

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO.487 OF 2001
cuttack, this the 21st day of February, 2003.

Rabindra Goud.

....

Applicant.

:Versus:

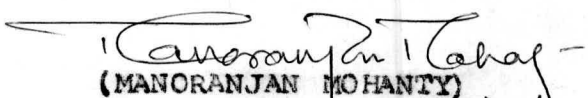
Union of India & Others.

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


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 21/02/03

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 487 OF 2001
Cuttack, this the 21st day of February, 2003.

CORAM:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. M. R. MOHANTY, MEMBER (JUDL.).

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Rabindra Gouda, Aged about 33 years,
S/o. Harisankar Goud,
Vill. Rampur, Po: Patrapali,
Via. Rengali, Dist. Jharsuguda,
now working as E.D. Mailman in the
Office of the Head Record Officer
RMS (K) Division, Jharsuguda. Applicant.

By legal practitioner: M/s. R. K. Prusty, B. C. Majhee,
D. Das, A. K. Moharana,
Advocates.

- Versus -

1. Head Record Officer, RMS (K) Division,
Jharsuguda Dist. Jharsuguda.
2. Superintendent of RMS (K) Division,
Jharsuguda, Dist. Jharsuguda.
3. Director of Postal Services (K) Division,
Sambalpur, Dist. Sambalpur.
4. Union of India represented through Chief
Postmaster General, Bhubaneswar, Dist. Khurda,
Orissa.

.... Respondents.

By legal practitioner: Mr. A. K. Bose,
Senior Standing Counsel (Central).

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL) :-

Applicant, on being selected (by the Head Record Officer, RMS(K) Division, Jharsuguda) in a regular process of selection was appointed under Annexure-3 dated 14-07-2001 and joined the post of E. D. Mailman on 02-08-2001. While working as such, he was issued with a notice of termination (under Annexure-4 dated 08-09-2001) of his service which reads as under:-

"In pursuance of Rule 6(a) and (b) of the PSE Extra-Departmental Agents (Conduct and Service) Rules, 1964 and Supdt. RMS'K' Dn., letter No. B. 7/1-3/ST-95 dated at Jharsuguda the 03-09-2001, I Sri Benudhar Naik, Head Record Officer, RMS'K' DN Jharsuguda hereby give notice to Sri Rabindra Gouda ED Mailman of this Unit that his services shall stand terminated with effect from the date of expiry of a period of one month from the date of which this notice is served on to him".

It is against this termination notice, the Applicant has approached this Tribunal (in this Original Application U/s. 19 of the Administrative Tribunals Act, 1985) praying to quash the said termination notice under Annexure-4 dated 08-09-2001 and to get all consequential service benefits.

2. Respondents have filed their counter interalia stating that since on review (made by the Supdt. of Post Offices/Respondent No. 2 with regard to the selection and appointment to the post of E. D. Mailman), it was observed that gross irregularity had been committed by the Appointing

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Authority (in the matter of Selection and appointment to the post of E.D. Mailman, which is the subject matter of challenge in this O.A.) and it was directed for termination of the service of the Applicant under Rule 6(a) and (b) of the ED Agents (Conduct and Service) Rules, 1964; which provides that the service of an employee, who has not already rendered more than three years continuous service, can be terminated at any time by service of a notice in writing and the period of such notice shall be one month and that accordingly, the termination notice (under Annexure-4 dated 08-09-2001 had been issued.

3. The short point for consideration in this Original Application is as to whether the notice under Annexure-4 (in which the services of the Applicant had been sought to be terminated) is sustainable in the eye of law. We have heard Learned Counsel appearing for the parties and perused the records of the case.

4. Law is well settled in a plethora of judicial pronouncements that natural justice has various facets and acting fairly is one of them and fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of law, every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The Rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure

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of the level of civilisation and Rule of law prevailing in the community. In the case of BINAPANI DEI VRS. STATE OF ORISSA (reported in AIR 1967 SC 1269) the Hon'ble Apex Court of India have held that even an administrative order or decision in matters involving civil consequences has to be made consistently with the Rules of natural justice. The Hon'ble Apex Court in the case of A.K. KRAIPAK VRS. UOI and others (Reported in AIR 1970 SC 150) have been pleased to observe as follows:

"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."

While confronting with a similar situation where termination of services of an employee was made under Rule-6 of the P&T EDAs (Conduct and Service) Rules, 1959, the Hon'ble High Court of Kerala in the case of T.C. Govindan Vrs. Inspector of Post Offices and others (reported in 1967 SLR 515) observed as follows:

"When a Court is satisfied that the action against an employee is really by way of a punishment, not a mere termination of services according to service conditions, the provisions in Art. 311(2) will be attracted".

The Hon'ble Apex Court of India in the case of MADHYAPRADESH INDUSTRIES LTD. VRS. UNION OF INDIA AND OTHERS (Reported in AIR 1966 SC 671) in dealing with a question of giving

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opportunity observed as follows:-

"The principle of natural justice requires that a quasi-judicial tribunal should not make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him".

Law is well settled that no order shall be passed against anybody unless he has been given an opportunity to make his representations against the comments, if any, received from the employer.

5. The questions that arise for determination in this case are similar in character to the questions which have been the subject matter of consideration before the Hon'ble Apex Court in the case of UNION OF INDIA AND OTHERS VRS. JAYAKUMAR PARIDA (Reported in 1996 SC (L&S) 320) and, after considering the facts of that case it was observed as follows:-

"If any material adverse to the respondent formed a foundation for termination, principles of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply, an appropriate order may be passed giving reasons in support thereof".

In the case of TILAK DHARI YADAV VRS. UNION OF INDIA AND OTHERS (Reported in (1997) 36 Administrative Tribunals Cases 539) the Full Bench of the Central Administrative Tribunal (at Allahabad Bench) while testing the legality of such termination under Rule-6 of the EDAs (Conduct and Service) Rules have been pleased to observe that "Termination of Services of EDA, other than unsatisfactory service by appointing authority or superior to appointing authority, Rule-6 does not confer power on appointing authority or the authority superior to appointing authority to terminate the services of EDA without giving him

an opportunity to show cause. In the case of BASUDEO TIWARY
VRS. SIDO KANHU UNIVERSITY AND OTHERS (Reported in AIR 1998
SQ 3261) the Hon'ble Apex Court of India have been pleased
to observe as follows:-

*The condition precedent for exercise of power under S.35(3) is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, Rules or Regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding, and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable. Thus, in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, Rule or Regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice.

(emphasis supplied)

In the case of RAIPADA BISWAS VRS. UNION OF INDIA AND OTHERS (reported in AIR 1987 (2) CAT 587) the Calcutta Bench of the Central Administrative Tribunal also quashed the order of termination (under Rule-6) of an employee as the same offends the principles of natural justice.

6. In the above premises, it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law; upon which our whole Constitutional system is based. In a system governed by Rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without compliance of the principles of natural justice, the same is antithesis to the rule of law being contrary to the Constitutional mandate as provided under Article 14 of the Constitution of India. In the present case, no natural justice having been given to the Applicant, before issuance of the impugned order of termination, the same is not sustainable in the eyes of law.

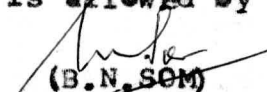
7. Now coming to judge the foundation of the impugned notice of termination, it is seen that due to some irregularities committed by the Appointing Authority, the Services of the Applicant were directed to be terminated. No where in the counter it has been urged by the Respondents that the Applicant got the employment by misrepresenting or playing a foul game. The Department/Respondents have candidly stated that because of error committed by the concerned authority the Applicant was selected/appointed. The aforesaid being the admitted position and the Applicant being in no way responsible for it, he cannot be allowed to suffer particularly

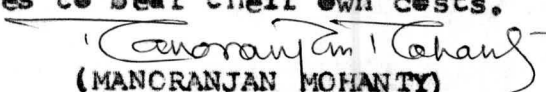
when he has already rendered service for years. The Hon'ble High Court of Orissa in the case of MAHENDRA TANTY VRS. UNION OF INDIA AND OTHERS (in OJC No. 5254 of 1998 disposed of on 15-11-1999) have also taken the same view, while deciding a similar issue.

8. Further, on perusal of the impugned notice under Annexure-4, it shows that such notice has been issued at the behest of the higher authority on review of the selection and appointment. Various Benches of this Tribunal, in vary many cases, have already held that the higher authority has no power to review the selection and appointment of an ED Agent; as the same is not available in the Rules.

9. In the above said premises, we have no hesitation to hold that the impugned notice under Annexure-4 dated 08-09-2001 was bad and not sustainable and, therefore, the same is quashed. The Applicant is directed to continue in service with all consequential benefits.

10. In the result, therefore, this Original Application is allowed by leaving the parties to bear their own costs.


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 21/02/03

KNM/CM.