued by the Learned Counsel for the respondents that in terms of the order passed by this tribunal every relevant document was provided to the applicant.

7. We have considered the rival submissions and have perused the papers on record with the able assistant of Learned Counsel for the parties. The solitary contention of the applicant is non compliance of the well established principle of natural justice in passing the impugned order of removal from service. Admittedly, the applicant was never served with the charge-sheet, or the order of removal. We have gone through the envelope of the registered letter dated 18.1.1993 which is enclosed with the Counter Affidavit at page 13 to 20 by which it is clear that respondents have not even given the complete address and the addresss mentioned therein reads as under;

"Joda Ram, Put Off Duty, Muzaffar Nagar, Pienna."

Where as the complete address of the applicant in the record is Joda Ram S/o late Shri Madev r/o village Pienna Post Office, Dist. Muzaffar Nagar. It is, therefore, clear that the allegation of the applicant stand proved. Therefore, it is safely presumed that the respondents have not bothered to serve the applicant and have passed the impugned order behind his back, which is in violation of

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the principle of natural justice. It is repeatedly held by the Hon'ble Apex Court that every administrative authority is bound to comply with well established principle of *audi alteram partem*. Reliance is placed upon the case of **State of Orissa vs. Binapani Dei AIR 1967 SC 1269** wherein the Hon'ble Supreme Court has observed as under:

"9.An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

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"12. It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even a administrative order which involves civil consequence, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence." No such steps were admittedly taken, the High Court was, in our judgement, right in setting aside the order of the State."

[emphasis supplied]

The primary ground of challenge to the respondents action rests on the assertion that the same is void and illegal on the ground of violation of principle of natural justice, by the respondents. In the case of **Maneka Gandhi vs. UOI AIR 1978 SC 597** the Hon'ble Supreme Court defined natural justice as 'a fact of fair play' and defined it as 'quintessence of the process justice, inspired and guided by fair play in action; while in, another situation it can be descried as 'distillate of due process of law.' Therefore, on this count alone the impugned order is liable to be set aside.

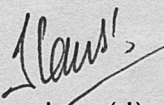
8. With regard to the allegation of the applicant that despite the orders passed by this Tribunal he has not been given the necessary documents enabling him to file the statutory appeal. We have specifically asked the Learned Counsel for the respondents as

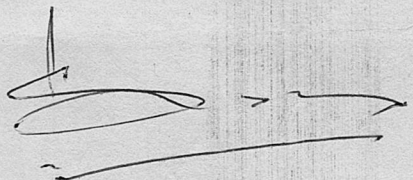
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whether the respondents have provided the documents asked by the applicant. The Ld. Counsel for the respondents neither pointed out from the Counter Affidavit nor from the record that they have provided the documents asked by the applicant. When the Counsel for the respondents is confronted with the averments made in Para No.4.15 of the O.A. he was not in a position to answer the same. We have also perused the letter written by the respondents No.2 wherein he specifically refused to provide the documents asked by the applicant (Annexure A.7 and A.8). Therefore, without going into the merit of the case, and only on the ground of violation of principle of natural justice, and in the conspectus of the facts and circumstances of the case, we hold that the impugned orders are not sustainable in the eyes of law and the same are accordingly quashed. This order will not, however, come in the way of holding of *denovo* ^{inquis} should ~~be~~ ^{the} competent authority decide to hold one, by following the principle of natural justice.

9. The O.A. is accordingly, allowed. No order as to costs.


Member (J)


Member (A)

Sj*