

(2) 111

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.322 of 1988.

Date of decision : April 26,1990.

Iswar Chandra Patel ... Applicant.

Versus

Sub-Divisional Inspector (Postal)
and others. Respondents.

For the applicant ... M/s.A.K.Sahoo,
M.Bhuyan, Advocates.

For the respondents ... Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

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.

J U D G M E N T

N.SENGUPTA, MEMBER (J) The facts material for this case lie in a short compass. The applicant was selected and appointed as an Extra-Departmental Delivery Agent cum Mail Carrier of Jhargaon Post Office. A letter of appointment was issued to him by registered post on 4.8.1988, copy at Annexure-1. On 2.9.1988 the Respondent No.1 issued an order terminating his (applicant's) services and directed him to hand over the charge. Copy of order of termination is annexed as Annexure-A2. Annexure-A/2 states that a G.R. case was found

Mr. Sengupta
26/4

to have been subjudice in the court of law against the applicant, therefore his appointment was terminated with immediate effect, under Rule 6 of the Extra-Departmental Agents (conduct and Service) Rules, 1964. The applicant's case is that he was not asked to show cause nor was he heard before his services were terminated. Making these allegations, he has prayed for quashing the order at Annexure-A/2, to declare that he is in service and ^a suitable direction to pay the outstanding dues for the month of September, 1988 during which he worked.

2. The respondents in their counter have admitted that the applicant was selected from amongst 16 persons ^{who} with responded to the advertisement calling for applications for being appointed as Extra-Departmental Delivery Agent-cum Mail Carrier, Jaargaon Post Office. The applicant at the time of his appointment was to submit an attestation form in which he stated that no case in any court of law was pending against him. Subsequently one Jaganath Behera filed an application stating that infact one G.R. Case bearing No. G.R. Case No. 65 of 1981 under various sections of Indian Penal Code was subjudice in the court of Sub-Divisional Judicial Magistrate, Sundargarh. As the applicant made a wrong declaration and wilful suppression about the pendency of a criminal case, in terms of the order of appointment, his appointment was terminated. At page 4 of the counter it has been mentioned that Annexure-R/9 gave the number of the G.R. Case pending against the applicant. With regard to the non-payment of dues of the

Mr. S. K. Singh
26/9

applicant, the case of the respondents is that as the applicant ~~had~~ not made over the office records, and stamp advance of Rs.10/-, payment cannot be made to the applicant, however on the applicant making over the relevant documents and refunding the stamp advance, payment would be arranged.

3. We have heard Mr.A.K.Sahoo, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel(Central) for the respondents. On reading the counter and hearing from Mr.Tahali Dalai, ~~it~~ is not clear actually what was the number of the G.R.Case, if at all, pending against the applicant in the court of the Sub-Divisional Judicial Magistrate, Sundargarh(in the copy of the counter the number of G.R.Case has been mentioned as 655 of 1981, in Annexure-R/9/~~ix~~ ^{which} is stated to be ^{the basis} based on the order of termination, the number of the case has been given as G.R.65 of 1981. The applicant has produced a certified copy of the ordersheet of G.R.Case No. 65 of 1981 pending in the court of the Sub-Divisional Judicial Magistrate, Sundargarh. From this document it would be found that ~~the~~ case was against one Kanta Katuwal. Therefore, there can be no doubt that the applicant was not involved in the G.R.Case No.65 of 1981 of the Court of the S.D.J.M., Sundargarh. No document relating to any G.R.Case of the court of S.D.J.M., Sundargarh bearing number 655 of 1981 has been filed in this case. Mr.Tahali Dalai has contended that as under Rule 6 of E.D.Agents(Conduct and Service) Rules the appointing authority has plenary power to terminate the appointment of E.D.Agent~~x~~ who has not

Accepted
26.4.90

put in three years of service from the date of his appointment, the order of termination cannot be questioned. No doubt this rule authorised the appointing authority to terminate the services of an employee who has not rendered more than three years of continuous service at any time without notice but that cannot mean that the power ^{can} to be exercised in an arbitrary or capricious manner. Being alive to this principle, the Director General, Posts and Telegraphs on 19.4.1979 issued a letter bearing No. 15112/78-Dist.2 instructing when regular disciplinary proceeding are necessary if specific irregularity comes to ^{notice} service and this was to be done in view of the safeguard afforded to a public servant under Article 311 of the Constitution of India. Here is a case where the reason for termination of the services of the applicant was pendency of a criminal case against him. But as has been stated above, the allegations in the counter with regard to the G.R. Case are self contradictory. In such circumstances, we are constrained to observe that the applicant is to be reinstated in service and if any G.R. Case be pending against the applicant, the respondents are free to pass appropriate orders with regard to his termination of services after due consideration. Since the respondents have admitted non-payment of dues and that in fact the applicant had not made over charge of records of the office, we would direct that payment be made after making over charge if his services are required to be terminated for pendency of the criminal case and if not terminated,

Eec/pt
 20/4
 [Signature]

12

XI

5

payment may be made within a month hence. We direct accordingly. No costs.

km
..... 26-4-90
Vice-Chairman



Member
..... 26-4-90
Member (Judicial)