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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

OA No. 358/1994

Date of Decision: 7.5.1997

BETWEEN:

T. Prameela Devi .. Applicant

AND

1. The Assistant Superintendent, of Post Offices, Nellore Division, Nellore
2. The Senior Superintendent of Post Offices, Nellore Division, Nellore.

3. J. Ramaiah,
E.D. Branch Post Master,
Pedapadupadu,
Nellore Dist.

Counsel for the applicant: Mr. B.S.A. Satyanarayana

Counsel for the Respondents: Mr. K. Bhaskar Rao

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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JUDGEMENT

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (J)

Heard Sri B.S.A. Satyanarayana the learned counsel for the applicant and Sri K. Bhaskar Rao the learned standing counsel for the respondents. None appeared for Respondent No:3. The Respondent No:3 also remained absent.

The applicant has sought the following reliefs in this O.A.

- i) That the termination order No. B3/BPM/Padugupadu dated 7.12.1992 issued by the 2nd respondent on 31.12.1993 that to be quashed by declaring the same as illegal and unconstitutional;
- ii) That the notification seeking fresh applications for the post of E.D.B.P.M./Padugupadu, A/W Kovvur S.O., under Nellore H.O., issued by the 2nd respondent on 12.10.1992 has to be quashed;
- iii) To direct the respondents to continue the applicant in which she has worked with retrospective effect.
- iv) That the applicant shall be paid her back wages for all the months from the date of her termination from the said post.
- v) The applicant has to be regularised and
- vi) and that the applicant has to be paid the costs of the applicant.

The facts of the case are as follows:-

The post of EDBPM Padugupadu in account with Kovvur fell vacant due to resignation of the said post by the regular incumbent. The respondents appointed the applicant to that post on provisional basis with effect from 11.12.90. On 1.5.91 a notification was issued to fill up the said post by regular candidate. Only one person responded to the said notification. Hence a renotification was issued

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on 11.6.91. In response to the said notification the applicant and others had responded. The applicant was selected to the said post on regular basis. However, her services were terminated from 21.8.92. She submitted a representation against the said termination. Her representation was dt. 9.10.92. There was no response to that representation from the respondents. Hence the applicant challenged her termination before this Tribunal in OA No. 722/92. On 15.11.92 the said OA was disposed of directing the respondents to consider the representation dt. 9.10.92 of the applicant in accordance with the rules. Accordingly the respondents considered the representation of the applicant and informed her the reasons for terminating her services as EDBPM, Padugupadu. Being aggrieved by the said reply the applicant has filed this OA for the above reliefs.

A counter has been filed stating that after her appointment on regular basis some facts adverse to her came to the knowledge of the respondents that the applicant had knowingly suppressed certain information while furnishing the attestation forms at the time of joining the duties and that the respondents felt no need to continue her services. The respondents felt that the applicant suppressed vital information for wrongful gain, that it was revealed that the applicant was involved in a criminal case along with others in Crime No. 148/85 registered under Section 120, 210 & 148 of the Indian Penal Code read with Sections 3 & 4 of the Indian Explosives and Substances Act, that the applicant as well as her father and her husband were arrested that she was remanded to judicial custody. The respondents have stated that subsequently they took steps to fill up that post provisionally as well as by regular candidate.

The applicant has challenged her termination as illegal on the ground that they had not given her any opportunity to explain her conduct that the protection available under Articles No.14, 16, ~~213~~, 311 (2) of the constitution of India are available even to temporary and probationary civil servants that under Rule 5(i) of the CCS (Temporary Services) Rules a month's notice is essential that they have violated the principles of natural justice that therefore, the action of the respondents in terminating the services is unconstitutional.

On 2.4.1997 we heard the learned counsel for the parties. We were unable to lay our hands on the order of termination passed in the case. Therefore on 3.4.1997 we directed the respondents to produce the file containing the termination proceedings of the applicant. The respondents have not produced the said file. However the learned counsel for the respondents during the course of his arguments submitted that the services of the applicant were terminated by invoking Rule 6 of the EDDA services Rules.

The learned counsel for the applicant during the course of his arguments submitted that the applicant has been terminated without following the principles of natural justice that she was not given an opportunity to explain and her conduct, that, therefore, the order of termination is bad in law.

Rule 6 of the EDDA Staff Services Rules empowers the authority to terminate the services of ED postal staff who has put ⁱⁿ not less than 3 years service without assigning any reasons. In the beginning even action under the said rule could have been taken even with-out issuing any notice.

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Now the said rule has ammended and the ammendment has come into effect where notice is necessary, for terminating the E.D staff under the rule 6.

It is now to be seen whether the respondents were, justified in invoking the rule 6 to terminate the services of the applicant.

The learned counsel for the respondents relied upon the full bench decision of this Tribunal in OA No.774/95 decided on 20th day of November, 1996. The full bench of this Tribunal recorded a finding that a person suppressing certain facts at the time of entering into service in the attestation form can be terminated. We have no doubt in our mind that the applicant ^{had} suppressed her involvement in ^a criminal case in 1995. She did not disclose the information at the time of entering into service. Therefore the suppression of the said material information clearly justified the respondents to take a decision to terminate her service. But the point now required to be considered is whether they can invoke Rule 6 of the Rules ^{or} have ^{to} resort to Rule 8 of the said Rules.

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The learned counsel for the applicant relied upon the decision of the Hon'ble Supreme Court of India in the case of Union of India and others Vs. Jai Kumar Farida in support of his submission that the respondent should not have invoked Rule 6 of the Rules and should have initiated disciplinary proceedings against the applicant. In para-5 the Hon'ble Supreme Court of India has observed as follows:

" 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 Overseer to ~~and~~ settled law that if any material 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.

In the case of Surya Bhan Gupta Vs. Union of India and others reported in AR 1988 (7) Administrative Tribunal cases 226, the Allahabad Bench of this Tribunal considered the scope and ambit of Rule 6 of the EDDA Staff Rules. In paras 4, 5, 8, 11 & 13 the Tribunal has been pleased to observe as follows:

4. The implications of amendment to Rule 6 have been explained, vide Director General of Post Offices and Telegraphs letter No.10/1/82-Vig.III dated 13.4.1983 as under:

Implication of amendment to Rule 6.- The words which have been deleted from Rule 6 of the P. & T. E.D. Agent (Conduct and Service), Rules, 1964 (i.e. "for generally unsatisfactory work or on any administrative grounds unconnected with his conduct") created some legal complications

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and in one case the court gave an adverse verdict. Accordingly, it was thought fit that the rule should be so amended that order for termination of services may not require any reasons to be indicated. Otherwise, this amendment has not made any change in the existing instructions and termination of services may normally be ordered only in cases of unsatisfactory service or for administrative reasons unconnected with the conduct.

Obviously from the department's point of view, no fundamental or basic change has occurred by deletion of the foregoing words from Rule 6. Assuming, however, for the sake of arguments that the services of an employee i.e. EDDA can be completed three years' continuous service and no reason need be assigned for the same, the question which still looms large is whether the principles of natural justice ought to have been complied with or not.

5. The principle of 'audi alteram partem' is a basic concept of principles of natural justice. No one should be condemned without hearing is the essence of justice. Hence courts of law apply this principle to ensure fair play and justice in judicial, quasi-judicial and even administrative actions which come up before them for judicial review.

8. Hence in our view the respondents ought to have complied with the principles of natural justice especially the principle of 'audi alteram Partem' enabling the applicant to represent against the proposed cancellation of his appointment. We need not say whether that would have led the Sr. Superintendent of Post Offices to a different conclusion but one cannot be oblivious to the fact that the Sr. Superintendent of Post Offices has proceeded on the assumption that the applications by respondent 4 and three other persons were submitted in the Employment office on 26.3.1985 and the same could not be delivered to the Sub-Divisional Inspector (PO) either on 26 or 27.3.1985 because he was not available in his office. Surely, it would have been open to the applicant to challenge the veracity/correctness of this assumption and prove that the applications were in fact received by the Employment office on 28.3.1985. Any how the point for consideration is that justice and fair play in action demanded that before the applicant was deprived of his valuable right by cancellation of his appointment, he should have been afforded an opportunity to show a cause against the same. That not having been done, the impugned order has to be quashed as being illegal and invalid. The fact that under Rule 6, termination of service can be effected without notice does not in our considered view detract from the legal position elucidated above. We are fortified in the view we have taken by Division Bench decision of Allahabad High Court in Girish Chandra V. Union of India. That case too was of termination of services of an Extra-Departmental Mail man. Their Lordships observed:

Since the petitioners had been appointed after their selection and they had been working for more than two years, they had acquired a right to continue in service unless the same was terminated in accordance with service rules. If there was any irregularity committed in the selection and if the authority proposed to cancel the selection, the petitioners should have been given opportunity of hearing. Admittedly, no opportunity was given to the petitioners as a result of which principle of natural justice was clearly violated. An order passed in breach of the principles of natural justice is rendered null and void, and it is not necessary to demonstrate any prejudice.

11. Evidently both these authorities are not at all attracted to the facts of the instant case in as much as the appointment of the Tehsildars in the former case and that of the Headmistress in the second case were totally in contravention of the service rules and as such were held to be 'void ab initio'. In law there is a clear distinction between a void and voidable action. Where an order is made in contravention of statutory provisions, or where the authority making such an order lacks competence/jurisdiction to make an order under the rules, such an order has no legal foundation whatsoever and, therefore, it can be set aside/quashed any time being null and void. However, where, as in the instant case, an order does not suffer from any inherent or intrinsic infirmity like one of competence or jurisdiction, it cannot be said to be void. It may at worst be voidable and may be set aside at the instance of the aggrieved party. No doubt on the complaint of respondent No. 4 challenging the legality of order of appointment of the applicant the same could be set aside by the concerned authorities on the ground that respondent 4 and other applicants who had made applications within the prescribed time should also have been considered for appointment. Their non-consideration for appointment certainly entitled them to challenge the legality of the order of appointment of the applicant. All the same it being nobody's case that the applicant had not been appointed by a competent authority or that he had been appointed against the statutory rules, the order of his appointment cannot be said to be void ab initio by any stretch of reasoning. Under the circumstances, it was incumbent on respondents 1 & 2 to afford an opportunity to the applicant to be heard before cancelling his appointment inasmuch as he had acquired a valuable right and he could not be deprived of the same, unilaterally or arbitrarily.

13. The learned counsel for the respondents laid great stress on the fact that the appointment of the applicant being provisional only, it can be terminated any moment without assigning any cause or giving any notice. Having regard to all the facts of the case, we don't think that the appointment of the applicant as EDDA can be said

to be provisional in its true sense. Admittedly, there was a clear vacancy of EDDA and he was appointed to the said post by the Sub-Divisional Inspector (PO), who was the competent authority under the rules. It is nobody's case that the appointment had to be ratified by any higher authority for instance, the Sr. Superintendent of Post Offices. However, it bears repetition that appointment was made after considering other applicants also. As per instructions issued, vide D.G., P. & T Letter No.43-4/77/Pen., dated 18.5.1979:

- (i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies in such cases, the appointing authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.
- (ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment.

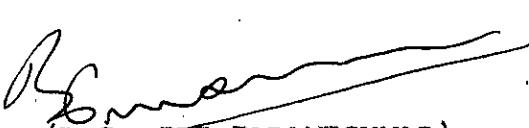
In the instant case the grounds stated for the termination is that the applicant had failed to mention / or suppressed her involvement in a criminal case No.148/85. However it is submitted that she has been acquitted in the said criminal case. It is for the concerned appointing authority to take into consideration about the suitability of the candidate. However the applicant failed to mention the said fact in the declaration at the time of entering into service. This in our opinion amounts to misconduct. The respondents were not justified in invoking rule 6 of the EDDA Rules in view of the principles enunciated in the cases stated above. No doubt, the respondents were competent to consider the suitability or otherwise of the applicant on account of the suppression of material fact in the declaration form but they should not have invoked rule 6 of the Rules to short cut the process of termination. In our opinion the

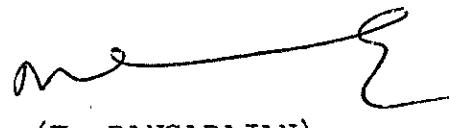
respondents should have resorted to Rule 8 of the EDDA Rules. Having considered the facts and circumstances of the case we feel that terminating the services of the applicant under Rule 6 of the EDDA Rules is not justified. The respondents should have resorted to Rule 8 of the said rules and conducted an inquiry as to the conduct of the applicant. Hence in our opinion the order of termination Dt. 7.12.92 issued by Respondent 2 is not sustainable in law.

After termination the respondents have filled up the post of EDBPM, Padugupadu. Therefore, the applicant is not entitled to the relief claimed in para-(ii) to (v) of

In the result the application is allowed in part. The termination order dt. 7.12.92 is hereby set aside. The respondents are directed to take the applicant ^{back} to duty forthwith. The period from 7.12.92 till the date of reinstatement of the applicant into service shall be regulated as per rules.

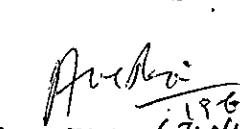
The respondents are at liberty to proceed against the applicant for the alleged misconduct on her part in not disclosing vital information in the declaration submitted by her at the time of her entering into service. In the circumstances of the case no order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
7/5/93


(R. RANGARAJAN)
MEMBER (ADMN.)

KSM

Date 7.5.97


Dy. Registrar (JUDL.)
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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: M
(J)

DATED

11/5/97

ORDER/JUDGEMENT

M.A./R.A/C.A. NO.

D.A. NO.

358/97

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

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II Court.

केन्द्रीय व्यापारिक अधिकार
Central Administrative Tribunal
प्रिय/DESPATCH

- 4 JUL 1997

हैदराबाद प्लायफील
HYDERABAD BENCH