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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 384 of 1993

Date of Decision: 6.12.1993

Fakir Ch. Sekhar Deo

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *NO*


MEMBER (ADMINISTRATIVE)

06 DEC 93

len 6/12/93
VICE-CHAIRMAN

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Respondents

For the applicant

M/s.P.K.Routray
P.K.Mohanty
P.K.Ray
P.K.Patra,
Advocates

For the respondents

Mr.Ashok Mishra
Sr.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)

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, order of termination of services of the petitioner is under challenge. The petitioner was selected as Extra Departmental Branch Postmaster of Biribira Branch Post Office. His services have been terminated. Therefore, this application has been filed to quash the order of termination of his services.

2. In their counter the opposite parties maintain that since the petitioner had not passed Standard - VIII, which was subsequently detected, the order was sought to be acted by way of terminating

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the services of the petitioner; therefore, no illegality having been committed the application should be dismissed.

4. We have heard Mr. P.K. Routray, learned counsel for the petitioner and Mr. Ashok Mishra, learned Senior Standing Counsel and we have gone through the pleadings of the parties. We do not propose to express any opinion on the merits of the case. On a perusal of the record, we find that one month's pay was given to the petitioner in lieu of notice. But the law is well settled that, before any person is deprived of his civil right, notice must be given to the person concerned to show cause as to why action should not be taken against him and he should be personally heard in the matter. In a case reported in AIR 1988 SC 686 (K.I. Shephard and others vs. Union of India and others) Hon'ble Mr. Justice R.N. Mishra (as my Lord 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 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".

Hon'ble Mr. Justice R.N. Mishra on behalf of the Court quoted with approval the observations of the Sarkaria (j) in the case of Swedeshi Cotton Mills vs. Union of India reported in AIR 1970 SC 2042 which runs thus:

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" 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) SC 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 and administrative decisions which was perceptibly mitigated in Binapani Dei's case (supra) was further rubbed out to a vanishing point in A.K. Kariapack's case AIR 1970 SC 150 (supra)...."

In a case reported in Judgment Today 1992 (5) SC 621 (Navjyoti Co-operative Group Housing Society etc. vs. Union of India and others) Their Lordships while explaining the Doctrine of 'Legitimate Expectation' have also re-affirmed the view taken by the Supreme Court in the case of K.I. Shepherd (supra) and was pleased to observe as follows :

" An aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reason.... The doctrine of 'Legitimate Expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such

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'legitimate expectation'. Within the conspectus of fair dealing in the case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in".

5. In the present case no notice having been served on the petitioner, the order of termination of his services is liable to be set aside as principle of natural justice is violated. Therefore, the order of termination, terminating the services of the petitioner is hereby quashed and he should be reinstated to service within 15 days from the date of receipt of a copy of this judgment. The petitioner shall not be entitled to any backwages and the amount drawn by the petitioner vis. one months' pay in lieu of notice shall be returned by the petitioner within 30 days from the date of reinstatement or the amount ^{recovered from the pay} will be ^{ken} which will be payable to the petitioner after he joins.

6. The petitioner should be given due notice to file his show ~~show~~cause and if he demands, he should be personally heard and thereafter orders may be passed by the competent authority accordingly to law. Thus the application is accordingly disposed of. No costs.


MEMBER (ADMINISTRATIVE)

06 DEC 93


VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 6.12.1993/B.K.Sahoo