

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. T.A./69/1996
CO 12269-W/82

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member

DERASIS GHOSAL

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. A.K. Mukhopadhyay, counsel

For the respondents : Mr. B. Mukherjee, counsel

Heard on : 15.11.99

Order on : 15.11.99

O R D E R

The case of the applicant in short is that he was appointed as Extra Departmental Delivery Agent-I in the Khejurih E.D. Sub Post Office on being selected through a selection test conducted by the department and he joined service on 1st January, 1980. Thereafter, he intended to appear in the departmental examination for promotion after completion of 3 years' service under the department. He was to complete 3 years of service on 31st December, 1982. But before that, he had been served with an impugned order dated 5th October, 1982 issued by the respondent No.5, the Inspector of Post Office, Katwa Sub-Division, P.O. Katwa, Dist. Burdwan whereby he was informed that in accordance with the instruction contained in Superintendent of Post Offices, Burdwan, Memo No.SP/Con-28/81 dated 25th September, 1982 his appointment was considered as irregular as per norms and his service would be terminated from the date of his relief on the administrative grounds. Feeling aggrieved by and dissatisfied with the said impugned order of termination, he approached the Hon'ble High Court by filing a writ petition bearing No.CO 12269-W/82 which has been subsequently transferred to this Tribunal and

contd.

numbered as T.A. 69/1996. Before that the Hon'ble High Court had passed an interim order staying the impugned order of his termination and in pursuance of that interim order, the applicant is still continuing in service. It is stated by the applicant that the impugned order of termination was issued illegally and therefore, such order is liable to be cancelled.

2. Respondents filed written reply denying the claim of the applicant. It is stated in the reply that the applicant was to complete 3 years' service on 31st December, 1982 and he ^{was to be} ~~was~~ allowed to appear in the departmental examination after completion of 3 years' service from the date of joining. But the said rule was amended thereafter and as per the new rule, the applicant ^{may} be allowed to appear in the departmental examination only after completion of 5 years' service. It is also stated by the respondents that after his appointment as EDDA, it had come to the notice of the department that the applicant suppressed the fact that he is the son of Sri Umananda Ghosal, the existing ^{in the same office} EDSPM and as per order contained in DG P&T Comm. No. 43/36/64-Pen dated 17.10.1966 communicated under PMG W.B. Circle Cal SFN/Q-3/V/Rlg dated 02.11.1968, no staff having near relation between themselves can be appointed in the same office. Accordingly, the appointment of Sri Ghosal EDDA-I was considered as irregular and in order to regularise the irregularity his service was terminated. Moreover, the applicant had suppressed the fact that he was a regular student of Class 12 at the time of his appointment. As a result, his service was duly terminated in accordance with the Rule 6 of EDDA(Conduct & Service) Rules, 1964. So, he is not entitled to get the reliefs as claimed in the application and the application should be dismissed.

3. Ld. counsel, Mr. A.K. Mukherjee appearing on behalf of the applicant files rejoinder to the reply and submits that the impugned order of termination of the service of the applicant was issued without giving any showcause notice as to why his service should not be terminated and the respondents did not give any opportunity of being heard before issuance of such impugned order to the applicant. Besides, the applicant was duly selected on the

basis of merit and therefore, his service cannot be terminated on the ground of irregularity as mentioned in the reply. It is further stated by Mr. Mukherjee that the order of termination is illegal, irregular and violative of principles of natural justice. So, such impugned order is liable to be cancelled and the applicant should be given all consequential benefits to which he is entitled as per the extant rules.

4. Ld. counsel, Mr. B. Mukherjee appearing on behalf of the official respondents contended that the service of the applicant was terminated as per rule 6 of P&T EDDA(Conduct & Service) Rules, 1964 which provides that the services of an ED employee who has not rendered more than 3 years continuous service, shall be liable to termination at any time without notice for generally unsatisfactory work or on any administrative ground unconnected with his conduct. So, in all fairness, the order of termination in this case is ~~neither illegal~~ nor unwarranted by law as stated by the petitioner. He further submits that the said rule has been changed subsequently. Under the new rule, the ED employee can be terminated by one month's notice in writing (who has not rendered more than 3 years' service). But the said new rule is not applicable in this matter as this matter is a very old i.e. of 1982. So, the application is devoid of any merit and is liable to be cancelled.

5. We have considered the submissions of the ld. counsels of both sides and have perused the records. We have also perused the Rule 6 of the P&T EDA(Conduct & Service) Rules, 1964 and the said rule runs as follows:

"The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice."

We find that the said rule has now become obsolete in view of the several judgments delivered by the Hon'ble Apex Court. *that no order detrimental to the interest of the citizen should be passed without giving reasonable opportunity* Moreover, it is found that the respondents have terminated the service of the applicant on some allegations ^{brought} against him stating that he had suppressed material fact about the employment of his

father in the same office and about his regular studentship in class - XII. But they did not issue any showcause notice before terminating the service of the applicant which is necessary as per rules. ^{of Principle of Natural Justice} It is settled law that no order detrimental to the interest of the Government servant should be issued to him without affording him a reasonable opportunity of being heard before proposed action taken. In this case, the respondents did not provide the opportunity of being heard to the applicant before issuance of the order of termination and thus they have violated the principles of natural justice. Therefore, we are of the view that the said order of termination of the service of the applicant dated 5th October, 1982 is liable to be quashed.

6. In view of the above position and circumstances, we hereby set aside the impugned order of termination dated 5th October, 1982. The respondents are directed to give all consequential benefits to the applicant as per the extant rules. Accordingly, the application is disposed of awarding no costs.


(G.S. MAINGI)
MEMBER(J)

S.M.


(D. PURKAYASTHA)
MEMBER(J)