

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

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**O.A.NO.39/91**

~~**R.A.NO.**~~

DATE OF DECISION 3.01.1997

Shri Kishorgiri Ishwargiri Gosai Petitioner

Mr.P.H.Pathak Advocate for the Petitioner [s]  
Versus

Union of India & <sup>U</sup>rs. Respondent

Mr.Akil Kureshi Advocate for the Respondent [s]

**CORAM**

The Hon'ble Mr. K.Ramamoorthy : Member (A)

The Hon'ble Mr. A.K.Mishra : Member (B)

**JUDGMENT**

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

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Shri Kishorgiri Ishwargiri Gosai,  
E.D.A., Patna,  
Dhasagam.

: Applicant

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India  
Notice to be served  
through the Secretary,  
Post Department,  
Central Secretariat,  
New Delhi.

2. Sub-Divisional Inspector,  
Department of Post,  
Savarkundala Division,  
Savarkundla-364 515

: Respondents

(Advocate: Mr.Akil Kureshi)

J U D G M E N T

O.A.39/91

Date: 3.01.1997

Per: Hon'ble Mr.K.Ramamoorthy

: Member (A)

The short question involved in this application is the off-debated situation where a Deptt. chooses to use its "power to terminate the service" while the applicant alleges that action to be an order of removal but without following due procedure of law as a mere short cut.

The applicant in this case was working as an E.D.A. for the last two and half years i.e. since 25.11.1987. During his service period, there had been some complaints and after getting his explanation, the applicant was subjected to a "severe warning". The applicant in his turn has also been represented against undue pressures being brought against him. However, on continued receipt of complaints, the Deptt. decided to invoke Rule 6 of the P & T EDA (Conduct & Service) Rules and decided to terminate the service on account of 'unsatisfactory' service.

The applicant has contended that the action taken by the respondent deptt. was in the nature of disciplinary action and the order of termination was in effect an order of removal ~~but~~ without following the due procedure under law. The respondent deptt. in their written statement of 20.9.1991 while not denying the complaints received against the applicant has averred that ultimately the Deptt. had found the service of the applicant to be unsatisfactory. "Termination without any stigma is not a penalty but an exercise of the right of appointing authority in respect of EDA having less than 3 years service".

The counsel for the applicant and respondent Deptt. were heard.

As stated out the outset, the question basically revolves round the resolution of the issue as to whether the termination is a "termination simplicitor" or whether it is a short cut step to avoid the procedure involved in carrying out a disciplinary action. The task of lifting the veil in this case, has been considered made easier by the very explicit written statement of the respondent deptt. The relevant extracts of the statement are reproduced below:

"The unsatisfactory work of the applicant was brought to his notice when the Mail overseer Sawarkundla visited Khijadia Branch post office on 21-6-1989, the applicant failed to deliver 8 post cards, 3 inland letters, ~~two~~ envelopes and one signed acknowledgement of Registered letter on that day and found undelivered from the combined box of the post office. The applicant had ~~admitted~~ this fact in his written statement dated 22.6.1989 recorded by the Mail Overseer-Sawarkundla.....I

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state that Shri Mulji Jadav Patel the Sarpanch of Khijadia village had bitterly complained on 26.7.1989 against the applicant that he was misdelivering the clearly addressed articles, throwing away the articles for delivery well, river and after taking away correspondence letters seeming to be between spouses.....The Mail Overseer, Savarkundla submitted his enquiry report No.154 dated 30.9.1989 to the Senior Superintendent of Post Offices Bv. Dn. Bhavnagar. All the enquiry papers were sent to the Sub-Divisional Inspector (P) Savarkundla on 13-10-1989 for taking necessary action. ....The S.D.I. (P) Savarkundla had gone through the papers and the applicant was severely warned vide his letter NO.CR/Misc./90 dated 22.3.1990..... I further state that the Sarpanch Shri Khijadia Gram Panchayat had again bitterly complained on 5.2.1990 against the applicant regarding irregular delivery of DAK, throwing away of articles for delivery in well, taking away correspondence letters seeming between spouses. Another complaint dated 1.2.1990 from Shri L.B.Patel of Patna was received that 16 letters were found from the well situated between Khijadia and Malapara villages. .... But the grievances of the public members continued even thereafter resulting into a complaint dated 26.5.1990 from Shri M.B.Renva, M.L.A.--Gadhada-Umrala constituency on behalf of the members of public. I crave leave to refer to and rely upon the same at the time of hearing of this application. At last, the S.D.I. (P) Savarkundla personally enquired into these serious and repeated complaints on 19-6-1990.....I state that the applicant himself in his written statement dated 19.6.1990 had admitted irregularities. The S.D.I. (P) Savarkundla had submitted his enquiry report under No.GR/Misc/90/Patna EDA/90 dated 20.6.1990 to the SSPOs-Bv.division, Bv. The S.D.I. (P) Savarkundla being an appointing authority, with the above facts and from the evidence adduced from before him, terminated the services of the applicant from 19.6.1990 A.N."

The above averments clearly indicate that an enquiry the action contemplated was a direct result of/ resulting in termination. Apart from the legal wrangle as to whether the event as narrated above can be stated to be the foundation of motive behind the action, there are two other aspects which need consideration. The Deptt. itself has directed against invoking of Rule 6 for dealing with specific acts of misconduct. D.G., P & T has its letter No.151/2/78-Disc.V, dated 19.4.1979 has prescribed that "Initiation of regular disciplinary proceedings is necessary, if specific irregularity comes

to surface in view of the safeguard afforded to E.D. Agents under Article 311 of the Constitution". (Note under Rule 6 in Swamy's compilation of Service Rules for Extra Departmental Staff). In this case, as seen from the averment above, specific acts of misconduct have been alleged. The complaints have emanated even from political functionaries like MLA and Sarpanch. All the more therefore there is reason to make an enquiry and take action against such alleged misconduct as justice is not only to be done but also is seen to be done. In this case even some enquiry had been completed, wherein some admission of the applicant has also been obtained.

The second aspect of this case is that the acts of misconduct, if proved, are sufficiently serious for the type of functionary that the applicant is, as to require regular disciplinary action which should be stigmatic so that the public service does not suffer by re-engagement of such persons. Therefore, also a short cut via stigmaless action is not administratively warranted.

The Tribunal therefore has no hesitation to come to the conclusion that action taken in this case is in effect, a disciplinary action. Hence, the impugned order of 19.6.1990 suffers from the serious defect of not following the legal procedure as provided for in Rule 8. This order has, therefore, to be quashed.


There is one more aspect of the case which deserves direction. In this case the impugned order is of the year 1990, and the case has come up to be decided in 1996, the delay having been caused due to administrative reasons, priority for hearing etc. The question as to whether with the quashing of the order, reinstatement automatically follow is an issue


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which have to be decided. In this particular case, we would like to be guided by the direction in para-5 of the Apex Court's judgment as reported in 1955 (1) SC SLJ p.258 in the case of State of Haryana & Anr. vs. Jagdish Chander. In this case while therefore quashing the impugned order, we allow the option to the Deptt. even to proceed further without reinstatement by directing an enquiry if they intend to hold and to give an opportunity to the officer concerned to defend himself and then pass appropriate orders. On the basis of the result of the enquiry, necessary reliefs need to be moulded.

In view of the above, though both the counsel had pleaded in favour of the applicability of I.D. Act provision in the context of even "termination simpliciter" and non-applicability of the Act in respect of the employees of the respondent Deptt., these pleadings are not discussed or adjudicated in this order.

The O.A. is allowed with the above direction.  
No order as to costs.

  
(A.K. Mishra)  
Member (J)

  
(K. Ramamoorthy)  
Member (A)