

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application No: 282/2006.
 This, the 21st day of September 2006.

Hon. Mr. M. Kanthaiah, Member(J)
Hon. Mr. P. K. Chatterji, Member, (A)

**Sri Hari Prasad Gupta aged about 50 years S/o Sri Radhey Lal
 Gupta r/O C-3843 Rajaji Puram, Lucknow at present working
 as DOPLI Lucknow.**

Applicant.

By Advocate Shri R.S. Gupta.

Versus

1. **Union of India through the Secretary Cum D.G.
 Department of Post Dak Bhawan, New Delhi.**
2. **Director Postal Services o/o Chief Postmaster General U.P.
 Lucknow.**
3. **D.D.M.(PLI) O/O Chief Postmaster General U.P. Lucknow.**
4. **CPMG U.P. (Lko) Lucknow.**
5. **Sri Rajeev Umrao DDM PLI O/O C.P.M.G. U.P. Lucknow.**

Respondents.

By Advocate Shri Rajendra Singh for respondent No. 1, 2, and 4.

Shri S.P. Singh for respondent No. 3 and 5

Order

BY Hon. Mr. P.K. Chatterji, Member(A)

**The applicant was working as Postal Assistant (HSG-II) in
 the office of Chief Postmaster General U.P. Circle Lucknow. He
 was selected as Development Officer PLI by the respondents on
 1.12.2005 for a period of five years. Earlier, he was assigned**

free of charge

such responsibility, which he had performed successfully and dutifully. After he was selected on 30.12.2005, he was posted at Agra by the order of the respondents. However, he made representations to the Chief Postmaster General for transfer to Lucknow. This was acceded to by the concerned authority in the office of the CPMG and he was ordered to be posted it Lucknow by order of the respondents dated 9.5.2006. He joined the post at Lucknow on 2.6.2006. But on 5.6.2006 he was directed to be relieved on the post of DOPLI vide Memo No. STA/422-XA/Ch-VI/1 dated 5.6.2006. This is the order which has been challenged by the applicant in this O.A.(Annexure 1). In this order, which was communicated by the Assistant Postmaster General (Staff) office of the CPMG U.P. Circle Lucknow it was stated that the Director Postal Services (HQ) Lucknow had ordered to terminate the appointment of the applicant on the tenure post of DO (PLI) with immediate effect as the official was found absent from duty frequently and lacked sincerity to be trusted with the filed job.

2. The applicant has challenged this order for grounds, which as follows:

"Because the applicant was appointed as D.O.PLI for 5 years on 30.12.2005 and has worked only for 5 month and not completed his tenure for 5 years.

Because, the termination of appointment is without any show cause notice for the same.

Because, by the above illegal act of opposite parties the applicant has been put to harassment torture and loss of reputation.

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Because, if the illegal act of P.O. is not stayed the applicant will be put to extreme harassment and irreparable loss.

Because, the tenure of the post is five years.

Because the applicant was appointed for five years."

3. The applicant has requested the Tribunal to quash the termination order dated 5.6.2006 and grant all consequential benefits including back wages. The applicant had also requested for stay on the order of reversion of termination. This was considered by the Tribunal after taking into account the objections filed by the respondents and vide its order dated 5.7.2006 the Tribunal had directed that the termination order dated 5.6.2006 be stayed till disposal of the O.A.

4. The respondents in their submissions in the counter affidavit have denied the allegations and asserted that the appointment of the applicant to the post of DOPLI was subject to satisfactory performance of his working. They have mentioned that such appointment is made by the DPC appointed by the CPMG and the Development Officers so appointed are supposed to procure the business of Life Insurance for the circle. The respondents have refuted the claim of the applicant that after selection to the post for tenure of 5 years they have no authority to terminate the job and, that too without a show cause notice. The respondents have drawn the attention of the Tribunal to the appointment letter and has asserted that the CPMG has full right to put the selected candidate back to their regular / substantive post if they failed to discharge their duties and to secure the prescribed quantum

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of PLI business. It has been stated by the respondents that the conduct of the applicant was not found to be satisfactory as he was found to be absent without any intimation for days together as reported by the concerned Postmaster General. The respondents have annexed the letter of the PMG in this regard.

5. The respondents have further stated that even after issue of his transfer order to Lucknow, he did not join his new assignment at Lucknow as he was away from his HQ at Agra for days together. When he came to know about it he got himself relieved and thereafter joined at Lucknow on 2.6.2006. Against a show cause notice which was issued to him by the CPMG UP Circle, he says that he was not able to join the post at Lucknow earlier as he was not relieved by the Postmaster General Agra in time, thus putting the blame in the office of the Postmaster General. This, it was stated by the respondents, was not acceptable and it was an excuse to cover up his own lapse.

6. It has also been mentioned in this context that the applicant had impleaded the Deputy Director DDM PLI Shri Rajiv Umrao in the O.A. in his private capacity by name alleging that it was due to his malafide intention and his displeasure with the applicant that he was served the termination order so quickly after his transfer to Lucknow. Besides the counter affidavit filed by the official respondents No. 1 to 4 Shri n Rajeev Umrao has also filed a counter affidavit. In both the submissions it has been pointed out that Shri Umrao



was a member of the DPC which had selected the applicant initially as Development Officer PLI. He was the key person being the officer in charge of the PLI Division and if he had harbored any malice or any bad intention to the applicant, he would not have been selected in the first instance. Moreover, it has also been pointed out that after the applicant, submitted a representation for his transfer to Lucknow, shri Umrao DDM PLI did not stand in the way of expectations of his request. If he had objected, being the key person in charge of the PLI Unit, the applicant's request would not have been acceded to. For this reason, the respondents have categorically refuted the allegations that Shri Umrao was nursing ill feeling towards the applicant.

7. While contesting the request of the applicant for stay order earlier, the respondents have brought it to the notice of the Tribunal that in seeking the interim relief, the applicant had concealed the fact that he was directed to be relieved following the order dated 5.6.2005. This fact was also mentioned in the supplementary C.A. which was filed by the respondents. However, it is seen from the order sheet dated 9.8.2006 that the learned counsel for the applicant had also asserted his right to file rejoinder affidavit against the Supplementary C.A. as it brought into consideration new elements. The learned counsel for the respondents thereafter wanted withdraw the supplementary C.A as they were anxious for early disposal of the O.A. Thereafter, the supplementary C.A. was not taken on records as it would appear from the order

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sheet dated 9.8.2006 and no reference is being made to the points raised in the supplementary C.A.

8. After considering the case in all its aspect through the submissions and pleadings, we are of the view that the following points are key to decision in this case.

- a) Whether the respondents have the authority to terminate the posting of the applicant as DOPLI before 5 years.
- b) Whether by not giving a show cause notice the respondents violated any statutory provision.
- c) Whether by giving the stay, the Tribunal has recognized already his right to the post (as stated by the learned counsel for the applicant) and therefore any order otherwise would be in consistent with the interim relief.
- d) Whether the grounds shown by the respondents for termination of the order are sufficient or whether it is necessary for the Tribunal to go into analyzing the performance and conduct of the applicant in the capacity of DOPLI.
- e) Whether malafide against respondent No. 5 has been substantiated by the applicant.
- f) Whether authority reverting him to the post of PA is competent.

9. Let us take all the issues one by one. The respondents counsel during the hearing drew our attention to the appointment letter in which it was stated that the posting was subject to their satisfactory performance and conduct and the respondents reserved the right to terminate the arrangement at any time if they were not satisfied. It was also pointed out by the respondents counsel that the appointment to the post of *mechan*

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DOPLI is made by the CPMG from time to time for procuring business for the PLI which was in competition with other insurance products. The DDM PLI was given an onerous task and he needed to monitor the staff and performance of the DOS on the day to day basis. For this reason, he has been assigned by the CPMG to monitor the performance and take suitable actions if performance of any one did not come up to expectations. It is for these reasons that the respondents had reserved a right to terminate the arrangement before 5 years. We are of the view that this explanation is acceptable. This is purely administrative and executive order which has been assigned to the Head of the circle. The Tribunals are not supposed to dissect and analyze the actions of competent authority in individual cases. In a good number of judgments the Apex Court decided that in transfer and posting matters, the Tribunal, should not substitute its decision for that of the competent authority.

10. As to the point made by the learned counsel for the applicant that no show cause notice was issued, the respondents say a show cause notice was issued to the applicant on 29.5.2006, but it was pointed by the applicant that it was a show cause notice for the delay of his joining at Agara. It was not a show cause on termination. We are of the view that this question is not so relevant as the appointment DOPLI is not by virtue of a statutory authority. It is purely executive order which is related to the business targets given to the circles. It is not like a disciplinary order which derives its

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authority from the statute. For this reason, a show cause notice before termination is not essential.

11. On the question of the interim relief, we are of the view that stay was granted on *prima-facie* examination of the case. It is not necessary nor is it a settled law that the final decision has always to be in keeping with the interim order.

12. Regarding the grounds given by the respondents, we are of the view that the monitoring authority i.e. ^{DDM} ~~DOPLI~~ and the [^] PMG concerned, are supposed to watch the performance on day to day basis. The Tribunal would not like to go into the merits of their assessment nor is it necessary that the business procured by the applicant would be the only criteria to decide his retention or otherwise. There are also other factors like discipline. As already stated that it is not for the Tribunal to go into the facts on a day-to-day basis. We are satisfied that no statutory provision has been violated. Regarding the point of malafide by the respondent No. 5, the matter has already been dismissed above in para 6. The respondents have explained how the allegations of malafide would not stand as far as respondent No. 5 is concerned and we are satisfied with the explanation. As to the authority issuing the reversion order, the applicant has not given any objection. However, we have also satisfied that the respondents have not exceeded the authority in this regard.

11. In view of the above discussions, we are of the view that the respondents action are not ultravires of rules and also ⁱⁿ *mechan*

any statutory provisions. For this reason, the O. A. is disallowed and is dismissed. No costs.

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(P.K. Chatterji)
Member (A)

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(M. Kanthaiah)
(Member(J))

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