

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.753 of 2003

Thursday, this the 17th day of July, 2003.

Hon'ble Maj. Gen. K.K.Srivastava, A.M.
Hon'ble Mr. A.K. Bhatnagar, J.M.

Anil Kumar Singh,
Son of Vijay Bahadur Singh,
Resident of Village and
Post - Mathura Chhaper,
District Deoria.

.... Applicant.

(By Advocate : Shri Amarendra Singh)

Versus

1. Union of India through
the Secretary,
Ministry of Communication
Department of Post,
New Delhi.
2. Director Postal Services,
Gorakhpur Region,
Gorakhpur.
3. Senior Superintendent Post Offices
Deoria, Division Deoria.
4. Trileki Nath Srivastava
Son of Amiruddh Lal Srivastava,
Resident of Village & Post
Maghi Kothilwa, District Kushinagar.

.... Respondents.

(By Advocate : Shri R.C.Joshi)

ORDER (ORAL)

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

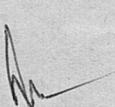
In this O.A. filed under Section 19 of A.T. Act, 1985, the applicant has challenged the order dated 4.6.2003 passed by respondent No.2 i.e. Director Postal Services (in short DPS) regarding putting back on duty, respondent No.4 who was put off

Contd....2.

duty. The applicant has prayed for quashing the order dated 4.6.2003 and has prayed that a direction be given to the respondents not to interfere in the functioning of the applicant as Gramin Dak Sewak, Branch Post Master Kinnerpatti, Padrauna, District Kushinagar.

2. The facts, in short, of the case are that the respondent No.4 i.e. Shri Triloki Nath Srivastava was the Branch Post Master, Kinnerpatti, Padrauna, District Kushinagar. The respondent No.4 was dismissed from service by respondent No.3 i.e. Senior Superintendent Post Offices (in short SSPO) vide order dated 30.7.2001. The respondent No.4 filed appeal before DPS. The present impugned order has been passed by DPS, Gorakhpur to put back the respondent No.4 on duty. It appears that an order dated 7.10.2002 was passed by respondent No.2 setting aside the punishment of dismissal of respondent No.4 issued by respondent No.3 as directions have been given for initiating disciplinary proceedings de-novo.

3. After the dismissal of respondent No.4 vide order dated 30.7.2001 the applicant was appointed on provisional basis as EDBPM, Kinnerpatti, Padrauna by order dated 24.2.2003. The applicant joined his duties on 27.2.2003, ^{in view} with issuance of the impugned order dated 4.6.2003, ^{which} resulted into the removal of the applicant when respondent No.4 is put back on duty. Aggrieved by this, the applicant has filed this OA.


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4. Shri Amarendra Singh, learned counsel for the applicant submitted that so far the order dated 4.6.2003 has not been implemented and the applicant continued to be working as EDBPM, Kinnerpatti, Padrauna. The learned counsel further submitted that since the applicant has been appointed on the post with clear stipulation that he would continue on the post till the disciplinary proceedings are finally disposed of and he has exhausted all channels of remedy available to him. The learned counsel argued that the impugned order is not legally tenable as it is in contravention to the condition laid down in the appointment letter of the applicant dated 24.2.2003 (Annexure-A-3).

5. The learned counsel for the respondents opposing the claim of the applicant prayed for time to file counter. We are not inclined to call for counter in this case as it is a fit case for final disposal at the admission stage itself.

6. Heard counsel for the parties. The main contention of the applicant is that he can not be removed from his present post till the disciplinary proceedings against respondent No.4 are finalized and the respondent No.4 has availed all the channels for remedy available to him. In order to appreciate the controversy raised by the applicant, we would like to refer the appointment letter of the applicant dated 24.2.2003. In para 3 of the letter of appointment, the following is mentioned :-

" Shri Anil Kumar Singh s/o Vijay Bahadur Singh will. and post Mathura Chhapar (name and address of the selected candidate) is offered the provisional appointment to the post of G.D.S.B.P.M. Kinnerpatti

(name of post). Shri Anil Kumar Singh (name of the selected candidate) should clearly understand that if ever it is decided to take Shri Triloki Nath Srivastava (name of the ED Agent who has been dismissed) back into service, the provisional appointment will be terminated without notice."

Perusal of Para 3 reproduced above leaves no doubt in our mind that the provisional appointment of the applicant can be terminated without notice, in case it is decided to take back respondent No.4 who has been dismissed.

7. We go back to the impugned order dated 4.6.2003 passed by respondent No.2. In para 2, the respondent No.2 has mentioned that by order dated 7.10.2002 the disciplinary proceedings done earlier have been set aside with order to initiate the disciplinary proceedings de-novo. It appears that after this order dated 7.10.2002 was passed, respondent No.4 was put off duty. In para 3 of the impugned order, it has been observed by respondent No.2 that the put off duty period of respondent No.4 is un-necessary being prolonged. Therefore, the respondent No.2 has ordered that this period of put off duty of respondent No.4 should come to an end with immediate effect and respondent No.4 be taken back on duty.

8. It is an admitted fact that respondent No.2, i.e. DPS Gorakhpur, is the Appellate Authority. The Appellate Authority, as per rules, can always order for setting aside the punishment order passed by disciplinary authority with direction for de-novo proceedings. This has been done by Appellate Authority by order dated 7.10.2002.

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9. We do not find any errors of law in the action of the Appellate Authority. Not only this, we ^{do not} ~~also~~ consider that the Appellate Authority has committed ^{in any} ~~no~~ irregularity or illegality in directing the respondent No.3 to take back the respondent No.4 on duty.

10. For the aforesaid reasons, we do not find any good ground for interference. The OA is devoid of merits and it is accordingly dismissed. No order as to costs.



Member-J



Member-A

RKM