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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH.

Original application Nos. 280 and 281 of 1993.

Date of Decision:- 22.7.93.

In O.A.280 of 1993 Purna Chandra Naik ... Applicant

Versus,

Union of India & others ... Respondents.

In O.A.281 of 1993 M.L.Bagal ... Applicant.

Versus,

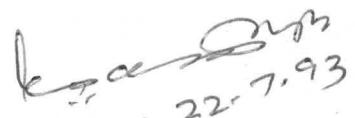
Union of India and others ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? No

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunals or not ? No


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
22 JUL 93


(K.P. ACHARYA) 22-7-93
VICE-CHAIRMAN.

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Versus,
Union of India & others Respondents.

In both the cases: For the applicants M/s. Devanand Misra
Deepak Misra
A. Deo, B.S. Tripathy,
P. Panda, Advocates.

For the Respondents: ... Mr. Ashok Misra,
Sr. Standing Counsel (Central).

C O R A M :

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

AND

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

J U D G M E N T.

K. P. ACHARYA, V.C.,

Since both the cases involve common questions of fact and law, we have heard each of the cases one after another and we would direct that this common judgment will govern both the cases mentioned above.

2. In O.A. 280 of 1993 and in O.A. 281 of 1993 both
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the petitioners are E.D. Mail Men attached to the R.M.S. (SRO), Baripada, Further case of the petitioner is that each of the petitioners, was considered along with other candidates. The competent authority issued an order of appointment in favour of each of the petitioners and they functioned as such for a good bit of time. Subsequently appointment of both the petitioners was cancelled by the competent authority and therefore both the petitioners have filed both these applications with a prayer to quash the order passed by the Competent Authority cancelling their appointments.

3. In their counter, filed in each of the cases it is maintained by the Opposite Parties, that the appointment order issued in favour of the petitioners was illegal and void ab initio as certain rules were not complied with. The requisitioning authority had requested the Employment Exchange to sponsor the names of the candidates for appointment to one post of E.D. Mail Man of the R.M.S. and accordingly the Employment Exchange had sponsored 19 candidates and cases of all these candidates were considered along with six other candidates who had come from the open market including the present petitioners. The further case of the Opposite Parties is that since no candidates belonging to the reserved community were sponsored by the employment exchange, the requisitioning authority sent another requisition requesting the employment exchange to sponsor names of candidates belonging to the reserved community.
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Since the employment exchange did not give any response, without inviting formal application the cases of both the petitioners along with four others, for the same post was considered and appointment order was issued in favour of the present petitioners which is an illegality committed by the concerned authority. It is further maintained by the Opposite parties that this original requisition was sent to employment exchange and six names were sponsored from Employment Exchange for one vacant post only but the concerned authority committed an illegality by considering the cases of candidates for the second post which was an anticipated vacancy and therefore such illegality having been committed by the concerned authority, the competent authority was fully justified in cancelling the appointment of both the petitioners which should not be interfered with-rather it should be sustained.

4. We have heard Mr.Tripathy, learned counsel appearing for both the petitioners and Mr.Ashok Misra, learned Senior Standing Counsel(Central) appearing for the Opposite parties in both the cases.

5. Mr.Tripathy strenuously urged before us that for no fault on the part of the petitioners their appointment has been cancelled. Accordingly Mr.Tripathy submitted that departmental authorities have not committed any mistake in the matter of issuing of an order of appointment. But once appointment order having been issued in favour of the petitioners the concerned

authority should not have issued a cancellation order unless it is shown that the petitioners are guilty of any fraudulent act having been committed by them or not having come with a clean hand by virtue of which the appointment order has been ~~maintained~~ obtained. On the other hand it was emphatically contended by Mr. Ashok Misra, learned Senior Standing Counsel that in view of the illegalities/irregularities committed by the appointing authority, such order of appointment is ab initio void and therefore the competent authority had rightly cancelled the appointment order which should not be interfered with.

6. We have given our anxious consideration to the arguments advanced at the Bar. We find there is substantial force in the contention of Mr. Ashok Misra that the appointing authority has committed a grave irregularity in the matter of appointment of suitable candidate for the post in question. Equally we find that there is substantial force in the contention of Mr. Tripathy that the petitioners should not suffer for no fault on their part for the irregularity committed by the concerned authority. They are being made to loose a plate of rice for no fault on their part. We would have certainly taken a rigid view if the petitioners would have obtained the appointment order by practicing fraud on the departmental authorities. Here is a peculiar case where the petitioners have been made to suffer due to the laches on the part of a particular officer in Postal Department.
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7. This case suffers from another serious infirmity. Once an order of appointment has been issued in favour of a particular person and that particular person has functioned in the post, he has acquired a right to the post and he could be deprived of that right only after compliance with the principles of natural justice. At one point of time in England, law laid-down was that even in an administrative action, the party, who may be affected should be noticed of the proposed action to be taken and after hearing the party, proposed action could be taken failing which the principles of natural justice is violated. This law prevalent in England was adopted in several cases in India. Hon'ble Mr. Justice R.N. Misra (as my Lord the Chief Justice then was) in the case K.I. Shephard and others -versus- Union of India and others, reported in (1987) 4 SCC 431, 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".

His Lord-ship, also speaking for the court, quoted with
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approval the observation of Sarkaria(J) in the case of Swadeshi Cotton Mills- Versus- Union of India reported in AIR 1981 SC 818, 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, 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 dated February 7, 1967, of this court in Dr.Binapani Dei case; wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with rules of natural justice. This supposed distinction between quasi-judicial and administrative decision, which was perceptibly mitigated in Binapani Dei case was further rubbed out to a vanishing point in A.K.Kraipak V.Union of India".

The latest decision on this point has been reported in 1993(3) Judgment-Today 617 (D.K.Yadav -V-- M/s.J.M.A. Industries). In Paragraph-11 of the Judgment Their Lord-ships have been pleased to observe that there is no distinction between quasi-judicial function and administrative function for the purpose of application of principles of natural justice. Notice must be given to the particular officer against whom action is proposed to be taken and may be affected by the
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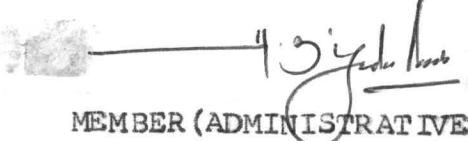
order to be passed failing which the principles of natural justice are violated.

8. In the present case, of course notices were given to the petitioners that their services would be terminated with effect from 5.9.92 but in the said notice nothing was mentioned that due to the reasons resulting from irregularities committed, the competent authority proposes to terminate the services of the petitioners and the petitioners were not called upon to file their show cause as to why services should not be dispensed with. This procedure was not at all adopted which is mandatory as laid down by Their Lordships in the above mentioned judgments. Hence we have absolutely no hesitation in our mind to hold that in both the cases principles of natural justice have not been complied with by the competent authority and that this has grossly affected the service benefits of petitioners for which the petitioners stand prejudiced. Therefore, we would again repeat that, though there were laches on the part of the appointing authority for which the petitioners should not suffer, and owing to non-compliance of the principles of natural justice, we do hereby quash the order passed by the competent authority contained in Annexure-5 in both the cases cancelling the order of appointment thereby terminating

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the services of the petitioners. We direct the competent authority to allow the petitioners to continue in the posts in question. Thus both the applications are accordingly disposed of. No costs.


MEMBER (ADMINISTRATIVE).
22 JUL 93


22.7.93.
VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack/ Hossain.
22.7.93.