

Deo Kumar Pathak Vs. Sub Divisional Inspector of Post

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Court : Central Administrative Tribunal CAT Allahabad

Decided On : Feb-18-1999

Judge : S Agrawal, R A G.

Appellant : Deo Kumar Pathak

Respondent : Sub Divisional Inspector of Post

Judgement :

1. In this OA the prayer of the applicant is to quash and set aside the impugned order dated 26.12.1997 by respondent No. 1 and the order dated 23.12.1997 passed by respondent No. 2.
2. It appears that in pursuance of the order dated 23.12.1997 issued by respondent No. 2, respondent No. 1 has issued an order dated 26.12.1997 terminating the services of the applicant under Rule 6 of the ED Agents (Conduct and Service) Rules, 1964.
3. In brief the facts of the case as stated by the applicant are that the post of E.D.M.C. Piyarauta, district Ballia fell vacant due to retirement of one Sri Kapil Deo Singh on 31.12.1996. In order to fill up that post, respondent No. 1 requisitioned the names of suitable candidates for appointment from Employment Exchange. The Employment Exchange in pursuance of the same sponsored six names and the applicant was found suitable out of those six to be appointed on the post of E.D.M.C. Piyarauta district Ballia. It is stated that after the selection, the applicant was appointed and the applicant joined the service in the afternoon of 31.12.1996

in pursuance of the appointment order. It is further submitted that the applicant was discharging his functions honestly and with all sincerity but all of sudden an order of termination dated 26.12.1997 was served upon him. It is stated that on perusal of this order, it appears that this order dated 26.12.1997 was passed in pursuance to the order Superintendent of Post Offices, Ballia dated 23.12.1997. It is stated that no opportunity of hearing/show cause notice was given by the Opposite Parties to the applicant. The applicant was selected after the due process of law. But respondents have arbitrarily and malafidely passed the impugned order. No notice was given to the applicant before passing the impugned order.

Therefore, the same is utter disregard of the Rule 6(b) post and Telegraph Extra Departmental (Conduct and Service) Rules, 1964 and is liable to be quashed as such. Therefore, by this OA, the applicant has prayed for a relief sought for.

4. A counter affidavit was filed. It is admitted in the counter affidavit that the order dated 26.12.1997 was passed by the S.D.I. (P) terminating the services of the applicant in pursuance of the order of S.P.O. Ballia dated 23.12.1997. It is stated that the applicant was selected against the vacant post after following regular selection process and was appointed by the S.D.I (P) vide order dated 27.11.1996 and the applicant joined on 31.12.1996 as E.D.M.C. Piyarauta. It is stated that on receiving the representation from the residents of village Piyaurata, the Director Postal Services reviewed the matter and found the appointment of the applicant as irregular and terminated the services of the applicant vide order dated 23.12.1997 and on this basis the S.D.I. (P) respondent No. 2 issued an order dated 26.12.1997 terminating the services of the applicant under Section 6(b) of EDA (Conduct and Service) Rules, 1964. The basis of terminating the services of the applicant was that the certificate of income filed by the applicant does not disclose any independent source of income and thus the appointment was irregular.

4A. A rejoinder affidavit was filed stating that no show cause notice was given to the applicant before terminating his services and the services of the applicant could not be terminated on the ground that the applicant has no independent source of income.

5. Heard learned counsel for the applicant and learned lawyer for the respondents and perused the whole record.
6. Learned lawyer for the applicant submits that the authority who reviewed the matter was not competent to review as the same was higher than the appointing authority and no opportunity to show cause was given to the applicant before the impugned order of termination was issued. It is also submitted that the applicant was appointed after following due process of selection and his appointment was not in any manner irregular.
7. Learned Counsel for the applicant also referred some of the decisions in support of his contention: (i) V.K. Sabu v. Asst. Supdt. of Post Offices and Anr., (1993) 23 ATC 117=1992(3) SLJ 398 (Ernakulam) (CAT).
- (ii) T.G. Gowrikutty v. Supdt. of Post Offices, Alapuzha and Anr., (1994) 26 ATC 159=1993(3) SLJ 482 (Ernakulam) (CAT).
- (iii) Shri Amar Singh v. UOI and Ors., 1995(3) SLJ 354 (Jodhpur) (CAT).
- (iv) Tilak Dhari Yadav v. UOI and Ors., (1997) 36 ATC 530=1999(3) SLJ 461 (FB Allahabad) (CAT).
8. In V.K. Sabu v. Asst. Supdt. of Post Offices and Anr.. It was held that termination of E.D. Agent on the ground of selection being found irregular by the reviewing authority, the provisions of Rule 6 cannot be invoked.
9. In T.G. Gorikutty v. Supdt. Post Offices, Alapuzha and Anr., it was held that non-approval of selection by higher authority is not a valid ground for termination. In this case the applicant was appointed as EDBPM but notice given to her for termination of her services because the Post Master General perused the selection file and he did not approve the selection. It was held that the same was not permissible in exercise of such unlimited direction. Therefore, the termination notice was quashed.
10. In Amar Singh v. UOI and Ors., it was held that an authority administratively higher authorities than the appointing authority has no power of review in the

matter of appointment by appointing an authority and termination in pursuance of such power of review is not valid and, therefore, quashed.

11. In *Tilak Dhari Yadav v. UOI and Ors.* FB Allahabad it was held that termination of services of EDA other than unsatisfactory service by the appointing authority or superior to appointing authority, Rule 6 does not confer power on appointing authority or superior to appointing authority to terminate the services of EDA without giving him an opportunity to show cause. The FB answered the reference in this case as follows: "Rule 6 of Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent, who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause." 12. On the other hand learned lawyer for the respondent while objecting to the arguments had submitted that the impugned orders are perfectly legal and this OA is devoid of any merit. Therefore, it is liable to be dismissed.

13. We have given thoughtful consideration to the rival contentions of both the parties and perused the whole record with reference thereto.

14. It is an admitted fact that the applicant, whose name was also sponsored by the Employment Exchange, was appointed as he was found most suitable. The applicant was appointed and he joined in pursuance of that appointment on 31.12.1996. It is also an admitted fact that on some representation of the residents of village Piyaauta, the Director General Postal Services reviewed the matter and found the appointment of the applicant as irregular on the ground that the applicant has no independent source of income and in terms of order dated 23.12.1997 issued by the Director General (P) the services of the applicant were terminated vide order dated 26.12.1997. This order appears to be legal in view of the law laid down by the different Courts/Tribunals. Not only this, according to the instructions issued, if the name of a candidate is sponsored by Employment Exchange for the selection of EDAs, he is required to fill up a prescribed

application form which may be sent to the candidate alongwith covering letter and he is directed to submit the same alongwith the documents. Accordingly, the applicant was required to submit the income certificate and a list of property and the requirement of that was that the applicant must have adequate means of independent livelihood. The requirement is that the candidate must have adequate means of livelihood is nowhere mentioned. No report is submitted before this Tribunal to show that any inquiry was made in this regard and what was the basis of such finding that the applicant was having no independent source of livelihood is not known to us. It is not the case of the respondents that the applicant failed to submit the required certificate/ documents. So the conclusion drawn by respondent No. 1 also appears to be based on without any basis.

Moreover, it also appears that everything was done behind the back of the applicant. No opportunity of hearing was provided to the applicant before reaching to such a conclusion by the respondent authority.

15. We, therefore, are of the considered opinion that the impugned order of termination dated 26.12.1997 issued in terms of the order dated 23.12.1997 appears to be illegal and is liable to be set aside.

16. We, therefore, allow this OA and quash the order dated 26.12.1997 passed by respondent No. 1 and the order dated 23.12.1997 passed by respondent No. 2.

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