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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No.285 of 1988.

Date of decision - January 29, 1990.

Sri Surendra Pradhan,
Son of Sri Niranjan Pradhan,
Village-Palaspot,
via- Boudh - 762 014,
District- Phulbani.

.... Applicant

Versus.

1. Union of India, represented by
the Postmaster General, Orissa Circle,
Bhubaneswar - 751 001, Dist-Puri.
2. Director of Postal Services,
Sambalpur Region,
Sambalpur - 768 001.
3. Superintendent of Post Offices,
Phulbani Division,
Phulbani (O) - 762 001.
4. Sub-Divisional Inspector (Postal),
Boudhraj Sub-Division,
Boudhraj - 762 014,
District-Phulbani.

.... Respondents

For Applicant	-	M/s. P.V. Ramdas and B.K.Panda.
For Respondents	-	Mr. Tahali Dalai, Addl. Standing Counsel.

C O R A M :

The Honourable Mr. N. Sengupta, Member (Judl.)

A n d

The Honourable Miss Usha Savara, Member (Admn.)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

Judgment.

N. Sengupta, Member (Judl.)

So far as the facts of this case are concerned, they are rather simple. Undisputedly there was an advertisement calling for applications for appointment as E.D. Branch Postmaster, Palaspat post office in the subdivision of Boudh in the district of Phulbani. The present applicant ^{was} is one of the aspirants for that post and he was selected and informed of his selection by the Superintendent of Post offices, Phulbani Division under his letter No.762001 dated 21.12.87. The Subdivisional Inspector (Postal), Boudhraj addressed a letter on 28.12.87 to the O.S.(Mails), Manmunda line, Manmunda directing him to appoint the present applicant after observing the usual formalities, along with the letter he sent some documents called appointment papers. The case of the applicant is that when he went to join the post pursuant to the order that he received, he was not allowed to work but instead he was informed that the order of appointment was cancelled and the intervener was appointed in his stead.

- He is 29.1.90*
2. The respondents in their counter have averred that no doubt the applicant was first selected for the post of E.D. Branch Postmaster of Palaspat post office and he got a communication to that effect but before the applicant could join the post, a telegraphic instruction was received from

the Director, Postal Services, Sambalpur that Sri Mahadev Pradhan (intervener) should be appointed and as the said Mahadev was working as a substitute, he should not be asked to deliver charge of the office. The entire grievance of the applicant is that before cancellation of his order he was not given any chance of being heard. Therefore, the cancellation order cannot be allowed to stand.

3. We have heard Sri P.V. Ramdas for the applicant and Sri Tahali Dalai, learned Additional Standing Counsel for the respondents. Sri Dalai had stuck to the pleas raised in the counter filed by the respondents, namely, that a superior authority had cancelled the appointment of the applicant ~~and~~ for the reason that the intervener Sri Mahadev Pradhan had been working as a substitute in place of the ex-regular incumbent. Sri Ramdas has referred to para-2 of the counter filed by the respondents and has contended that when the case of the applicant and that of Sri Mahadev Pradhan were considered and a decision was arrived at to select the applicant, that decision should not be rescinded without affording an opportunity to the applicant of being heard. Sri Dalai has contended that since the applicant has really not joined as E.D. Branch Postmaster, no right accrued to him and unless a person is in service or holds a post, he cannot make a grievance that he was not heard. The contention of Sri Dalai is wholly untenable firstly because the appointment of E.D. B.P.M. is mostly contractual, there being an offer and acceptance and as is well settled, an unilateral ^{rescission} ~~precession~~ of contract is not permissible and secondly, the moment an order of appointment is issued and the person to be

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appointed receives it, he acquires a right to question any cancellation under the principles of natural justice. Sri Ramdas has referred to a decision of the Supreme Court reported in 1978(1) SCC page 405 (Mahendra Singh Gill v. Chief Election Commissioner) and contended that the Court or a Tribunal is not to search for justification of an order of cancellation to ~~de hors~~ ^{de hors} the order of the initial appointment. We do not feel it necessary to refer to that decision in detail as we are inclined to take the view, as indicated above, that before an order of cancellation could be issued, the party affected should have been heard, that is the elementary principle of natural justice. That apart, the learned counsel for the respondents has not been able to place before us any rule empowering a superior authority to cancel an order of the appointing authority without a regular representation or hearing. For these reasons, we would hold that the order of cancellation of appointment of the applicant as E.D. B.P.M. is bad in law and accordingly it is quashed.

4. The application is accordingly disposed of. Parties to bear their own costs.

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Member (Admn.)



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Member (Judicial)