

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.408 of 1991

Date of Decision: 8.7.1993

Babru Bahan Nayak

Applicant(s)

Versus

Union of India & Others

Respondents

For the applicant:

M/s .Devanand Misra
Deepak Misra
R.N.Naik,A.Deo
B.S.Tripathy,
P.Panda,
Advocates

For the respondents:

Mr.Aswini Kumar Misra,
Standing Counsel
(Central Government)

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C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

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JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order contained in Annexure-2 dated 9.10.1991 terminating the services of the petitioner under Rule-6 of the E.D.D.As (Conduct and Service) Rules, 1964.

2. Shortly stated the case of the petitioner is that a vacancy occurred in the post of Extra Departmental Branch Post Master in Kaposi Branch Office under Niali Sub-Post Office. The petitioner Shri Babru Bahan Nayak was appointed to the said post provisionally vide Annexure-1 dated 31.1.1991. Suddenly, vide Annexure-2 dated 9.10.1991, the services of the petitioner was terminated under Rule-6 with immediate effect. Hence this application with the aforesaid prayer.

3. In their counter the opposite parties maintain that the appointment of the petitioner was purely on provisional basis and since certain irregularities were noticed in the selection process, rightly the services of the petitioner was terminated, and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. B. S. Tripathy, learned counsel for the petitioner and Mr. Aswini Kumar Mishra, learned Standing Counsel.

5. Cases of similar nature have been decided by us, in which there has been a gross misuse of provisions contained under Rule-6 of the E.D.B.P.M. Conduct Rules. Admittedly, there is no allegation against the petitioner stated in in the counter, and nothing to the above effect has been

urged by Mr. Aswini Kumar Mishra, learned Standing Counsel during the course of argument advanced by him. Further more from the counter, we find that the regular selection process is in progress and perhaps, the selection process may be completed in near future. We do not understand the rhyme or reason for which the services of the petitioner was terminated under Rule-6.

6. At one point of time the Law in England was that if any adverse order is passed against a particular employee, the affected party must be given ~~not~~ notice of such proposed action so that, he would have his say in the matter and, if this procedure is not adopted, principles of natural justice is violated.

7. This Law prevalent in England has been adopted by the Hon'ble Supreme Court in the case of K.I. Shephard v. Union of India reported in AIR 1988 SC 686, where Hon'ble Mr. Justice R.N. Mishra (as my Lord the Chief Justice of India then was) speaking for the Court was pleased to observe as follows :

" On the basis of these authorities it must be held that even when a State agency acts administratively rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet."

The Hon'ble Chief Justice speaking for the Court quoted with approval the observations of Sarkaria, J. in the case of Swadeshi Cotton Mills v. Union of India reported in

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AIR 1970 SC 2042 which runs thus:

" During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in Ridge V. Baldwin, (1964 AC 40), it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for the purpose, whenever a breach of the rule of natural justice was alleged, Courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision of this Court in Dr. Binapani Dei's case (AIR 1967 SC 1269) (Supra); wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial perceptibly mitigated in Binapani Dei's case (Supra) was further rubbed out to a vanishing point in A.K. Karipak's case, AIR 1970 SC 150 (Supra)"

8. Incidentally we must take notice of another judgment of the Central Administrative Tribunal, Calcutta Bench relied upon by the learned counsel appearing for the petitioner Mr. B. S. Tripathy, reported in ATR 1987 (2) C.A.T. 587 (Raipada Biswas v. Union of India and Others). In the said case, the Hon'ble Judges held that compliance of principles of natural justice is mandatory before invoking the provisions contained in Rule 6 and principles of natural justice not having been complied, the petitioner before the Central Administrative Tribunal, Calcutta Bench was ordered to be reinstated.

9. Therefore, law is well settled in India that before any action is taken on the administrative side, against any person, affected party must be given notice of the proposed action, failing which principles of natural justice is violated.

10. In the present case, admittedly, no notice was

given to the petitioner and therefore, we are of opinion that the principles laid down by Their Lordships in the case of K.I. Shephard (Supra) applies in full force to the facts of the present case. Therefore, we do hereby quash the order of termination passed against the petitioner; and we would direct his reinstatement within seven days from the date of receipt of a copy of the judgment. The petitioner shall not be entitled to any backwages.

11. We deem it fit and proper to avail this opportunity to bring to the notice of the Ministry and other authorities in the Postal Department that unless the provisions contained in Rule 6 are suitably amended, there would be gross miscarriage of justice as this provision gives unfettered discretion to the appointing authority to terminate the services of an E.D. Employee on flimsy grounds. Several instances have come to our notice where without any rhyme or reason and without complying with the principles of natural justice and even on flimsy grounds, provisions contained under Rule 6 are being resorted to by the competent authority and unnecessarily drastic steps are being taken against E.D. As without such employees having any protection of law. We are of the firm view that it is high time for the authorities to exercise their discretion and adopt suitable amendment to the provisions contained in Rule 6 so that the interest of Extra Departmental Agents are maintained according to law and they would not be

unnecessarily harassed or punished. With these observations and with the hope that suitable amendments would be adopted, the application stands allowed, leaving the parties to bear their own cost.

~~1.5.93. B.K. Sahoo~~
MEMBER (ADMINISTRATIVE)

8.7.93

Kejawant 8.7.93.
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench Cuttack
dated 8.7.1993/ B.K. Sahoo

