

CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION No. 321 of 1992

Prabhakar Dubey

Applicant

versus

Union of india & others

Respondents.

HON. MR. S.N. PRASAD, JUDICIAL MEMBER.

HON. MR. B.K. SINGH, ADMN. MEMBER.

(By HON. MR. S.N. PRASAD, JUDICIAL MEMBER.)

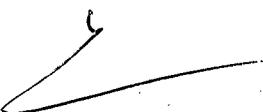
The applicant has approached this Tribunal for setting aside the order of termination of the services of the applicant, if any passed by the respondents and for directing the respondents to pay regular salary to the applicant.

2. In nut shell, the facts of the case, interalia, are that the applicant was appointed and worked as Extra Departmental Male Peon in Bhujgi Branch Post office (Jalalpur), Faizabad with effect from 18.2.88 to 31.10.88 and 8.12.88 to 31.7.89 on monthly salary of Rs 420/- per month. The applicant has annexed the photo^{stat}copies of the charge report dated 18.2.88, the certificate(experience) dated 13.4.91 issued by Post Master Bhujgi Branch office, (District Faizabad) and the appointment letters issued by the Inspector of Post offices Akbarpur(South)Faizabad as Annexures 1,2 and 3 to the original Application; and since the applicant was already registered with the Employment Exchange, Faizabad, under registration No. 1291 of 1991 and was High School pass and had experience in postal work, his name was sponsored by the Employment Exchange alongwith four others(vide Annexure 4); and the applicant was eventually selected and was appointed as Extra

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Departmental Male (Peon) Carrier as per order dated 3.6.91 (vide Annexure 6); and the applicant joinded his duties accordingly on 5.6.91(vide Annexure 7). The applicant had been working continuously since 5.6.91 without any break satisfactorily without any complaint; and while he was on duty on 10.7.92, he was informed verbally by Branch Post Master Mathia Jalalpur, Faizabad that the services of the applicant are to be terminated by the Inspector, Post offices(South),Akbarpur, Faizabad without assigning any reason and the steps are being taken to make new appointment against the post of the applicant. It has further been stated that the applicant has put in about 15 months of service on casual basis and 13 months service as a regular appointee, and has been working satisfactorily and as such any order terminating the services of the applicant without giving any opportunity or without issuing any show cause notice to the applicant shall be violative of the provisions contained under Article 311(2) of the Constitution of India and against the principles of natural justice.

3. In the counter affidavit filed by the respondents, it has been contended interalia, that till 10.7.92 no decision of the head of the circle was made known to the administration at Faizabad but how the applicant came to know or smelled about the order; and as such it shows that the applicant was not confident of his appointment on the post held by him. The cancellation of order by the Reviewing authority in exercise of the inherent power of the authority does not attract Article 311(2) of the Constitution of India because it is not by way of punishment and does not cast any stigma on the applicant. It has further been contended that the grounds taken by the applicant are hypothetical and unlawful and have no merit. In view of the above circumstances the application of the applicant is liable to be dismissed.



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4. Rejoinder Affidavit has been filed by the applicant wherein he has reiterated almost those very view points as mentioned in the Original Application as stated above.

5. We have heard the learned counsel for the parties and thoroughly gone through the records of the case.

6. The learned counsel for the applicant while drawing our attention to the contents of the application and Rejoinder affidavit and papers annexed thereto has argued that the applicant has put in about 15 months of service on casual basis and 13 months of service as regular appointee; and as such his services should have not been terminated without issuing any show cause notice or without affording any reasonable opportunity to the applicant, as the basic tenets of natural justice require that one should not be condemned without being heard or without any show cause notice being served; and has further argued that non-observance of principles of natural justice is by itself a sufficient proof of prejudice, and as such the order of termination of service of the applicant passed by the Inspector of Post Offices, Akbarpur(South), Faizabad verbally communicated by the Branch Post Master, Branch Post office Mathia , District Faizabad verbally on 10.7.92 and any subsequent order to this effect is illegal and invalid and should be set aside and in support of his arguments he has placed reliance on the following rulings:

1. (1988)7ATC 226 'Surya Bhan Gupta'(Petitioner)versus Union of India & others(Respondents), wherein it has been enunciated :

"Termination-Cancellation of erroneous appointment-Petitioner appointed Extra Departmental Delivery Agent through Employment Exchange-Another candidate challenging his appointment on the ground that he had submitted application to the Employment Officer in time but it reached the concerned Sub-Divisional Inspector after the closing date-Petitioner's appointment cancelled-Held, the appointment was made by the competent authority and was according to rules! Omission to consider the other candidate did not render

if void-It was at the most voidable-It could not be cancelled without affording opportunity of representation to the employee-Such opportunity was necessary even if possibility of change in decision was very less."

2. (1988)6 A.T.C. 712 'S.Serial Raj(applicant) vs. Union of India & others'(Respondents), wherein it has been enunciated:

"Termination-Natural justice-applicant an Extra Departmental Branch Postmaster-His services terminated without any notice on the complaint of a person who was considered for appointment alongwith applicant but was not successful-Held, natural justice denied-Hence, termination invalid-P&T Extra Departmental Agent(Conduct and Services)Rules, 1964, Rule 6."

3. (1993) 23 ATC 243 'Satendra Pratap Singh(Applicant) versus 'Superintendent of Post Offices, Sultanpur and others'(Respondents), wherein it has been enunciated:

"Termination-Extra Departmental Agents(Conduct and Services)Rules, 1966, R.6-Termination under-Legality-Applicant duly selected and appointed as EDBPM-An authority superior to the appointing authority, on complaint, finding a rival candidate to be more qualified and directing termination of applicant's service in order to accommodate the rival candidate-Termination of applicant's service under such direction without affording opportunity, held illegal-

7. The learned counsel for the respondents while reiterating the viesw points as set out in the counter affidavit has argued that since the appointment of the applicant was provisional, there was no legal necessity for issuing any show cause notice or affording any opportunity to the applicant for terminating his services; and has further argued that the cancellation of an order by Reviewing authority in exercise of the inherent power of the authority as such does not attract the provisions of Article 311(2) of the Constitution of India, because it is not by way of punishment or it does not cast stigma on the applicant and as such the application of the applicant be dismissed.

8. We have perused the above rulings.

9. This is worthwhile making mention of this fact that in para 4.13 of his application, the applicant has stated that he has put in about 15 months of service on casual basis and 13 months of service as a regular employee and this fact has been clearly admitted by the respondents in para 14 of their

counter affidavit. In this context this is important to point out that the appointment letter of the applicant dated 3.6.91(Annexure 6 to the O.A.) clearly reveals that the appointment of the applicant will be liable to be terminated by him(applicant) or by the appointing authority notifying the other in writing and the appointment of the applicant shall be governed by the P&T Extra Departmental Agensts(Conduct and Services)Rules, 1964, as amended from time to time. Thus from the above and from the entire material on record it is fully established that the applicant has put in about 15 months of service on casual basis and about 13 months of services as regular appointee, and from the scrutiny of the material on record it is apparent that before terminating the services of the applicant no show cause notice was issued or no opportunity of being heard was given to the applicant, which is violative of the principles of natural justice; as after his appointment and after rendering his services about 13 months as regular appointee a valuable right had accrued to the applicant, but the applicant has been condemned without being heard or without giving any opportunity of showing cause against termination of his services; and in this view of the matter we find that the above rulings cited by the learned counsel for the applicant go a long way in supporting the above arguments of the learned counsel for the applicant.

8. Consequently, we find and hold that the order terminating the services of the applicant whether ^{verbal} or in writing, if any, is illegal and invalid and violative of principles of natural justice and as such the same is hereby quashed, and the application of the applicant is allowed and the applicant is entitled to all consequential benefits. The respondents are directed to reinstate the applicant with all consequential benefits with arrears of pay forthwith, latest within a period of one month from the date of communication of this order and the respondents are further

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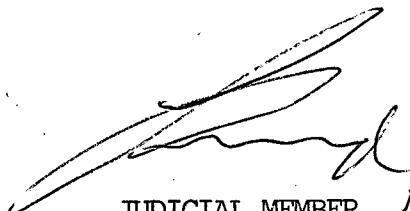
directed to make payment of all consequential benefits and arrears *in accordance with law*, within a period of 3 months from the date of communication of this order. However, it shall be open for the respondents to proceed against the applicant in accordance with law, if they choose to do so.

9. The application of the applicant is decided as above. No order as to costs.


ADMIN MEMBER.

LUCKNOW : DATED : 14.9.93

Shakeel/-


JUDICIAL MEMBER. 14.9.93