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This judgment has been reviewed and substituted by
judgment dated 22.1.91; copy of this judgment shall not be issued

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22.1.91

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A. No.60 of 1990 (L)

Lalta Charan Applicant

Versus

Union of India & Others Respondents

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing an order dated 14.2.90, Annexure-I terminating the appointment of the applicant Lalta Charan as Extra Departmental Branch Postmaster at Ganeshpur and further for quashing the appointment of respondent No.4 Kamal Singh on that post by Annexure-D4 dated 14.2.1990.

2. The facts of the case are not in dispute. To fill the vacancy of the E.D.B.P.M., five names were sponsored by the Employment Exchange on the requisition of the Supdt. of Post Offices, respondent No.3. These included the names of the applicant as well as respondent No.4. By order dated 17.10.89, Annexure-5 of respondent No.3 who is the appointing authority, the applicant, after selection, was appointed to the post and he took charge of the office on 19.10.89.

3. Respondent No.4 appears to have made an appeal by Annexure-D.3 dated 19.10.89 to the Director of Postal Services, respondent No.2 against the appointment of the applicant. By Annexure-R2 dated 5.2.1990, the respondent

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No.2, after perusal of a letter dated 5.1.90 of respondent No.3 and the appointment file, the Director cancelled the appointment of the applicant and directed to issue an order of appointment of respondent No.4. He also informed respondent No.4 accordingly by a letter dated 16.2.90, Annexure-8. In para 4 of the counter of respondent No.3 it is stated that in compliance of the directions contained in the letter dated 5.2.90, Annexure-R2 of respondent No.2 he terminated the services of the applicant in exercise of powers under Rule 6 of the P&T EDA (Conduct and Service) Rules, 1964 and issued the appointment letter, Annexure-D4 on the same date in favour of respondent No.4.

4. The applicant's case is that the appointing authority was respondent No.3 and since the respondent No.3 had selected the applicant in accordance with the prescribed procedure and gave appointment to the applicant on that basis, respondent No.2 was not competent to cancel the appointment. It is next said that even if respondent No.4 had filed any appeal to respondent No.2 against the appointment of the applicant, the respondent No.2 was bound to give opportunity to the applicant to defend his appointment on the principles of natural justice but the respondent No.2 violated that requirement of the law.

5. Counters were filed separately on behalf of respondents 1 to 3 and respondent No.4. According to respondents 1 to 3 the services of the applicant were terminated and respondent No.4 was appointed in his place in compliance of the orders of respondent No.2. It was next said that the termination under Rule 6 of the

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E.D.A. (Conduct and Service) Rules, 1964 did not require any opportunity to be given to the applicant. It is significant that this counter does not set out any reasons to show that the appointment of the applicant was invalid.

6. In the counter of respondent No.4 it is stated that an appeal lies against the impugned termination order dated 14.2.90 under Rule 15 of the E.D.A. (Conduct and Service) Rules which the applicant had not preferred and therefore this application is not maintainable. It is next said that while the minimum educational qualification for appointment of EDBPM is 8th standard passed according to the Rules, the applicant had secured only 232 marks in the High School examination whereas respondent No.4 had secured 240 marks and therefore respondent No.4 had superior educational qualification. It is next said that according to departmental instructions a candidate should have adequate means of livelihood but Lalita Charan did not have an adequate source of income and therefore he was not entitled to be appointed. The appointment of applicant by respondent No.3, according to this counter, was arbitrary.

7. In his rejoinder to the counter of respondent No.4 the applicant stated that he possessed the qualification of B.A. pass and had adequate means of livelihood and income which had been duly verified by the postal authority. He claimed to have possessed agricultural land and a palkha house containing the room which could be utilised for post offices. He reiterated that while his appointment was perfectly valid and is according to law, his termination and the appointment of respondent No.4 is

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arbitrary and illegal. This application having been filed on 21.2.90, it was admitted by this Bench on 23.2.90 and at the same time an interim order was issued staying the operation of the impugned termination order dated 14.2.90 contained in Annexure-I. That interim order was vacated on 23.3.90.

8. When this case was taken up for final hearing today Shri P.L. Mishra appeared on behalf of the applicant; no one appeared on behalf of the respondents. We have gone through the record of the case and have heard Shri P.L. Mishra.

9. The preliminary submission of respondent No.4 that the application is not maintainable because the applicant did not file an appeal against the termination order has no substance. In the first place, the Rules provide for an appeal under Rule 10. This provision is confined to an order putting an employee off duty or against a punishment order under Rule 7. There is no provision of appeal against an appointment.

10. Even if we construe the so-called appeal to be only a motion for review under Rule 16, it could not serve any useful purpose of the applicant because the motion for review would have to be made to respondent No.2 who is the authority immediately superior to respondent No.3 who passed the termination order. The impugned termination order was passed under the directions of respondent No.2 and therefore any motion for review to respondent No.2 would be meaningless.

11. In any event the competence of the Tribunal to admit a petition even if some of the remedies available,

if at all, were not availed of is beyond dispute in so far as Section 20(1) of the Administrative Tribunals Act, 1985 only says that a Tribunal "shall not ordinarily admit an application" in such a situation. The circumstances of the present case are such as called for the admission of the petition without waiting for the applicant to approach the superior authority.

12. The question as to which of the two parties namely the applicant and respondent No.4 was better qualified or more suitable to be appointed was a matter specifically for the consideration of the appointing authority namely respondent No.3; and once the respondent No.3 had exercised his powers in that regard, vested civil right accrued in the person selected and appointed who also assumed charge of the office in consequence of the appointment. It is clear from the orders of respondent No.2 that he had acted on the so-called appeal of respondent No.4 and on perusal of the record of respondent No.3. As already mentioned there is nothing in the counter on behalf of respondents 1 to 3 (which obviously includes respondent No.2) to show that the appointment of the applicant was invalid or improper. All that is stated is that the applicant having been duly appointed through the proper procedure of selection the respondent No.2, on the complaint of respondent No.4, ordered the appointment of the applicant to be cancelled and it was in compliance of that direction the respondent No.3 passed the order, Annexure-I terminating the services of the applicant and Annexure-D4 appointing respondent No.4. No facts or circumstances have been set out in the counter of respondents 1 to 3 to show that the applicant's appointment was invalid. Fairness and justice demanded

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therefore that before the appointment of applicant was cancelled he should have been given an opportunity to contest the so-called appeal (in effect a complaint) of respondent No.4 contained in Annexure-D3. This is a basic requirement of the principles of natural justice which flow from Articles 14 and 16 of the Constitution of India. The provision of Rule 6 that the services of an employee who has not already rendered more than 3 years continuous service "shall be liable to termination by the appointing authority at any time without notice" does not imply that the fundamental obligation to act fairly and justly is done away with. The expression "without notice" does not include the expression "show cause notice". The Rule dealt with termination of services, and the ordinary method of termination of services in the Service Jurisprudence is to terminate it by one month's notice or by payment of Pay & Allowances in lieu of notice. An Extra Departmental Agent does not get any pay; he only gets some allowances which does not fall into the category of salary. When an Extra Departmental Agent proceeds on leave he does not get even allowances for the leave period much less for the period of absence from duty. In other words, an Extra Departmental Agent gets allowances only when he actually works. It is in this spirit that the expression "notice" is used in Rule 6; the significance is that his services may be terminated immediately, i.e. without notice. It does not mean that, ^{where} fairness and justice demand an opportunity to be given to show cause, even that opportunity is done away with by Rule 6. There can be no doubt that the termination of the services of the applicant have visited him with civil consequences. He must therefore

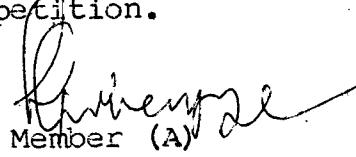
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have had an opportunity to show cause before his appointment could be terminated.

13. It is also noticeable that the power to act under Rule 6 is a power vested in the Appointing Authority, not ⁱⁿ any superior authority. The Appointing Authority has to apply its own mind and exercise its own discretion and judgement in the matter. He can ^{not} be forced by superior authority to act in a manner which he considers to be erroneous or improper. In the case before us, the Appointing Authority, respondent No.3 has only acted in compliance of the directions of the superior authority, respondent No.2 and has not applied his own mind to the problem. The impugned termination order therefore also suffers from the vice of non-application of mind.

14. The result of the above finding is that the application must succeed.

15. The application is allowed and the impugned order of termination of the applicant's services contained in Annexure-I and of the order of appointment of respondent No.4 contained in Annexure-D4, both dated 14.2.90, are quashed. Respondents 1 to 3 are directed to permit the applicant to function as EDBPM at Branch Post Office Ganeshpur, District Kheri in consequence of his original order of appointment within one week of the date of the receipt of the copy of this judgement. The applicant shall not be entitled to any allowances for the period between 14.2.90 to the date when he actually reassumes office of the post in question. Parties shall bear their costs of this petition.


Member (A)


Vice Chairman

Dated the 28th Sept., 1990.

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