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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. DA 259/88

DATE OF DECISION: 13/1/87

Shri Jagdish Prasad.

... Applicant.

Versus

Union of India & Ors.

... Respondents

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. M.M. Mathur, Member(A).

For the Applicant.

... None present.

For the Respondent.

... Shri M.L. Verma,
Counsel.

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. M.M. Mathur, Member(A))

The applicant in this case worked as an Extra Departmental Mail Peon at Beor Qasimabad from 19.1.84 to 16.11.87 under the Superintendent of Post Office, Budaun (Respondent No.2). He has filed the present Application under Section 19 of the Administrative Tribunals Act, 1985 challenging the termination of his service and praying that the respondents be directed to provide him with employment as Extra Departmental Mail Peon (E.D.M.P. for 'short') at Beor Qasimabad or at any other place or in any other cadre of Extra Departmental Agency.

The essential facts of the case in brief are that the applicant was appointed as E.D.M.P. at Beor Qasimabad vide Order dated 19.01.1984 (Annexure 'F') after fulfilling all requirements mentioned in respondent's letter dated 15.12.1983 (Annexure 'E'). It was stated in the appointment letter that the applicant's employment was in the nature of a contract to be terminated by him or the respondents by notifying the other and also that he shall be governed by the Posts and Telegraphs Extra Departmental Agents (Conduct and Services) Rules 1964. The applicant took over charge of the post of E.D.M.P. on 23.1.1984 by the Charge Report at Annexure (G) and continued

to work in that post for the next three years and ten months. On 10.11.1987, he was informed that the previous incumbent of the post Shri Vijay Pal Singh whose services had been terminated as a result of a Departmental Enquiry, had been reinstated in the post and consequently, the applicant would have to be relieved from that post. The applicant thereupon requested the respondent vide his letter dated 10.11.1987 (Annexure 'H') that having already worked for more than 3 years he should be given an opportunity to work as E.D.M.P. Islamnagar Rudain Line. He had also prayed that till he was not appointed permanently, he should be allowed to work in officiating capacity. In response to the applicant's request, the respondent issued a letter dated 12.11.1987 (Annexure 'I') addressed to the S.D.I., Budaun directing him to engage the applicant as E.D.M.P. Islamnagar Rudain Line till further orders against the post, which was lying vacant. Accordingly, the applicant handed over charge of the post of E.D.M.P. Beor Qasimabad on 16.11.1987 vide Charge Report at Annexure (J). He has, however, stated that when he reported for duty at Rudain as per the orders of Respondent No. 2, the S.D.I., Budaun, orally refused to allow him to join there. Thereupon, he submitted a representation dated 11.12.1987 to Respondent No. 2, as a result of which he was allowed to join the post of E.D.M.P. at Islamnagar Rudain Line on 5-3-1988. After joining, however, the applicant protested against this appointment vide his letter dated 7.3.1988 (Annexure R-2) on the ground that he was a regular permanent employee and as such his appointment cannot be treated as a fresh appointment. His grievance in the present Application is that his services were again terminated on 28.5.1988 without assigning any reasons or without issuing any notice, which was against the departmental rules.

The respondents in their written reply have contested the claim of the applicant mainly on the ground that the applicant was provisionally appointed as E.D.M.P., Beor Quasimabad only

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on an ad hoc/stop-gap arrangement in place of Shri Vijay Pal Singh, who was put off duties due to the departmental proceedings against him. As a result, on the conclusion of the proceedings Shri Vijay Pal Singh was reinstated on duty and consequently, the applicant was relieved from the post w.e.f. 16.11.1987. The respondents have stated that the applicant himself made a request for posting as E.D.R., Islamnagar Rudain Line at Budaun in the vicinity of his residence. His request was accepted on humanitarian grounds and the S.D.I., Budaun was asked to engage him to work as E.D.R., Rudain till further orders and consequently, he joined the new post in March, 1988. However, the S.D.I. Central vide his letter dated 20.5.1988 directed that the applicant should be discharged from service and his name should be kept in the waiting list for one year in accordance with the ruling issued under D.G. Post vide Memo dated 23.3.1979. Accordingly, the applicant was relieved of his duties on 25.5.1988. The respondent's contention is that since the applicant had already expressed his unwillingness to work on a temporary basis by the letter dated 7.3.1988, he has now no right to claim a regular appointment against this post. It has, however, been added that the Assistant Superintendent Post Office, Sahaswan has already been directed to keep the applicant in the waiting list and to absorb him in the next available vacancy.

In the written arguments filed by the learned counsel for the applicant, he has built up this case mainly on the ground that in the appointment letter issued to the applicant there was no mention whatsoever that he was being appointed either on a provisional or ad hoc basis or against the temporary vacancy caused as a result of the departmental

proceedings being held against Shri Vijay Pal Singh. He has argued that the appointment letter dated 19.1.1984 (Annexure 'F') clearly states that "his employment as E.D.M.P. shall be in the nature of a contract to be terminated by him or by the undersigned by notifying the other and he shall also be governed by the Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time". The terms of appointment clearly envisaged issuing of notice before the appointment could be terminated. However, no such notice was ever issued to the applicant. The learned counsel has, therefore, argued that in the absence of the required notice the termination of his employment was against the terms of his appointment and thus illegal. It has further been argued on behalf of the applicant that he had requested for the posting to Islamnagar Rudain Line on the understanding that he continued to be in service and was only being transferred to the other post in order to accommodate Shri Vijay Pal Singh. It was only after careful reading the letter dated 12.11.1987 issued by the respondent (Annexure 'I') that he realised that he was being treated as a retrenched employee, which was contrary to the actual position as no termination notice had been issued to him under the terms of his appointment. He has further argued that the applicant never refused to work as E.D.R. at Islamnagar Rudain Line. In his letter dated 7.3.1988, he had only stated that he was appointed on a regular basis against a permanent post and, therefore, he could not accept a fresh temporary appointment. Nowhere in this letter, he has refused to work, but has only requested the respondent to amend his orders.

We have carefully considered the written arguments filed by the learned counsel for the applicant as well as the arguments advanced by the learned counsel for the respondent

The basic point relevant for the adjudication of this case is whether the termination of the applicant's services as E.D.M.P., Beor Qasimabad was in accordance with the terms of his appointment and the relevant provisions of the P&T Extra Departmental Agents (Conduct and Service) Rules, 1964. It is undisputed facts that the appointment letter dated 19.1.84 issued to the applicant clearly stipulated that the contract could be terminated by him or the respondent by notifying the other. The respondents have not been able to show any evidence that to prove/any notice in terms of the appointment letter was issued to the applicant. The appointment letter further states that the applicant shall be governed by the Posts & Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964. Rule 6 of the said Rules, which deals with termination of service, states as follows:-

"6. Termination of Services: The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice!"

It is evident from the above rule that the service of an employee who has already rendered more than 3 years continuous service from the date of his appointment cannot be terminated without giving notice. Admittedly, no notice under this Rule was issued by the respondent to the applicant. In the absence of compliance with these two vital requirements, the service of the applicant cannot be treated as having been terminated ~~xxxxxx~~ merely by the act of his handing over the charge to Shri Vijay Pal Singh on 16.11.1987. In fact, the letter dated 12.11.1987 (Annexure 'I') issued by the Respondent No. 2 to S.D.I., Budaun asking him to engage the applicant to work as E.D.R., Islamnagar Rudain Line till further orders, would indicate that the services of the applicant were only transferred to the latter post in order to accommodate Shri Vijay Pal Singh, who had been reinstated in the previous post at Beor Qasimabad. The respondents have laid

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much reliance on the applicant's letter dated 7.3.1988 in support of their argument that he refused to work as E.D.R. Islamnagar Rudain Line. A careful reading of the letter, which is in Hindi, would show that the applicant has only said that the orders issued to him vide Memo dated 4.2.1988 were not acceptable to him inasmuch as he was being offered a fresh temporary appointment whereas he had been appointed on regular basis against a vacant post. There is nothing in this letter to indicate that he had refused to work against the post at Islamnagar Rudain Line. All that he had requested in this letter was that he should be treated as on continuous service and the Memo dated 4.2.1988 should be modified accordingly. We, therefore, do not find any force or substance in the arguments of the respondents that the applicant had refused to work. Regarding the applicant's discharge on 25.5.1988, the respondent's only argument is that this was done in pursuance of the directions issued by the S.D.I. Central, who had referred to some orders of the D.G. Post dated 23.2.79 under which a surplus discharged E.D.R. should be kept on waiting list for one year in the concerned unit. This argument is also not sustainable because, as we have already said above the applicant's services had not been terminated under the Rules and as such he could not be treated as a retrenched or discharged employee.

After careful considering the facts and circumstances of the case, as discussed above, we are of the view that the termination of the services of the applicant on 16.11.1987 was in violation of the term of his appointment as well as the provision of Rule 6 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964. The

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Application is accordingly allowed and the Respondents are hereby directed to treat the applicant to be in continuous service and from 17.11.1987 / appoint him against a suitable post within a period of three months from the date of receipt of this order. However, the applicant shall not be entitled to any wages for the period during which he has not actually performed any duties. Under the circumstances, parties to bear their own costs.

M.M. MATHUR
(M.M. MATHUR)
MEMBER(A)

"SRD"

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN

31.5.90

Pronounced in open Court
by me today.

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