

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

O.A. NO.178/91

this the 21st day of November, 2000

HON'BLE MR. D.C. VERMA, JM

HON'BLE MR. A.K. MISRA, AM

Ashok Kumar Dubey

.....Applicant

By Advocate: Sri Harish Chandra

Versus

Divisional Superintendent of Post offices, Sultanpur
and two others.

....Respondents

By Advocate: Sri D.R. Sinha.

ORDER (ORAL)

D.C. VERMA, MEMBER (J)

Ashok Kumar Dubey has filed this O.A. for quashing of the termination order dated 5.4.1990 (Annexure 1 to the OA) passed by Superintendent of Post Offices, Sultanpur Division, Sultanpur.

2. The facts of the case is , as claimed in the O.A., that the applicant was regularly appointed as EDR Pakhrauli, Sultanpur, District- Sultanpur vide Annexure 4 to the OA by Assistant Superintendent of Post Offices (South), Sultanpur. Subsequently, by the impugned order, the Superintendent of Post Offices cancelled the appointment order.

3. The only point argued before us is that the impugned order , terminating the services of the applicant, is not valid on two grounds:-

(1) That the applicant was not given the show cause and was not heard before the order of termination was passed by the Superintendent of Post Offices; and

(2) That the Superintendent of post Offices was not the appointing authority and therefore, the order passed by the superior authority is not valid.



4. Learned Counsel for the respondents has submitted that the reasons mentioned in the CA, the appointment of the applicant was terminated by the Superintendent of Post Offices. The reason, as per learned Counsel is that the applicant's father Prasidh Narayan Dubey was a Mail Overseer and due to his influence, the applicant's appointment was made though the applicant's application was received late after expiry of the last date fixed for receipt of application i.e. 31.7.1989. We however, find in the recitals made in the para 5(ii) of the CA that the application of the applicant "appears" to have been received after expiry of the last date fixed for receipt of the applications. The other ground taken in the CA is that the applicant does not belong to the delivery jurisdiction of the Post Offices. Both these grounds have been challenged by the learned counsel for the applicant who submits that as he was not granted any opportunity to show cause he was not able to clarify the grounds for cancelling the appointment order. The learned counsel for the applicant submitted that he had filed ration card and had given his house number. The learned counsel for the applicant states that his application was received in time prescribed for receipt of such applications.

5. In our view we need not go into detail for examining the correctness of the rival contentions. In the case of Union of India and others Vs. Jai Kumar Parida reported in 1996, SCC (L&S) page 320, the apex court considered the provisions of Rule 6 of Rules of 1964 and observed as below:-

"The question is whether the termination of the respondent is in accordance with this rule. There appears to be a complaint laid against the respondent



that he had produced a false income certificate before seeking appointment. That was taken into account while making the appointment of the respondent as Extra-Departmental Branch Post Master. It is settled law that if any material adverse to the respondent formed a foundation for termination, principles of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply appropriate order may be passed giving reasons in support thereof. If it is only a motive for taking action, in terms of Rule 6, since that rule provides that such a termination could be made within three years without any notice, there would be no obligation on the part of the appellant to issue any notice and to give opportunities before termination. So each case requires to be examined on its own facts."

Following the

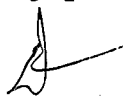
6. / Above decision of the apex court, the full bench of this Tribunal in the case of Tilak Dhari Yadav Vs. Union of India (1997) 36 ATC, page 539 held that under rule 6 of the Rules, the appointing authority does not possess power to cancel the appointment of Extra Departmental Agent for reasons other than unsatisfactory service or for administrative reason unconnected with conduct of the appointee, without giving him an opportunity to show cause.

7. In view of the above without giving a show cause notice, the applicant service could not have been terminated by the respondents. The order of termination is therefore not valid.

8. Learned counsel for the respondents submits that as the applicant's appointment was taken by play of fraud, the Department may not be deprived of taking any action in the light of the material which they have in their possession. We have not expressed our views on merits and it will be open for the respondents to taken action as they deemed fit.

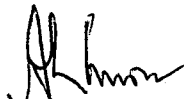
9. In view of the above discussions, the impugned order terminating the services of the applicant is found not valid and is liable to be quashed.

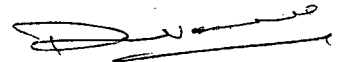
10. The O.A. is accordingly allowed. The impugned



order is quashed. The applicant shall be taken back in service immediately and shall be deemed to be in service from the date of termination of his service till the date of joining but without any back wages. The period in between shall be counted for purposes of seniority, if any.

10. The O.A. is accordingly allowed with no cost.


MEMBER (A)


MEMBER (J)

HLS/-

Lucknow:Dated: 21.11.2000

Copy prepared.
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19/11/00