

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

...

OA.No.1910 of 1990

Dated at New Delhi, this 1st day of September, 1994

Hon'ble Shri A. V. Haridasan, Member(J)

Hon'ble Shri B. K. Singh, Member(A)

Shri Yogender Kumar  
Q/o Shri Sant Lal, Advocate  
C-21(B) New Multan Nagar  
DELHI-110056

... Applicant

By Advocate: Shri Sant Lal

VERSUS

Union of India through

1. Secretary  
Ministry of Communication  
Department of Posts  
Dak Bhawan  
NEW DELHI-110001

2. The Sr. Superintendent of  
Post Offices  
Delhi North Division  
Civil Lines  
DELHI-110054

3. The Assistant Superintendent  
of Post Offices  
Delhi North II<sup>nd</sup> Sub Division  
DELHI-110035

... Respondents

By Advocate: Shri M. K. Gupta

O R D E R  
(Order)

Shri A. V. Haridasan, M(J)

*Here* short question that arises before  
consideration of this application filed under  
Section 19 of the Administrative Tribunal Act, 1985  
by the applicant Shri Yogender Kumar, an Extra  
Departmental Agent of Postal Department, who has  
been removed from service under Rule 6 of the  
Posts and Telegraphs Extra Departmental Agents  
(Conduct and Service) Rules 1964 (hereinafter referred  
to as 'Rules'), whether it is permissible to

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terminate the services of a Extra Departmental Agent (EDA) who had rendered more than three years of continuous service from the date of his initial appointment invoking power under the 'Rules' even if after a period of three years' <sup>there is his</sup> break in service.

2. The brief facts of the case are these. That the applicant was appointed as Extra Departmental Packer on 4.12.80(FN). He was transferred to different places during his tenure. Lastly he was transferred from Mangolpuri 'I' Block Post Office to Nangloi Post Office vide order dated 8.8.86(Annexure A-4) and was relieved on the afternoon of 13.8.86. He reported at Nangloi Post Office only on 23.11.86 because according to him(applicant), he became ill and his brother sent a telegram to the Postmaster concerned informing that the applicant was unable to report for duty. However, when the applicant reported for duty on 23.11.86, he was not allowed to join duty as a substitute had been engaged in his place. The respondents initiated action against the applicant for unauthorised absence and an enquiry was commenced. While the enquiry was going on, the impugned order dated 15.3.88 terminating the services of the applicant with immediate effect under the provisions of rule 6 of 'Rules', was served on the applicant on 4.6.88. He filed an appeal to the Postmaster General, Delhi. There was protracted correspondence between the applicant and the Department,

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the department saying that the applicant should have submitted his appeal only to the Senior Superintendent of Post Offices, and, ultimately the applicant submitted his representation to the Senior Superintendent of Post Offices, Delhi North Division, Delhi on 10.4.89 (Annexure A-11). Finding no response to his representations, the applicant filed this OA seeking the following reliefs:-

- "i) To set-aside the impugned order of termination;
- ii) To direct the respondents to reinstate the applicant in service forthwith;
- iii) To declare that the applicant continues in service without break and is entitled to full back wages;
- iv) To award the cost of this application; and
- v) To grant such other relief as deemed proper."

3. The respondents, in their reply, contended that the impugned order (Annexure A-1) was issued in accordance with the provisions of rule 6 of Rules as there was <sup>need a</sup> no ~~bar~~ to take disciplinary action against an EDA having less than three years service as ~~the~~ <sup>a</sup> break in service was <sup>awarded to the applicant</sup> commensurate ~~on him~~ on 22.4.86 and as counting from that date the applicant had not completed three years continuous service. On this ground the respondents seek to justify the issue of impugned order. It has also been contended that as the applicant was relieved on 13.8.86 and has reported only on 24.11.86,

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*does not* constitute termination of the services of the applicant

*a* and *Such relief* reappointment unless order was issued. In this

case admittedly, before the impugned order, no order

terminating the services *had* been issued. Therefore,

it has *to be* ~~been~~ held that the applicant has continuously

*moreover* been in service ~~above~~ three years from the date of

his initial appointment and, therefore, *on that ground* ~~simply on that~~

~~the~~ ~~ground~~ the impugned order is liable to be struck down.

5. The next question to be considered is what are

the reliefs that should be granted to the applicant.

The applicant has prayed for setting aside the impugned

order terminating his services and for a direction to

the respondents to reinstate him in service and further

that the applicant be ~~treated as~~ in continuous service

with entitlement to full back wages. Admittedly, a

disciplinary proceeding against the applicant is

contemplated under Rule 8 of P&T EDAs (Conduct and

Service) Rules 1964 and it was during the pendency of

this proceeding that the impugned order was issued.

*Regarding* *grant of* ~~In case~~ the question of ~~backwages~~ in the case of the

*an* applicant, we are of the view that the same *will* ~~will~~ *should*

abide by the outcome of the disciplinary proceeding

pending against the applicant.

6. Therefore, in the light of what has been stated

above, we dispose of this application with the

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there is an automatic break in service, and, therefore, the applicant is not entitled to any relief.

4. We have gone through the pleadings on record and we heard Shri Sant Lal, counsel for the applicant and Shri M. K. Gupta, counsel for the respondents.

Rule 6 of the Posts and Telegraphs Extra Departmental Agents(Conduct and Service) Rules 1964 reads as follows:-

" 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."

A mere reading of the above Rule makes it clear that if an EDA who has completed three years of continuous service from the date of his appointment, his services cannot be terminated under the said Rule. That the applicant was appointed on 4.12.80(AN) is undisputed.

The argument of the learned counsel for the respondents that since the memo of break in service dated 24.6.86

was issued by which the applicant was awarded <sup>a</sup> break in service <sup>at amount</sup> which would <sup>be</sup> deemed to <sup>be</sup> discontinuance of his <sup>✓</sup>

service <sup>on</sup> ~~on the basis of fresh appointment~~ and therefore

his service <sup>could</sup> ~~should~~ be terminated before expiry of three years from <sup>that</sup> date of invoking the provisions of

the 'Rules'. We are unable to accept this argument of the learned counsel for the respondents. ~~The fact that~~

~~the order of termination was issued on the ground of~~

~~unauthorised absence causing break in service does not~~

~~The mere fact that an order of break in service was passed~~

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does not constitute termination of the services of the applicant

<sup>a</sup> and <sup>Such Specific</sup> reappointment unless order was issued. In this

case admittedly, before the impugned order, no order

terminating the services <sup>had</sup> been issued. Therefore,

it has <sup>to be</sup> ~~been~~ held that the applicant has continuously

<sup>monetarily</sup> been in service ~~above~~ three years from the date of

his initial appointment and, therefore, <sup>on that ground</sup> ~~simply on that~~

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this proceeding that the impugned order was issued.

<sup>Regarding</sup> ~~In case~~ the question of <sup>grant of</sup> backwages in the case of the

applicant, we are of the view that the same <sup>will</sup> ~~will~~ <sup>be</sup> ~~should~~

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pending against the applicant.

6. Therefore, in the light of what has been stated

above, we dispose of this application with the

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following directions:-

- (i) The impugned order dated 15.3.88 terminating the services of the applicant, is set aside and quashed.
- (ii) Respondents are directed to reinstate the applicant in service forthwith within one month from the date of receipt of a copy of this order.
- (iii) Respondents are further directed to complete the disciplinary proceedings pending against the applicant according to rules and to pass final order thereon within a period of three months of his reinstatement in service.
- (iv) The question as to whether the applicant is <sup>and other attendant benefits</sup> entitled to back wages or not, will abide by the outcome of the disciplinary proceedings pending against him.
- (v) The applicant if still agrived by the outcome of the disciplinary proceedings, he will be at liberty to agitate the matter in the appropriate forum.

7. With these directions, this OA is finally disposed of without any order as to costs.

(B. K. Singh)  
Member(A)

(A. V. Haridasan)  
Member(J)

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