

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 7.10.1996.

1. OA No. 241/96

Sunil ... Applicant.

versus

1. Union of India through the Secretary to the Government, Ministry of Communication (Department of Post), New Delhi.
2. Superintendent, Railway Mail Service, S.T. Division, Jodhpur.
3. Head Record Officer, Railway Mail Service, S.T. Division, Jodhpur.

... Respondents.

2. OA No. 242/96

Brij Mohan ... Applicant.

versus

1. Union of India through the Secretary to the Government, Ministry of Communication (Department of Post), New Delhi.
2. Superintendent, Railway Mail Service, S.T. Division, Jodhpur.
3. Head Record Officer, Railway Mail Service, S.T. Division, Jodhpur.

... Respondents.

Mr. Vijay Mehta, Counsel for the applicants.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman.

Hon'ble Mr. S.P. Biswas, Administrative Member.

PER HON'BLE MR. GOPAL KRISHNA:

Applicants Sunil and Brij Mohan have filed O.A. No. 241/96 and 242/96 respectively challenging the orders at Annexure A/1 dated 22.7.1996 by which the services of these applicants as E.D. Mailman were terminated. Since common questions of law and facts are involved in these cases, these are being disposed of by a common order.

2. The contentions of the applicants are that their names were sponsored by the Employment Exchange, Jodhpur, on a requisition sent to the same for appointment to two posts of E.D. Mailman. The Employment Exchange had sponsored ten names including the names of the applicants for being considered for the said post. On a consideration of all the candidates whose names were sponsored by the Employment Exchange, the applicants were selected for being appointed to that post. The requisite educational qualification for appointment as E.D. Mailman is VIIIth pass. No weightage is provided to be given for the candidates possessing higher educational qualifications.

3. On the other hand, the respondents' case is that the appointments made to the said post were reviewed by the next higher authority, i.e., the respondent No. 2, who had found after a perusal of the records that the selection has been made ignoring the relevant instructions. Respondent No. 3, who is the appointing authority, was thereafter directed to make fresh selections as per existing instructions on the subject. However, respondent No. 3 instead of taking any further action requested the respondent No. 2 to take such appropriate action as was deemed proper by him. The respondent No. 2 by the impugned orders at Annexure A/1 terminated the services of the applicants.

4. We have heard learned counsel for the parties and have carefully perused the records.

5. The contention of the applicants is that since they were duly selected and appointed to the post, they acquired a right to hold the post, and, therefore, the services could not have been terminated without affording an opportunity of hearing to them and without recording any reasons for such an action. Learned counsel for the applicants has relied on 1991 (1) ATJ 455, V. Antony Selvaraj vs. Union of India & Another, to put forth his arguments that termination in accordance with the provisions contained in Rule - 6 of the Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964, (for short, the Rules) on the ground of certain irregularities / infirmities in the process of selection is not sustainable. In that case, the appointment was found to be in contravention of the Rules during the examination of case by the Vigilance Section of the Postal Department. The appointment given was provisional and the applicant in that case had worked from March 21, 1988 to 19.6.89 including the period of provisional appointment. In the cases in hand, the applicants were appointed as E.D. Mailman and they were made to understand that their employment as such shall be in the nature of contract liable to be terminated in terms of the provisions contained in the Rules. Rule 6 of the Rules reads as follows :-

"6. Termination of Services - (a) The services 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 at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee.

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(b) the period of such notice shall be one month:

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

This Rule provides that the services 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 at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee and further lays down that his services may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service. In the present case, the orders of termination stipulate that the applicants shall be entitled to claim a sum equivalent to the amount of their ~~basic allowance~~ ^{pay} plus Dearness Allowance for the period of notice at the same rates at which they were drawing them immediately before the termination of their services. The authority relied upon by the applicants referred to above does not help them as their appointments were made on contractual basis. The applicants are bound by the terms and conditions of their appointment to the post. The applicants were appointed on 30.7.95. Their services were terminated on 22.7.96. Merely working on the post during this period, they did not acquire any right to hold the ~~Chikhi~~ post. The other contention of the learned counsel for the

applicants that the impugned orders were not passed by the appointing authority is not tenable for the simple reason that the authority terminating the services of the applicants is higher than the appointing authority. Learned counsel for the applicants has also relied on (1991) 15 ATC 20, Ganesh Prasad Singh vs. Union of India & Ors., in which the Patna Bench of the Tribunal observed as follows :-

"When the competent authority has after assessment of the comparative merits of the candidates made selection, and the selected candidate has been appointed, it is totally unfair on the part of the higher authority to make an assessment of his own in respect of the comparative merits of the candidates and to set at naught the selection and the appointment. In any event before doing so, justice demands the affording an opportunity to the person whose appointment is affected especially when it is done on purely factual premises."

In the cases in hand, the appointments being purely contractual in nature, the termination of their services remains unassailable and this ruling also in the facts and circumstances of the case does not help the applicants. The orders of termination do not cast any stigma on the applicants. We are of the view that in the circumstances, no opportunity of hearing was required to be given to the applicants before terminating their services.

6. On a careful consideration of the facts and circumstances of these cases, we have come to the conclusion that the impugned orders terminating the services of the applicants were based on administrative grounds and as such they come within the purview of Rule-6 of the Rules. Reliance is placed on (1987) *Critique*

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3 ATC 54, Prahallad Charan Swain vs. Union of India & Others. We find that our stand finds support from the decisions of the Hon'ble Supreme Court in the case of P.K. Mukherjee vs. State of Bihar & Others, 1969 SLR Vol. 3 470. In this case, the Apex Court declined to provide any relief by ordering reinstatement of the appellant. The reason was that no writ of mandamus can be issued when the appointment is a matter of contract. The impugned orders of termination-simplicator under Rule - 6 of the Rules cannot be rendered invalid merely

on the ground that no reasons were mentioned therein.

We, therefore, find no merits in these Original Applications. These are dismissed with no order as to costs.

Signature
(S.P. BISWAS)
Member (A)

Signature
(GOPAL KRISHNA)
Vice Chairman

cvr.