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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration no. 305 of 1986.

Tunda Ram

Applicant.

Vs.

D.P.S., Kanpur and another

Respondents.

HON'BLE D.S.MISRA A.M.
HON'BLE G.S.SHARMA J.M.

(Delivered by Hon'ble D.S.Misra)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 challenging the order dated 11.4.86 passed by Senior Superintendent Posts, Agra terminating the services of the applicant.

2. The applicant's case is that the applicant had passed High School Examination and holds a certificate of Wireman-ship from the National Council for training in vocational trades; that he was appointed as a contingent paid wireman in Agra Head Post Office by an order dated 4.12.76 (copy annexure C) on a monthly salary of Rs.180/- per month; that by virtue of having rendered continuous satisfactory service for more than 2 years, he had acquired a lien for being appointed substantively in Group D cadre vide D.G., P and T Memo dated 20.2.1076 (copy annexure B); that a few posts of Wiremen in Agra Head Post Office in Group D cadre have been sanctioned by P.M.G., U.P w.e.f. 19.6.1979; that the applicant was assured that he would be appointed substantively on one of those posts but when the implementation of the assurance took abnormal time, the applicant submitted a written application on 2.1.1985 to the Sr. Superintendent of Post Offices Agra (respondent no.1) copy annexure F; that having learnt unofficially that respondent no.1 was proposing to appoint outsiders on the newly sanctioned posts of wiremen, the applicant made an appeal to the Director, Postal Services Kanpur (respondent no.2) copy annexure-G; that respondent no.1 terminated the 10 year old service of the applicant without affording him any opportunity vide memo dated 11.4.86 (copy annexure H); that the applicant made a telegraphic representation to respondent no.2 against the arbitrary action of respondent no.1 (copy annexure I), but he did not intervene in the matter. The applicant has prayed that the orders of respondent no.1 contained in the memo dated 11.4.86

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be set aside and he may be appointed substantively on the newly sanctioned post of wireman and the period of break in the service of the applicant from 16.4.86 to the date when he resumes charge may be treated as duty.

3. In the reply filed on behalf of the respondents it is stated that the applicant was appointed as a contingency paid wireman and he was not paid any pay or salary, but was paid monthly allowance from contingency fund; that this appointment was purely on a temporary basis and the applicant was not entitled for any kind of leave and his services could be terminated at any time; that the applicant's contention that he was recruited as a wireman, which post falls in category C and that he had acquired a lien for being appointed substantively in a group C cadre post is wholly misconceived; that in accordance with the policy letter dated 20.3.79 (annexure CA 1), contingency paid employees can be absorbed in regular manner in Grade D cadre post after they have qualified in the examination; that the posts of wireman sanctioned by PMG, U.P. Lucknow vide his letter dated 19th June, 79 are group C posts and not in group D; that the applicant was working as contingency paid Wireman and he can not be absorbed in group D posts according to the provisions of rule 154-A of the Manual of appointment and allowances of officers of the Posts and Telegraph Department that it is not correct that any appeal as stated in para 6.9 of original application was sent by the applicant and that in the case of contingency paid employees no appeal lies; that the services of the applicant were terminated on employment of regular departmental wiremen who were recruited and allotted by DPS Kanpur; that respondent no.2 had called for a report on a telegram sent by the applicant and the respondent no.1 submitted his report vide his letter dt. 5.5.86 (annexure CA 3); that the applicant has not been placed in the panel prepared for appointment to the post of Wireman and he was not entitled for regularisation of his appointment; that the selection and recruitment of regular wiremen has been made by the competent authority of the department according to the departmental rules and regulations and that the applicant is not entitled to any relief.

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4. A rejoinder affidavit was filed by the applicant in which the allegations made in the original application were reiterated and it is asserted that his services could not be terminated by giving one month's notice. The applicant had amended his application on 9.12.1986 in which the prayer was amended to read for "appointment to a group-C post and not in group-D post."

5. We have heard the arguments of the learned counsel for the parties and have perused the record. The main grievance of the applicant is that although four group-C posts of wireman were available and the applicant fulfills all the requirements for appointment as Group-C wireman, he has not been appointed against one of these posts. The respondents admit the creation of four posts of wireman but they also state that recruitment and posting against these posts had been done by the Director Postal Service, Kanpur who is the competent authority in the matter. The applicant's first contention is that the letter of his appointment does not mention that his services could be terminated at any time without any prior notice. A copy of the appointment letter dated 4.12.1976 is available at page 6 of the application. In this letter, it is stated that the applicant along with four others was selected for appointment as contingency paid employee on a temporary basis on a monthly allowance of Rs.180/- per month and he will not be entitled to any leave. We have considered this matter and we are of the opinion that this letter can not be considered as a letter of ^{regular} appointment *be* and the contention of the applicant that his service could not be terminated without any prior notice ^{is not correct} *be* is not correct. In his representation dated 10.1.1986 to the Director Postal Services Kanpur region (copy annexure G) the applicant had requested for appointment to a category D post on a permanent basis. However, in the application before the tribunal he had sought the relief of being appointed against one of the newly sanctioned posts of wiremen without disclosing that this was a category C post. The four posts of wireman were created vide PMG's letter dated 11.6.79 but the applicant made his representation for appointment against one of these posts only on 10.1.1986.

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The representation made by the applicant to the Sr. Superintendent of Post Offices Agra, a copy of which has been filed as annexure F, does not bear any date. The applicant's second grievance is that in the selection for the post of wireman made by respondent no.2 no information was sent to the applicant to enable him to apply against one of these posts. This grievance of the applicant appears to be misconceived as the applicant has failed to show that the respondent no.2 was required to do so under any rule or instructions issued by the department.

6. The third contention of the applicant is that by virtue of D.G.P. and T's letter dated 20.2.76, he should have been absorbed as a group C wireman. A copy of this letter is available as annexure B to the application. A reading of this letter would show that it deals with the relaxation to be given to casual Mazdoor (full time and part time) for absorption in regular class IV cadre. It does not provide for absorption of a casual mazdoor into a group C post as claimed by the applicant. According to the respondents, the case of the applicant falls within the instructions contained in D G P and T, letter no. 45 27/73 SPB I 20.10.1984 in which it is stated as follows:

" part time casual labour and full time casual labour may be brought on to a common panel for the purpose of recruitment to Group D posts. According to the present orders, full time casual labourers are eligible for recruitment to group D posts if they have put in 240 days of service in each of the preceding two years and part time workers are eligible if they have put in 240 days of service in each of the preceding four years, subject to these orders the services rendered by part time casual workers may be divided by two and thereafter full time casual workers and part time casual workers may be listed but in the order of their length of service."

In clause(e) of this letter, it is stated that part time contingency paid staff would be treated as part time casual labourer for the purpose of recruitment to class(iv) cadre. Detailed procedure for making of panel on the basis of period of service rendered by various categories of staff has also been given in this letter. Learned counsel

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for the respondents argued that the absorption of the contingency paid employees is not automatic and it has to be done in accordance with the procedures laid down in the letter, mentioned-above. He has also contended that the instructions contained in P and T letter dt.20.2.76 stand amended after the issue of the letter dated 20th October 1984 referred to above. We agree with this contention of the respondents.

7. Learned counsel for the applicant cited a judgment of ^{another Bench of} this tribunal in Registration no. 119 of 1986 Sunil Kumar Vs. Union of India in which in a similar matter, an order was passed quashing the order of termination and directing the opp.party to consider the applicant for regular appointment against one of the four posts created on 19.6.79. This order does not indicate that any reply was filed by the opp.party as is evident from the ~~operative portion of the order~~ which presumed that the selection and appointments against newly created posts were still in progress. In the instant case the situation is very different as the recruitment and selection by the competent authority for appointment against the newly created posts of wiremen was completed in the year 1985 and the names of selected persons allocated to the Agra Division were communicated to respondent no.1 who issued the orders of appointment on 21.2.86 and simultaneously terminated the service of the applicant. Learned counsel for the respondents brought to our notice the judgment of ^{Bench of} this tribunal in O.A. no.494 of 1986 Mawasi Ram Vs. Superintendent of Post Offices decided on 6.3.87 in which the matter under consideration was identical to the present case and it was held that the applicant had no claim for appointment to a category C post of wireman. A similar view was taken in Original Application no.491 of 1986 Deewan Singh Vs. Sr Superintendent of Post, Agra in which the claim of the petitioner for appointment against a category C post of Plumber was rejected.

For the reasons mentioned above, we are of the opinion that the applicant has failed to make out a case for appointment against a group-C post of wireman and the application is accordingly rejected. We make no order as to cost.

A.M.

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J.M.