

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.No.92/97

Date of order: 27/11/2000

Pawan Kumar, S/c S;hri Dharampal Singh, R/c Vill. & Post
Ranasar, Distt.Jhunjhunu, working as Ex.Postal Assistant,
Head Post Office, Chirawa, Distt.Jhunjhunu.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt, Deptt. of Post, Mini. of Communication, New Delhi.
2. Postmaster General, Rajasthan Western Region, Jodhpur.
3. Director Postal Services, Rajasthan Western Region, Jodhpur.
4. Superintendent of Post Offices, Jhunjhunu Divn, Jhunjhunu.

...Respondents.

Mr.K.I.Thawani - Counsel for the applicant

Mr.K.N.Shrimal - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Newani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunal's Act, 1985, the applicant makes prayer to quash and set aside the impugned order of termination dated 14.2.96 being illegal, capricious and in violation of Articles 14, 16 and 311(2) of the Constitution of India and to direct the respondents to reinstate the applicant with consequential benefits.

2. The case of the applicant in brief is that the applicant has possessed all the requisite qualification for the post of Postal Assistant as he passed the Intermediate Examination from Bihar Intermediate Education Council, Patna with First Division in the year 1994 and mark-sheet issued to the applicant by the said Council bearing Roll No.10398 was submitted to the respondents for the selection. Thereafter the selection committee has selected the applicant on the post of Postal Assistant. It is stated that there was no fraud or misrepresentation on the part of the applicant and there has not been any overwriting/eraser by the applicant on the mark-sheet so submitted and on verification it was found that Roll No.10397 has passed the Intermediate Examination of Bihar Intermediate Education Council, Patna, which was the actual Roll number of the applicant. It was a mistake/error on the part of the Council who issued the mark-sheet. It is stated that the respondents have taken this mistake as a fraud/misconduct on the part of the applicant and terminated the services of the applicant without an enquiry. The order of termination, according to the

applicant amounts to stigma, therefore, the action of the respondents is per se illegal, arbitrary and in violation of Articles 14, 16 and 311(2) of the Constitution. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated that the applicant did not avail the statutory remedy of filing an appeal against the order of termination, therefore, the application is not maintainable. It is also stated that the Asstt. Superintendent Post Offices, Sh.N.R. Meena, was sent to Patna, for verification of the documents produced by the applicant and he submitted his report to the Post Master General, Jodhpur, to the effect that the Mark-sheet filed by the applicant bearing Roll No.10398 was false and on the basis of the above report, the impugned order of termination was issued against the applicant. It is further stated that as per the terms of appointment letter, no notice/departmental enquiry was necessary before terminating the services of the applicant, therefore, this O.A is devoid of any merit and liable to be dismissed.

4. Rejoinder was also filed. In the rejoinder, it has been made clear that the applicant has passed the Intermediate Examination in First Division in the year 1994 and there was no difference in the mark-sheet, except the Roll number. It is further stated that the correct Roll number of the applicant was 10397 for which the respondents have not made any verification. It is also stated that the services of the applicant were terminated on the ground of misconduct which casts stigma upon the applicant, therefore, there has been a gross violation of the principles of natural justice in not conducting an enquiry before the impugned order of termination was issued.

5. Heard the learned counsel for the parties and also perused the whole record.

6. Admittedly, the services of the applicant were terminated on the basis of the fact that on verification it was found that the mark-sheet which the applicant has submitted for the selection was found false, therefore, the applicant has secured the selection on the basis of a fake mark-sheet which amounts to misconduct.

7. The learned counsel for the applicant has argued that under Article 311(2) of the Constitution, no Govt servant shall be dismissed or removed from service except after an enquiry. But in this case, the services of the applicant have been terminated without making any enquiry against the alleged misconduct which caused stigma on the applicant. No opportunity of hearing granted to the applicant.

8. As to what means to stigma has been considered by the Hon'ble Supreme Court in Kamal Kishore Lakshman Vs. Pan American

Subs

World Airways, 1987(1) SCC 146, which reads as under:

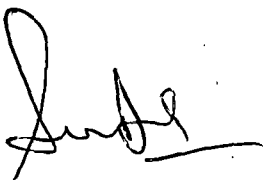
According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc, indicating that something is not considered normal or standard. The legal Thesuras by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary 'stigma' is a matter for moral reproach."

9. Article 311(2) of the Constitution of India reads as under:

(2) No such person as aforesaid shall be dismissed, or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a responsible opportunity of being heard in respect of those charges."

10. In Dipti Prakash Banerjee Vs. Stendra Nath Bose Hon'ble Supreme Court of India held that if findings were arrived at an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry the simple order of termination is to be treated as founded on the allegations of misconduct and will be bad but if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct enquiry, but at the same time he did not want to continue the employee against whom there were complaints it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquiry into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be motive and not the foundation and the simple order of termination would be valid.

11. In Radey Shyam Gupta Vs. U.P.State Agro Industries Corpn. Ltd. & Anr., Hon'ble Supreme Court of India 1999 SCC(L&S) 439, it was held that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer. It is done only with a view to decide whether he is to be retained or continued in service.

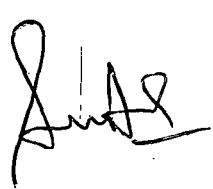


12 In Omvir Singh Vs. Dy. Inspector General of Police (Karmic) Head Quarter, Allahabad & Anr. ATJ 1999(3) 242, Allahabad High Court, it was held that in case of charge for obtaining appointment based on forged certificate, termination of services cannot be ordered without giving an opportunity of hearing. It was further held that if reasons of the ground is foundation and not motive, in that even it is not termination simplicitor but it is a termination with stigma and cannot be done without following the principles of natural justice. Only termination simplicitor can be passed in exercise of power under 1975 Rules. As soon as stigma is cast or it is a penalty, it does not remain within the scope and ambit of 1975 Rules and in such circumstances, it was incumbent upon the respondents to give an opportunity to the petitioner before issuing the order of termination.

13. In the present case, verification regarding qualification of the applicant was made with a view to find out whether the qualification as stated by the applicant in his application are correct or the applicant has filed a fake mark sheet. On verification, the respondents were of the view that the mark sheet filed by the applicant was false. No enquiry was done from the applicant and all was done behind the back of the applicant. If a show cause notice was given to the applicant or an inquiry was initiated to found out the truth then the position would have become very clear that it was only a printing mistake made by the issuing department and actually the applicant did pass Intermediate Examination in the year 1994 and secured First Division.

14. The services of a temporary Govt servant can be terminated at any time by an order of simplicitor, without assigning any reason. But services of a temporary Govt servant cannot be terminated by an order which punitive in nature and cast stigma upon him without affording an opportunity of hearing or without holding an enquiry against him.


15. The applicant in his pleadings made it very clear that he has passed the Intermediate Examination in the year 1994 with First Division, and the mark-sheet issued to him the Roll number written was incorrect whereas the correct Roll No. 10397. This fact was got verified by the respondents and without proper verification, the respondents reached to the conclusion that the applicant has got the appointment on the basis of fraud/misrepresentation. In our view, the foundation of the termination order was based on a misconduct, therefore, the services of the applicant could not have been terminated without affording an opportunity to show cause to the applicant as envisaged under Article 311(2) of the Constitution as the order of termination is based on misconduct is punitive and

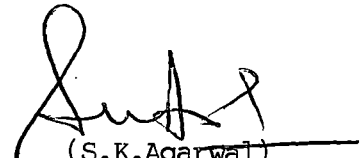


casting a stigma upon the applicant. Therefore, we are of the considered opinion that such an order is bad in law without following the principles of natural justice.

16. Therefore, the impugned order of termination passed by the respondents is definitely illegal, arbitrary, capricious and in violation of Articles 14, 16 and 311(2) of the Constitution of India and the same is liable to be quashed.

17. We, therefore, allow this O.A and quash the impugned order of termination dated 14.2.96 and direct the respondents to reinstate the applicant in service forthwith with all consequential benefits. No order as to costs.


(N.P. Nawani)
Member (A).


(S.K. Agarwal)
Member (J).