

(2005) 09 OHC CK 0007

In the Orissa High Court

Case No : Writ Petition (C) No. 11668 of 2005

Sushil Kumar Patra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2005

Acts Referred:

Constitution of India, 1950 — Article 14
Postal Gramin Dak Sevak (Conduct and Employment) Rules — Rule 4
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 6

Citation : (2006) 101 CLT 253

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : P.K. Khuntia, A.K. Rath, A.K. Panda and A.K. Nath, for the Appellant; Asst. Solicitor General, for the Respondent

Judgement

I.M. Quddusi, J.—This Writ Petition has been filed against the impugned judgment and order dated 30.8.2005 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O. A. No. 391 of 2003 dismissing the said O. A. which was filed by the petitioner against the impugned order of termination from service dated 2.7,2003 contained in Annexure-6 to the Writ Petition.

2. The brief facts of the case are that the petitioner was engaged as a contingent sweeper in Kuchei Sub Post Office. In the year 1993 he had applied to the Assistant Superintendent of Post Offices, Baripada Central Sub-Division, Baripada for appointment in the post of GDS/EDA (Extra Departmental Agent). He was provided with an application form which was submitted under the instructions of the ASPOs with the direction to apply through the same by 12.8.2002. Basing on the said application, the petitioner was provisionally selected vide order dated 16.8.2002 and was instructed to undergo training on the date and venue as mentioned in the said order. On completion of training, appointment order was issued in his favour on 22.8.2002 as Extra Departmental Delivery Agent (GDS MD). A letter was also issued to him on the same date directing him to take up

residence in village Kuchei as it was a necessary condition for the appointment as Extra Departmental Delivery Agent. He was also directed to join on or before 31.8.2002. After completing all the formalities, he submitted his joining report and started his work accordingly. All of a sudden he got an order of termination from service dated 2.7.2003. Being aggrieved he filed the above mentioned O. A. before the Tribunal.

3. A counter affidavit was filed by the Opp. Parties before the Tribunal in which it was averred that the post in question fell vacant due to death of a regular incumbent and the claim to provide a compassionate appointment in the said post to one of the family members of the deceased employee was rejected by the Circle Relaxation Committee and, therefore, it was necessary to fill up the post by making a regular recruitment. The ASPOs, Baripada Central Sub Division was the appointing authority who sought permission to fill up the said post which was accorded by the Superintendent of Post Offices vide his order dated 28.6.2002.

4. The Tribunal while considering the provisions of Rule 6 of the Extra Departmental Conduct Service Rules which provides the condition to terminate the services of an employee held that before completion of three years of his engagement, a GDS/ED personnel is liable to face a termination on receipt of one month's notice and dismissed the O. A. accordingly. We have perused the impugned judgment and order passed by the Tribunal. We feel that the Tribunal has not considered the relevant Rule in the facts and circumstances of the case which is laid in Clause 3 of Rule 4 of the Postal Gramin Dak Sevak (Conduct and Employment) Rules which provides as under :

4. Appointing Authority

*** ** (3) Notwithstanding anything contained in these rules, any authority superior to the Appointing Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears :

(a) to have exercised a jurisdiction not vested in it by any law or rules then in force; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit.

5. A bare perusal of Sub-clause (c) of Clause 3 of Rule 4 of the Postal Gramin Dak Sevak shows that in the circumstances where an appointment has been made and the superior authority to the appointing authority comes to the conclusion that the appointing authority has acted in the exercise of its jurisdiction illegally or with material irregularity in making appointment of a Dak Sevak in exercise of its jurisdiction, the termination of service cannot be made

without giving an opportunity of being heard.

6. Besides this, there is a catena of decisions of various High Courts as well as of the Apex Court in the case of Basudeo Tiwary Vs. Sido Kanhu University and Others, In the said case the Apex Court held that the law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary that the audi alteram partem facet of natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness. It has further been held that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing. It may be implied from the nature of the power-particularly when the right of a party is affected adversely. Further paragraphs 12 & 13 of the judgment of the Apex Court are also necessary for perusal which is reproduced as under:

12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorized manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, statutes, rules or regulations etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry the person whose appointment is under enquiry, notice will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's case. In such an event, we have to hold that in the provision there is an implied requirement of hearing or the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35(3) in this case will have to be read.

13. Admittedly in this case notice had not been given to the appellant before holding that his appointment is irregular or unauthorized and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.

7. In view of the above mentioned facts and circumstances of the case, we are of the opinion that the Tribunal has committed manifest error of law in dismissing

the O. A. holding that the impugned order of termination is sustainable in the eye of law.

8. In the result, the Writ Petition is allowed in part. The impugned judgment and order dated 30.8.2005 as well as the impugned order of termination dated 2.7.2003 are quashed. Consequently, the petitioner shall be reinstated in his post and entitled to all the consequential service benefits including the arrears of salary and allowance etc.

9. However, it will be open for the Opp. Party 3 to pass appropriate order only after providing opportunity of hearing to the petitioner.

10. We make, it clear that we have not considered the merits of the case that as to whether there was any illegality in making the recruitment or appointment or not.

Pradip Mohanty, J.

11. I agree.