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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1660 of 1986 (Original Suit No.508 of 1978)

Jagdish Kant Pandey ... Applicant.

Vs.

Union of India & 3 others ... Respondents.

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This transferred application is a regular suit and has been received by transfer from the Court of VIII Addl.Munsif Jaunpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. applicant(hereinafter referred to as the plaintiff) that he was appointed as Extra Departmental Branch Post Master (for short EDBPM) Gurbari in district Jaunpur by Superintendent of Posts Offices- respondent no.4 on 11.9.1975 but he was removed from service by his order dated 29.1.1977 without assigning any cause or opportunity of hearing. The appeal preferred by the plaintiff against the order of his removal was allowed by the Director of Postal Services- respondent no.3 on 2.6.1977 and the case was remitted back to respondent no.4 for de-novo action. On receiving the record the respondent no.4 passed an order of putting off duty on 8.6.1977 and by subsequent order dated 16.6.1977, he terminated his services under rule 6 of Extra Departmental Agents (Conduct and Service)Rules,1964(hereinafter referred to as the EDA Rules). The appeal preferred by the plaintiff against that order was summarily rejected by the respondent no.3. The plaintiff has sought a declaration that the order dated 8.6.1977 putting him off ~~open~~ duty and the order dated 16.7.1977 terminating his services are illegal and void and the plaintiff is entitled to reinstatement with all conse-

quential benefits of arrears of pay etc., on the grounds that the order putting off duty is against the provisions of rule 9 and the order of termination has also been passed in contravention of rule 6 of the EDA Rules. The said orders also violate provisions of Art.311(2) of the Constitution and the principles of natural justice and were passed with a malafide intention without affording any opportunity of hearing to the plaintiff.

3. The suit has been contested on behalf of the respondents and in the written statement filed on their behalf, it has been stated that the plaintiff's services were purely temporary and could be terminated without assigning any reason or opportunity of hearing before his completing 3 years' service. The order of termination is fully covered under rule 6 and the allegations of the plaintiff to the contrary are not correct. The services of the plaintiff were terminated in administrative exigency under the rule and contract of service without violating any law, rule or the provisions of the Constitution. The plaintiff's services were not above board. He did not possess the minimum qualification of passing class VIII or equivalent for the post held by him. The plaintiff had misrepresented by filing a copy of School Leaving Certificate according to which he had passed the Praveshika examination on 10.5.48 and had left the School while studying in Prathma. He had represented that Praveshika was equal to class VIII which was incorrect as in fact Prathma was equal to class VIII. No other authentic proof of his educational qualification was produced by him and under these circumstances, he had no right to hold the post of EDBPM. The earlier order of removal of this service of the plaintiff was set aside on technical grounds and the subsequent order of his termination from service was rightly passed under the rules. It was also pleaded that the suit was barred by Section 34,38 and 41 of the Specific Relief Act and Section 80 Civil Procedure Code and the Court of the Munsif had no jurisdiction

to try the suit. The pleas of under valuation and payment of insufficient Court fee were also taken.

4. In the replication filed by the plaintiff, it was stated that he is a civil servant and is entitled to get the benefit under Art.311(2) of the Constitution of India. The order passed by the respondent no.4 is arbitrary and malafide and on account of the stigma attached to it, will adversely affect his future career. Even a temporary servant is entitled to get the show cause notice before awarding the punishment. The respondents did not give him any opportunity regarding the School Leaving Certificate to explain the defect and doubts about the same. The case was remanded to the respondent no.4 for de-novo action, but he did not comply with the order and passed the order of termination without affording any opportunity to the applicant. The order passed by the respondent no.4 is, thus, without jurisdiction, illegal and void and the allegations made by the respondents for terminating his services are false and untrue.

5. We have carefully considered the contentions raised on behalf of the parties before us and have also perused the relevant records. The main argument of the plaintiff in this case is that there is no difference between an order of removal and an order of termination of service and as the order of removal of the plaintiff passed by the disciplinary authority on 29.1.1977 was set aside by the appellate authority on 2.6.1977 and the case was remitted to the disciplinary authority for de-novo action, the order passed by the disciplinary authority terminating the services of the plaintiff without further inquiry or affording an opportunity of hearing to the plaintiff is null and void. The impugned order was passed in this case under rule 6 of the EDA Rules which on

the relevant date ran as under :-

"6. Termination of Services:

The services of an employee who has not already rendered more than three year's continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice for generally unsatisfactory work, or on any administrative ground unconnected with his conduct."

6. Undisputedly, the plaintiff had not rendered more than 3 years continuous service till the date the impugned order was passed and the contention of the defendants is that under this rule, the services of the plaintiff could be terminated by the appointing authority at any time within 3 years without any notice. By an amendment made by D.G's letter dated 19.7.1982, the words " for generally unsatisfactory work, or on any administrative ground unconnected with his conduct" have been deleted from this rule and under the amended rule the appointing authority has wide powers of terminating the services of an EDA employee within a period of 3 years from the date of his appointment without notice on any ground after the deletion of the qualifying words under which the termination could be made ~~before~~ amendment.

7. In this case, the inquiry was made by the Postal Authorities before terminating the services of the plaintiff and on coming to the conclusion that the plaintiff had obtained his employment by misrepresentation regarding his educational qualification, the action against him was taken. According to the allegations made in para 17 of the written statement of the defendants, the certificate of Praveshika examination furnished by the plaintiff was not equivalent to class VIII which was the minimum qualification required for the post held by him and as there was no authentic proof of his ~~having~~ passed Class VIII, the services of the plaintiff were dispensed with.

In his replication, the plaintiff denied the fact of his having filed the certificate of Pravesikha. It is, therefore, no longer in dispute that Pravesikha certificate alleged to have been filed by the plaintiff in proof of his educational qualification was either not filed by him at all or if filed, he did not fulfil the requirement of his appointment on the post. The service record of the plaintiff is before us and it appears from the order/report dated 6.9.1975 therein that the plaintiff had not produced the certificate of having passed Pravesikha examination mentioned in para 17 of the written statement but had produced the certificate of his having passed the Dharam Ratna examination equivalent to class VIII. The contention of the plaintiff that he had, in fact, filed the certificate of Dharam Ratna and had not filed the certificate of his having passed the Pravesikha examination and as such, the very basis of the inquiry and finding arrived at against him was unfounded and illegal.

8. The written statement filed by the defendants is conspicuously silent about the Dharam Ratna examination having been passed by the plaintiff. The plaintiff was, however, cross-examined at length in the Court of learned Munsif when he appeared as P.W.1 in support of his case and it appears to us from his cross-examination that the Dharam Ratna examination alleged to have been passed by the plaintiff was actually not passed by him and this certificate was obtained by the plaintiff otherwise. The Dharam Ratna examination is held by Akhil Bharatiya Arya (Hindu) Dharm Sewa Sangh, Delhi and perhaps unmindful of the fact that this examining body could have its centres at other places, the plaintiff stated in his cross-examination that he had passed the Dharam Ratna examination in Sambat 2010. He did not remember the year according to the

English calender in which the examination was passed by him. He further stated that he had made his studies for this examination at Delhi but did not remember the name of the School in which the said studies were made. He further stated that he had studied at Delhi for 2 years but he did not remember his age at that time. He did not remember even the name of the Head (Pradhanacharya) of the institution. He even showed his ignorance about the classes from lowest to highest held in that institution. He even did not know about the Mohalla in which the said institution is situate. He stated that his centre of the examination was at Delhi but he did not remember the name of that centre. He also did not remember the fact whether the examination centre was in the very institution in which he had studied at Delhi for 2 years or at some other place. On further cross-examination, he stated that he has not studied in any school (Vidyalaya). The ignorance shown by the plaintiff on the aforesaid vital points simply goes to suggest that he has not stated ^{the} truth. We are, however, not recording our final and definite finding on this point as the defendants did not take this plea specifically in their written statement. We find from the certificate of Dharam Ratna examination available in the service book of the plaintiff that the plaintiff had passed this examination by appearing from Junior High School, Rupaipur, Sultanpur Centre. The plaintiff did not state about his having given the examination from this centre. Thus apparently this certificate too appears to be a fake document and appears to have been issued to the plaintiff without his appearing in the Dharam Ratna examination from Rupaipur centre in district Sultanpur.

9. As the defendants did not make any inquiry about the genuineness or otherwise of the Dharam Ratna certificate furnished by the plaintiff in support of his educational qualification and its genuineness has been disputed ^{on the basis of} ~~only~~ ^{the} statement of the plaintiff made in his cross-examination before

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the learned Munsif, we feel that a thorough inquiry in this connection is necessary after affording proper opportunity of hearing to the plaintiff. The plaintiff is without duty since long and in case ultimately it is found that the plaintiff had actually not passed even this Dharam Ratna examination, it has to be held that his appointment as EDBPM was obtained by fraud and misrepresentation and was void ab-initio and he will not be entitled to get any arrears of pay for the period during which he was kept put off duty. In case, the certificate is found genuine the defendants will have a right to pass suitable orders regarding the arrears of his pay etc., on his re-appointment, if made ultimately.

10. Regarding the applicability of rule 6 of the EDA Rules to the case of the plaintiff, we will simply like to observe that the case of the plaintiff could be unconnected with his conduct during the tenure of the service but it could hardly be said to be unconnected with his conduct at the time of his initial appointment. We will, therefore, like to say that it is a fit case in which the defendants should have made a proper inquiry prescribed by rule 8 of the EDA Rules and the order of termination passed by the defendants under this rule, therefore, cannot be upheld.

11. The suit of the plaintiff is accordingly decreed in part and the order of his termination from service passed by the disciplinary authority and upheld by the appellate authority is hereby set aside and the defendants are directed to make a proper inquiry against the plaintiff regarding his educational qualification and the certificate furnished by him in respect thereof in the light of the observations made above. There will be no orders as to costs.

Shm 19.1.88

MEMBER (A)

Sharma 19/1/88

MEMBER (J)

Dated: January 19, 1988
k.k.b.