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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.709 OF 1993

Date of decision: April 28, 1994.

Mukunda Amat

...

Applicant

Versus

Union of India & Others

...

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *yes.*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

28 APR 94

len 28/4/94
(K. P. ACHARYA)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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Date of decision: April 28, 1994

Shri Mukunda Amat	...	Applicant
	Versus	
Union of India & Others	...	Respondents
For the Applicant	...	Mr. S.K. Rath, Advocate
For the Respondents	...	Mr. U.B. Mohapatra, Addl. Standing Counsel (Central).

CORAM: THE HONOURABLE MR. K.P. ACHARYA, VICE- CHAIRMAN
&
THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

J U D G M E N T

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order contained in Annexure-11 dated 16th November, 1993, terminating the services of the petitioner Shri Mukunda Amat who was appointed as E.D.B.P.M. Bhalulata Sub Office within the district of Sundargarh.

2. Shortly stated the case of the petitioner is that he was considered along with others for appointment to the post of E.D.B.P.M. of the said post office. Petitioner was found to be suitable. Order of appointment was issued in favour of the petitioner vide Memo No. B/3/R-213 dated 12.8.1991 contained in Annexure-2 and the petitioner was functioning as such ⁱⁿ the said post office till the date of termination.

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During the intervening period, the petitioner was called upon to produce the residential certificate to be granted by the competent authority i.e. the Tahasildar as there was some suspicion that the petitioner did not belong to the post village namely Bhalulata. Petitioner did not tender the documents and hence Annexure-9 was issued terminating the services of the petitioner. Therefore, this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the petitioner not having complied with the orders of the competent authority in producing the residential certificate within a stipulated period, the order of termination was justifiably passed against the petitioner which should not be unsettled - rather it should be sustained.

4. We have heard Mr. S.K.Rath learned counsel for the petitioner and Mr. U.B.Mohapatra learned Addl. Standing Counsel(Central).

5. Though Mr.Rath urged several points attacking the legality regarding issuance of Annexure-9, we do not like to express any opinion on the points because the order we propose to pass hereunder.

6. Law is well settled that before an adverse order is passed against any particular Government servant affecting the service benefits, notice must be given to the officer who may be affected and after hearing him or after perusing his show cause, order should be passed by the competent authority. Our view gains support from a judgment of the Hon'ble Supreme Court reported in 1987(4)SCC 431(K.I. Shephard Vs. Union of India and others). Hon'ble Mr. Justice R.N. Mishra(as my Lord the Chief Justice of India then was) speaking for the Court observed 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 Lordship on behalf of the court quoted with approval the observations of Sarkaria J. in the case of Swedeshi cotton Mills. Vs. Union of India reported in AIR 1970 2042 which runs thus:

"During the last two decades the concept of natural justice has made great strides of 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

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 of decision in matters involving Civil consequences, had to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decision which was perceptibly mitigated in Binapani Dei's case (supra) was further rubbed out to a vanishing point in A.K. Kraipak's case AIR 1970 SC 150 (supra)...."

The latest pronouncement of the Hon'ble Supreme Court on the doctrine of 'LEGITIMATE EXPECTATION' is reported in Judgment Today 1992(5)SC 621, Navjyoti Co-operative Group Housing Society etc. Vs. Union of India and others. The observations of Their Lordships of the Hon'ble Supreme Court are 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' impose in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in 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".

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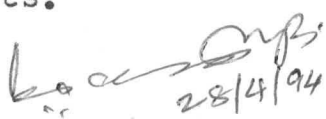
Applying the principles laid down by the Hon'ble Supreme Court to several cases decided by us in past, we have taken the view that without giving notice to the concerned officer of the action proposed to be taken against him and without hearing him on such proposal, the order of termination/ dismissal or any other order affecting the service benefits of the petitioner shall not be justifiable. In the present case, we do not find any justifiable reason to make a departure from the view already taken in several other cases in past. Therefore, applying the principles laid down by Their Lordships in the case of K.I. Sephard Vs. Union of India and others(supra) to the facts of the present case, we are of opinion that the principles of natural justice has been cleanly violated and therefore, the order of termination contained in Annexure-9 cannot be sustained. Hence it is hereby quashed. The Petitioner should be reinstated in to service but without any back wages. We give liberty to the Superintendent of Post Offices, Sundargarh to issue notice to the Opposite Parties calling upon him to file his residential certificate if the Supdt. of Post Offices so desires. We hope and trust the petitioner shall be reinstated into service within ten days from the date of receipt of a copy of this judgment.

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7. Thus, the original application stands allowed leaving the parties to bear their own costs.


MEMBER (ADMINISTRATIVE)

28 APR 94


VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/K.Mohanty/28.4.94.