

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 26 DAY OF 2, 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

ORIGINAL APPLICATION NO. 397 OF 2003
(Under Section 19, Administrative Tribunal Act, 1985)

Dori Lal S/o Shri Nawal Singh, R/o Ram Vihar Colony, Pala Road, Aligarh.
.....Applicant

By Advocate:- Shri A. Tripathi

Versus

1. Union of India through its Secretary, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Agra Region, Agra.
3. Senior Superintendent of Post offices, Aligarh Division, Aligarh.
4. Sub Divisional Inspector of Post Offices, East Sub Division, Aligarh.

.....Respondents

By Advocate- Shri R.K. Tiwari

ORDER

(DELIVERED BY: HON'BLE MR. A. K. GAUR, MEMBER-A)

By means of this Original Application, Applicant has prayed for following main relief/s:-

- (i) To issue an order, rule or direction for quashing and setting aside the impugned order dated 3.4.2003 by which the respondent no. 3 cancelled the appointment of the applicant after review.
- (ii) To issue an order, rule or direction for quashing and setting aside the impugned termination order dated 8.4.2003 passed by the respondent no. 4 in pursuance of the cancellation order dated 3.4.2003 (Annexure no.

✓

A-1 in compilation no. part 1 to this Original Application).

- (iii) To issue as order, rule or direction in the nature of mandamus directing the respondents to allow the applicant to continue to work on the said post of E.D.M.P, Bonai by giving all the benefit as salary and etc as usual the applicant is drawing.

2. Brief facts of the case are that in pursuance of the letter dated 06.09.2000 (Annexure A-2 of O.A), the applicant submitted his application on prescribed proforma alongwith all required documents. Under the Rules the eligibility criteria were the minimum High School passed and having suitable accommodation for keeping post office and income etc. The applicant fulfilled all the conditions of eligibility and on the basis of merit, he was selected and appointed as E.D.M.P Dado, Aligarh by the Senior Superintendent of Post offices, Aligarh Division, Aligarh (respondent No. 4) vide Memo No. B-EDMP/Bonai/2000-01 dated 05.10.2000 (Annexure A-3 of O.A). In pursuance of the order and after completing pre requisite condition and training, the applicant joined as E.D. Packer, Naurangabad on 01.11.2000 (Annexure A-5). He is still continuing on the post on the strength of the stay order granted by the Tribunal vide order dated 17.04.2003.

3. Learned counsel for the applicant submitted that the Post Master General, Agra Region, Agra /respondent No. 2 directed the respondent No. 3 to make an enquiry regarding the residence and Caste of the applicant from the District Magistrate and the respondent No. 3 started enquiry after two years of the appointment

of the applicant. Learned counsel for the applicant would contend that the respondent No. 3 made an enquiry from Tehsildar, Alwar and also the District Magistrate, Aligarh and Hathras. The District Magistrate, Hathras submitted his report to the office of respondent No. 3 stating that the applicant originally belongs to Alwar (Rajsthan) and also belongs to Sayrya Caste, which is recognized S.T. Community. The respondents also made an enquiry regarding residence which clearly indicates that the applicant has got landed property in the Aligarh and is also residing in the delivery jurisdiction of the concerned Village Post Office. According to the applicant, the respondent No. 2 / Post Master General, Agra Region, Agra directed the respondent No. 3 / Senior Superintendent of Post Office, Aligarh Division, Aligarh to review the appointment of the applicant, who reviewed and cancelled his appointment and in reference to the cancellation order No. A-133/Bonai dated 03.04.2003 (reference has been mentioned in order dated 08.04.2003) passed by the S.S.P.Os, Aligarh Division/respondent No. 3, the respondent no. 4 / S.D.I, East Sub Division, Aligarh passed the order dated 08.04.2003/Annexure-A1 terminating the services of the applicant.

4. The grievance of the applicant is that the action of the respondents is against the rules prescribed by the D.G. Posts wherein it has been provided that if an authority administratively higher than the appointing authority wants to review or cancel the erroneous appointment made by the competent appointing authority, then it is

✓

binding and necessary on the part of the Reviewing Authority to issue a show cause notice to the affected employee before passing the said cancellation order. Learned counsel for the applicant submitted that the action of the respondents in passing order dated 08.04.2003 by the respondent No. 4 in reference to the direction of S.S.P.Os/respondent No. 3 is totally against the settled principle of law as the higher authority has no power inherent or otherwise to review or cancel the appointment, which was made by the competent authority i.e. respondent No. 3. In order to buttress the aforesaid argument, the learned counsel for the applicant placed reliance on following decisions :-

- i. N. Ambujakashi Vs. U.O.I & Ors passed by Full Bench of this Tribunal at Hyderabad in O.A. No. 57/1991 (dated 10.02.1995)
- ii. Baij Nath Tripathi Vs. Union of India & Ors. 2001 (3) ATJ 285.
- ii. R. Jambukeswaran and Ors. Vs. U.O.I & Ors. A.T.F (Full Bench) 2002-2003 page 200-201
- iii. Ravi S. Bhalakar Vs. Superintendent of Post Offices, Haveri & Ors - A.T.D Vol. 38 (2002) (3) page 104
- iv. Hari Prakash A.T.J 1993 (3) Vol 29 page 550.
- v. Tilakdhari Yadav Vs. U.O.I & Ors. - 1997 ATC Vol. 36 page 539

4. Learned counsel for the applicant further submitted that the respondents have not issued any show cause notice or opportunity before reviewing or canceling and terminating the services of the

✓

applicant, therefore, the order dated 08.04.2003 is totally illegal, arbitrary, without jurisdiction and against the principle of natural justice. It is further stated by the learned counsel for the applicant that as the applicant was duly selected and properly appointed, and took over the charge of the post in question, he became a central civil servant and had to be governed by service rules and his services could not be terminated under Rules 8 of GDS (C&E) Rules 2001, unless the post was abolished or the work of the applicant was found unsatisfactory. Since both the contingency did not arise the services of the applicant could not be terminated under rules 6 of GDS (C&E) Rules, 2001. Learned counsel for the applicant would contend that once the applicant was regularly appointed after proper selection procedure and he had joined the services, it was not open to the respondents to terminate the services of the applicant arbitrarily instead, the applicant was entitled to protection of Article 311(2) of the Constitution of India.

5. On notice, respondents filed Counter Affidavit. Learned counsel for the respondents contended that to fill up the post in question, the vacancy was notified to Employment Exchange, Aligarh for sending three name of suitable candidates belonging to ST community. The applicant mentioned his domicile address as Ram Vihar Colony, Pala Road, Aligarh showing his caste as "Sahria". At the time of appointment, the applicant produced his certificate showing his residence "Mohalla- Ladia, Alwar (Raj), therefore, on receipt of

✓

complaint regarding permanent address of "Vill. Nagla Ahir, Post-Barwana, Distt- Hathras" an enquiry was made and the appointment of the applicant was found to be erroneous and as such the SSPOs, Aligarh as per order contained in Directorate Letter No. 22-1/2000-ED, Trg dated 24.05.2001 and Sub Rule 8 of GDS (Conduct & Employment) Rules, 2001 reviewed the appointment of the applicant and his services were terminated by the respondent No. 4, who is appointing authority of the applicant, vide order dated 08.04.2003.

6. Applicant filed Rejoinder Affidavit reiterating more or less the same facts as stated in the Original Application. .

11. We have heard Sri A. Tripathi, learned counsel for the applicant and Sri R.K. Tiwari learned counsel for respondents and carefully gone through the written argument filed by the counsel for applicant.

12. Having heard counsel for the parties we find that the applicant was selected after following recruitment rules and took over the charge of the post in question, hence he became a Central Civil Servant and therefore, his services cannot not be terminated under Rues 8 of GDS (C&E) Rules 2001, unless the post was abolished or the work of the applicant was found unsatisfactory. In view of the decisions rendered by Hon'ble Supreme Court reported in **1986 SCC (L&S) 745 - Smt. Rajinder Kaur Vs. State of Punjab and another** and **2000 (2) E.S.C 932(S.C) - V.P. Ahuja Vs. State of Punjab and**

others , services of the applicant cannot be terminated without affording any opportunity of hearing. Hon'ble Supreme Court in the case of Smt. Rajinder Kaur (Supra) has held as under: -

"13. On a conspectus of all these decision mentioned hereinafter, the irresistible conclusion follows that the impugned order of discharge though couched in innocuous terms, is merely a camouflage for an order of dismissal from service on the ground of misconduct. This order has been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause the purported order of dismissal from service and without giving any opportunity to cross-examine the witness examined, that is, in other words the order has been made in total contravention of the provision of Article 311(2) of the constitution. The Impugned order is, therefore, liable to be quashed and set aside. A writ of certiorari be issued on the respondent to quash and set-aside the impugned order dated September 9, 1980 of her dismissal from service. A writ in the nature of mandamus and appropriate direction be issued to allow the appellant to be reinstated in the post from which she has been discharged. The appeal is thus allowed with cost....."

13. In the case of V. P. Ahuja (Supra) Hon'ble Supreme Court has further held as under:-

"6. Learned Counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant can not claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were

W

terminated in terms of conditions set out in the appointment order. This plea can not be accepted.

7. A probationer, like a temporary servant, is also entitled to certain protection and his services can not be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principal of natural justice.

8. The affidavits filed by the parties before the high court as also in this court indicates the background in which the order, terminating the services of the appellant came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant."

14. In the instant case admittedly the applicant has not been afforded any opportunity of hearing before passing termination order dated 08.04.2003, which is totally in violation of principles of natural justice and fair play, hence in any view of the matter the impugned order dated 08.04.2003 is not sustained in law.

15. We have also given our anxious thought to the pleas advanced by the learned counsel for the applicant that when a person fulfils all the eligibility conditions and is appointed by the competent authority, his appointment cannot be cancelled merely on the direction issued by the higher authority. In the instant case, the applicant was appointed after following due recruitment process by the respondent No. 4, his case has been reviewed by the Senior Superintendent of Post Offices, Aligarh Division, Aligarh/respondent No. 3, and in pursuance of the letter No. A-133/Bonai dated 03.04.2003 issued by the respondent No. 3, the S.D.I, East Sub Division, Aligarh/respondent No. 4 terminated the services of the applicant. Learned counsel for the applicant urged that

✓

Rule 6 of Extra Departmental Agents (Conduct and Service) Rules, 1964 did not confer power upon a higher administrative authority to review or revise the order of appointment purported to have been passed by the lower authority under Rule 3 of the said Rules. The aforesaid view was also taken by the Full Bench of this Tribunal at Hyderabad In the judgment dated 10.02.1995 passed in O.A. No. 57/1991 - **N. Ambujakashi Vs. U.O.I & Ors.** In the said judgment the Full Bench relying on several decision rendered by the Apex Court has held that Rule 6 of Extra Departmental Agents (Conduct and Service) Rules, 1964 (for short, "the Rules") did not confer power upon a higher administrative authority to revise the order of appointment purported to have been passed by the lower authority under Rule 3 of the said rules. The higher authority has no inherent power or otherwise to revise the order of appointment passed by the lower administrative authority.

(Underlined to lay emphasis)

16. Similar view was also taken by this Tribunal at Allahabad in **Tilakdhari Yadav Vs. U.O.I & Ors. - 1997 ATC Vol. 36 page 539 (FB)** and at Madras in **R. Jambukeswaran and Ors. Vs. U.O.I & Ors. - A.T. (Full Bench) 2002-2003 page 200-201** and in the case of **Baij Nath Tripathi Vs. U.O.I & Ors reported in 2001 (3) ATJ 285.** In the case of Tilakdhari Yadav (Supra) the Full Bench of this Tribunal at Allahabad held as under: -

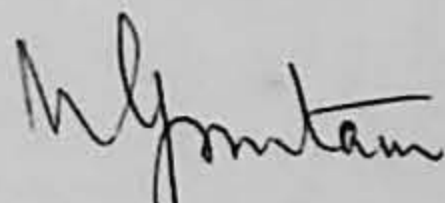
"6. In the light of our discussion aforesaid , we are of the view that under Rule 6 of the Rules, the appointing authority does not possess power to cancel the appointment of Extra Departmental Agent for reasons other than unsatisfactory service or for administrative reasons unconnected with the conduct of the appointee, without

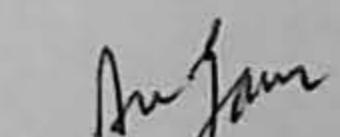
giving him an opportunity to show cause. Accordingly , our answer to the question referred to the Full Bench is as follows:-

Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause'."

17. In view of the observations made above, we hardly find any justification in the action of respondents in passing termination order dated 08.04.2003. Accordingly the O.A is allowed. The letter dated 03.04.2003 (in reference thereof the termination order has been passed) issued by the SSPOs, Aligarh Division/respondent No. 3 is hereby declared null and void. Accordingly the order dated 08.04.2003 (Annexure A-1 of O.A) passed as a consequence of letter dated 03.04.2003 is hereby quashed and set aside. As the applicant is still continuing in service on the strength of the stay order dated 17.04.2003 granted by the Tribunal, the respondents are directed not to interfere with the working of the applicant on the post of EDMP, Bonai.

18. Parties are directed to bear their own costs.


Member (A)


Member (J)

/Anand/