

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 703 of 1997

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

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

Bidhu Bhusan Biswas, S/o late N.C. Biswas, working for gain as EDDA, Dharbuincha Branch Office under Hanskhali, Sub Office, Dist. Nadia, residing at Vill. Mondabghat, P.O. Daharbuincha, Dist. Nadia

... Applicant

VS

1. Union of India, service through the Secretary, Ministry of Communication, Department of Posts, New Delhi

2. The Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, Cal-12

3. The Superintendent of Post Offices, Nadia South Division, Kalyani, Dist. Nadia

4. The Assistant Supdt. of Post Offices, Ranaghat East Sub-Division, Ranaghat, Dist. Nadia

... Respondents

For the Applicant(s): Mr. Samir Ghosh, counsel

For the Respondents : Mr. S. P. Kar, counsel

Heard on 16.02.2000

: : Date of order: 16.2.2000

O R D E R

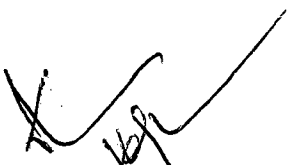
D. Purkayastha, JM

Applicant, Shri Bidhu Bhusan Biswas being aggrieved by the order of cancellation of his appointment as EDDA in Daharbuincha Branch Post Office has challenged the order of cancellation dated 12.6.97, Annexure/D to the application, on the ground that the said order of cancellation has been issued by an authority other than the competent authority and in violation of the principle of natural justice. According to the applicant, he passed the B.A. examination finally in the year of 1985 and his name along with other candidates was sponsored by the Employment Exchange of Ranaghat for the purpose of selection to the post of

EDDA in the said Post Office. The applicant submitted all requisite papers for the purpose of selection, but the respondents selected him and appointed him provisionally to the post of EDDA in the said Post Office. Thereafter the respondents by a letter dated 12.6.97, Annexure/D to the application, cancelled his provisional appointment as per direction of the Superintendent of Post Offices, Nadia South Division communicated to the appointing authority vide memo No.A-422/B.O. dated 11.6.97. According to the applicant, he has no authority in the matter of appointment and the respondents selected him after considering the marks along with other candidates for the purpose of appointment to the said post. Therefore, the respondents issued the order of cancellation without affording him any reasonable opportunity to state his case and hence, the order of cancellation is arbitrary, illegal and liable to be quashed.

2. The respondents submitted a reply to the OA stating the ground that the applicant was selected and appointed to the post of EDDA in violation of the administrative instructions for selection issued by the authority by a letter No.17-366/ED & Trg. dated 12.3.1993. The applicant passed Madhyamik examination in compartmental and was selected ignoring the candidature of one Shri Nimai Ch. Sikdar who secured higher marks in the Madhyamik examination. And thereby his appointment has been cancelled as per instruction of the higher authorities. As per instructions the applicant was not supposed to be selected for the post. So, wrong appointment has been corrected by the respondents by issuing the order of cancellation of the appointment of the applicant. Hence, the application is devoid of merit and liable to be dismissed.

3. Learned advocate, Mr. Ghosh on behalf of the applicant contended that the power of cancellation no doubt lies with the appointing authority, but that power should be exercised by the authority after following the principle of natural justice and



the applicant ought to have been given the opportunity of being heard before cancellation of the order of appointment of the applicant since the applicant was not at fault for such selection and since evil consequences would follow ^{due to} ~~after~~ issue of such order of cancellation. So, the order of cancellation can be said to be violative of Art. 14 of the Constitution. Mr. Ghosh also relied on a judgment reported in AIR 1981 SC 136 (S. L. Kapoor vs. Jagmohan and others).

4. Mr. Kar, learned advocate on behalf of the respondents has drawn our attention to the notification containing instruction regarding the method of selection of EDDA, Agent and other staff and he submits that the selection of the applicant was not made according to merit. Due preference was given to the age of the applicant as per Employment Exchange Card and therefore, on the basis of the complaint made by the unsuccessful candidate an enquiry was held and it was found that the appointing authority had committed a mistake or irregularity in violating the existing rule and instruction for the purpose of selection. Therefore, as per direction of the Postmaster General the provisional appointment of the applicant has been cancelled. Since the applicant has been appointed provisionally, therefore, he has no right to get opportunity of being heard. So, the application is liable to be dismissed since it lacks merit.

5. We have considered the submissions of the learned advocates of both the parties and perused the records. It is found that applicant's name has been sponsored by the Employment Exchange of Ranaghat and the applicant also produced his marksheet along with other candidates, but the respondent No.4 who is the appointing authority of the applicant has considered the age of the applicant and selected him since he was found matriculate and passed B.A. examination. The respondents produced the minutes of the selection dated 18.03.96 at the time of hearing. From the said minutes it is found that they got 15


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candidates for the purpose of selection and from the minutes it is found that the authority found fit for appointment ^{to} applicants No. 2, 3, 4, 5, 6 and 13 out of 15 candidates and for the purpose of selection ^{the applicant} notes have been given by the appointing authority. It has been mentioned that the post was not declared reserved for SC as 1) there are more than fixed percentage of S/C working in the Sub Division; 2) there is no S/T or Ex-serviceman amongst the applicant; 3) amongst the candidates fit for absorption, Shri B. B. Biswas Sl. No.5 is found most senior in respect of holding the employment registration card and he is selected for the post. On the basis of the said selection the applicant has been appointed provisionally, but it remains admitted fact from the side of the respondents that after appointment of the applicant some allegation has been made against the method of selection and the matter was enquired by the authority and thereafter it has been decided by the authority that there had been some irregularity in the matter of selection. So, his appointment ought to have been cancelled and accordingly, instruction ^{higher} had been given by the ~~appointing~~ authority to issue order of cancellation of the appointment and accordingly it has been done by a letter dated 19.3.96, Annexure/C to the application. Now the question comes whether the principle of natural justice ought to have been followed by the respondents before issuing the cancellation order in view of the judgment of the Hon'ble Apex Court, reported in AIR 1981 SC 136 (S. L. Kapoor vs. Jagmohan and others). In the said judgment the Hon'ble Apex Court held as below:

"The principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

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Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed."

In the instant case the applicant is holding the post of EDDA and it is found that the order of cancellation was issued as per direction of the Superintendent of Post Offices, but in the reply to the OA at page 3 the respondents stated that as per direction of the Chief Post Master General West Bengal Circle contained vide office letter No.SFB/Misc-137/96/ED dated 5.6.97 and conveyed vide Supdt. of POS; Nadia South Division memo No.A422/B/O. dated 11.6.1997 the provisional appointment of the applicant in the Post of EDDA, Daharbuincha P.O. was cancelled on 12.6.97. It remains undisputed that by such order of cancellation evil consequences will follow and it is a settled law that no order detrimental to the interest of the ^{Employee} ~~applicant~~ should be issued without giving any opportunity of being heard before taking any action. We find that the applicant was not at fault in the matter of selection. The appointing authority selected him in violation of the instruction keeping his eyes open to the fact disclosed to all the candidates. Therefore, when an appointment is made with open eyes to the fact, then it cannot be said ^{that by mistake, he was appointed} ~~to be wrong~~ on the face of the record. The appointing authority appointed him knowing the instruction contained in the memo as referred to by the learned advocate, Mr. Kar. We are of the view that in the instant case the power of cancellation could ^{have} been exercised by the respondents i.e., the appointing authority after affording the applicant reasonable opportunity to state his case. But admittedly, no opportunity of being heard to the applicant was given. Therefore, we are of the view that the impugned order of cancellation is violative of the principle of natural justice. In other words, it is arbitrary

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and therefore, it is liable to be quashed. Accordingly we hold that the impugned order of cancellation is liable to be quashed and as such we set aside the orders dated 11.6.87/12.6.97, Annexure/D to the application. We also direct the respondents to reinstate the applicant forthwith and he should be given all backwages as admissible under the rules. *B*

6. In view of our observations made above we allow this application awarding no cost.

G. S. Maingi
16.2.2006
(G. S. Maingi)

MEMBER (A)

D. Purkayastha
16/2/2006
(D. Purkayastha)

MEMBER (J)