

(2012) 07 AHC CK 0255

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27882 of 2003

Union of India and Others

APPELLANT

Vs

Central Administrative Tribunal Additional Bench and Others

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2012) 9 ADJ 261 : (2013) 2 AWC 2141

Hon'ble Judges : S.P. Mehrotra, J;Pankaj Mithal, J

Bench : Division Bench

Advocate : Mohammad Isa Khan, N.P. Shukla and Suresh Chandra Dwivedi, for the Appellant; V.C. Mishra, S.C. and J.N. Maurya, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioners Union of India, Ministry of Communication, Department of Posts, and the Superintendent of Post Offices, Fatehpur together have invoked the writ jurisdiction of this Court for quashing the order of the Central Administrative Tribunal, Allahabad dated 6th June, 2002 allowing Original Application No. 694 of 2002, Jai Singh v. Union of India and others. Jai Singh, respondent No. 2 had joined the post of Extra Departmental Male Peon, Fatehpur on 3.9.1998. The Superintendent of post office vide order dated 10.2.2000 ordered for the cancellation of his appointment. The Sub-Divisional Inspector, Post Office, Khaga Fatehpur, in pursuance of the said order issued a notice dated 28.2.2000 to the respondent No. 2 for cancelling his aforesaid appointment.

2. The said notice was challenged by respondent No. 2 before the Tribunal by filing O.A. No. 305 of 2000. It was disposed of and the aforesaid notice was quashed with liberty to the postal department to proceed afresh in accordance with law. Thereafter, issuing a fresh show-cause notice dated 5.1.2001, the Sub-Divisional Inspector, Post Office, Khaga, Fatehpur, vide order dated 15.2.2002 terminated the services of the respondent No. 2 holding his appointment to be irregular. The aforesaid order was challenged by respondent No. 2 before the

Tribunal and the order has been set aside by the impugned order.

3. Sri N.P. Shukla, learned counsel for the petitioners submitted that the Tribunal fell in error in allowing the O.A. on the ground that the order of the appointing authority amounts to reviewing its own decision which is not permissible in law. The impugned order is not an order of review but a fresh order. He has also produced a circular dated 13.11.1997 of the Government of India, Ministry of Communications and on its basis has contended that where an appointment of a particular agent to a post appears to be erroneous, the matter is to be decided by the next higher authority than the appointing authority and the appointing authority is supposed to forward the representation/reply of the employee to the next higher authority for taking decision. The next higher authority on review having found the appointment to be erroneous, the appointing authority rightly passed the impugned order after affording an opportunity to respondent No. 2.

4. Sri J.N. Maurya, learned counsel appearing for respondent No. 2 in reply contended that the aforesaid circular is not part of the record. Even otherwise as the procedure prescribed in the said circular was not followed, the order impugned cannot be sustained. According, to the aforesaid circular the final order is to be passed by the next higher authority to the appointing authority and as such the impugned order is without jurisdiction. The termination order is uninformed by reasons and is violative of the principles of natural justice.

5. It is not disputed that the appointing authority has no power to review. The termination order is actually an order cancelling the appointment of respondent No. 2. There is no dispute that the appointing authority of respondent No. 2 is the Sub-Divisional Inspector Post Offices. The matter of appointment of respondent No. 2 was reviewed by the next higher authority and it was not found to be in accordance with law. Therefore, the appointing authority after issuing a show-cause notice has ordered for the termination/cancellation of his appointment.

6. The show-cause notice dated 5.1.2001 (Annexure 12 to the writ petition) contains three allegations against respondent No. 2 on which he was required to submit his explanation. The first allegation was that he had submitted his application for appointment a day after the last date prescribed for submission of applications. The second allegation was that he was at serial No. 2 in the select list and instead of appointing the candidate on the top of the merit list he was erroneously appointed. Lastly, respondent No. 2 is not the resident of village Dhata whereas applications were invited from the residents of the aforesaid village only.

7. The respondent No. 2 has submitted response to the above show-cause notice on 19.1.2001 dealing with all the three aspects. The impugned order refers to the aforesaid reply of the respondent No. 2 and admits that it was received in the office on 25.1.2001 but without dealing with any of the allegations made and the reply of the respondent No. 2 in that regard, the appointing authority decided to

terminate his services by treating his appointment to be irregular. No reasons for treating the appointment to be irregular have been assigned. It has not been stated that the appointment of the respondent No. 2 was bad for any of the reasons or allegations assigned in the show-cause notice. It only states that the representation/reply of respondent No. 2 has no merit but again without disclosing any reason as to why it found to be meritless.

8. It is settled law that fair play requires recording of precise reasons germane for passing the order affecting rights of a citizen and visiting him with civil consequences. Any decision or order of any statutory or public authority bereft of reasons would be unfair, arbitrary, unjust and violative of Article 14 of the Constitution of India.

9. In *State of West Bengal v. Atul Krishan Shaw and another*, AIR 1990 SC 2205, the Supreme Court observed that giving of reasons is an essential element of administration of justice. A right to reason is, therefore, indispensable part of the sound system of judicial review.

10. In *S.N. Mukherjee v. Union of India*, AIR 1990 SC 1984, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizons of principles of natural justice provides for recording of reasons.

11. In view of above, the termination order is *ex facie* a non-speaking order which is completely uninformed by reasons and can safely be held to be violative of principles of natural justice.

12. The aforesaid termination order has been set aside by the Tribunal by the impugned order on the ground that it is an order by way of review which is not permissible under law. Now without going into the question as to whether the termination order passed by the Sub-Divisional Inspector, Post Offices is by way of review or a fresh order, as we are satisfied that it was not legally sustainable for the reasons stated above, it cannot be allowed to stand whether on the ground taken by the Tribunal or by this Court as above.

13. It is settled legal position that it is not necessary to set aside or quash an illegal order which on being set aside or quashed will give rise or revive another illegal order.

14. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , their lordships of the Supreme Court refused to exercise the discretion and to interfere with the order of the Government which was found to be bad on the ground that quashing of the said order would result in restoration of an illegal order.

15. Their lordships of the Supreme Court in *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, , observed where setting aside of an order would result in reviving an illegal order, the Court is justified in refusing to interfere under Article 226 of the Constitution of India.

16. Similarly in State of Uttranchal through Collector, Dehradun and Another Vs. Ajit Singh Bhola and Another, , the Supreme Court held that it will not exercise discretion and quash an order which is illegal if it has the effect to revive another illegal order.

17. In view of aforesaid facts and circumstances of the case, we are not inclined to exercise our extraordinary jurisdiction under Article 226 of the Constitution so as to quash the order of the Tribunal dated 6.6.2002 to the writ petition but accords liberty to the Sub-Divisional Inspector, Post Offices, Khaga, Fatehpur or the Superintendent of Post Offices, Fatehpur to proceed afresh and pass a fresh order in accordance with law in connection with the appointment/termination of respondent No. 2. Writ Petition is dismissed with the above observation but without costs.