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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

TRANSFER APPLICATION NO.242 of 1986

Union of India and others

... Appellant.
(defendant)

V e r s u s

Virendra Kumar Sonkar

... Respondent
(plaintiff)

Hon'ble D.S.Misra-AM
Hon'ble G.S.Sharma-JM

(By Hon'ble D.S.Misra-AM)

This is an appeal no.171 of 1985 filed in the court of District Judge, Varanasi which has come on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. Brief facts of the case are that the plaintiff Sri Virendra Kumar Sonker was appointed as Extra Departmental Stamp Vendor, Varanasi Kutchery Post Office by the Inspector Post Offices North Sub Division, Varanasi, under order no.A/VS Kutchery dated 2.5.1983. The plaintiff respondent assumed duty on 10.5.1983. It is alleged that he submitted a medical certificate for leave on medical ground for 15 days w.e.f. 16.7.1983 after providing a substitute to work in his place. On 14.7.1983 the Superintendent Post Offices, Western Region, Varanasi cancelled the order dated 2.5.1983 by which the plaintiff respondent was appointed as Extra Departmental Stamp Vendor. It is alleged that the order is illegal and mala fide.

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3. The appellant-defendants in their written statement stated that the advertisement issued by the Inspector of Post Offices for making selection on the post of Extra Departmental Stamp Vendor Varanasi was irregular and was cancelled by the Superintendent of Post Offices vide office letter no. A/165 dated 18.12.1982. Consequently, the selection made on the basis of an irregular advertisement was also irregular and therefore, the appointment order dated 2.5.1983 of the plaintiff-respondent was cancelled by the Superintendent of Post Offices who had full power under Extra Departmental Agents (Conduct and Service) Rules, 1964. It is also stated that Sri Dhananjay Kumar Tiwari, who was having ^{the} legal rights to be appointed on the post of Extra Departmental Agents, in comparison to the plaintiff was appointed on the post previously held by the plaintiff.

4. On the basis of the pleadings of the parties, learned trial court framed ten issues. However, for the purposes of considering this appeal, it would be sufficient to discuss the findings of the learned trial court on issue nos. 1, 2, 3, 4, 5 and 6.

5. We have heard learned counsel for the parties. Learned counsel for the appellants (defdts) stated that the learned trial court has given its findings regarding the appointment of Sri Dhananjay Kumar Tiwari without the latter having been made a party to the suit and the observation of the learned trial court that the order of termination of the services of the plaintiff-respondent could

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not be passed under Rule-6 of the Extra Departmental Agents (Conduct and Service) Rules was also erroneous. Learned trial court in its judgment has held that the Superintendent Post Offices had the necessary power to pass the order of termination of the services of the plaintiff but has held it illegal on the premise that this was done to accommodate Sri Dhananjay Kumar Tiwari. The reasoning adopted by the learned trial court is that the cancellation of the advertisement should have been followed by a fresh recruitment and since this was not done, it has been presumed that the services of the plaintiff were terminated merely to accommodate Sri Dhananjay Kumar Tiwari. We have examined the judgment of the learned trial in the light of the Rules 6 and 16 of the EDA (Conduct and Service) Rules 1964. Rules 6 and 16 of the EDA (Conduct and Service) Rules read as under:

Rule 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."

Rule 16: Review or Orders:

Notwithstanding anything contained in these rules,

- i) the Central Government or
- ii) the Head of the Circle or
- iii) an authority immediately superior to the authority passing the orders may at any time, either on its own motion,

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or otherwise, call for records of any enquiry or disciplinary case and review any order made under these rules, reopen the case and after making such enquiry as it considers necessary may

- a) confirm, modify or set aside the order,
- b) pass such orders as it deems fit:

Provided that no case shall be reopened under this rule after the expiry of six months from the date of the order to be reviewed except by the Central Government, or by the Head of the Circle and also before the expiry of the time-limit of 3 months prescribed for preferring an appeal.

Provided further that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses(ii) and (iii) of Rule 7 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an enquiry in the manner laid down in Rule-8 in case no such enquiry has already been held."

A plain reading of Rule 6 would indicate that the competent authority has the power to terminate the services of an employee who has not already rendered more than 3 years continuous service from the date of his appointment on any administrative ground unconnected with his conduct. Admittedly, the plaintiff had worked on the post for a period of about 2 months only when his services were termina-

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-ted by the Superintendent Post Offices. The order passed by the Superintendent of Post Offices terminating the services of the plaintiff is fully covered under Rule 6 of the EDA(Conduct and Service) Rules, 1964.

6. It is not unlikely that the Superintendent of Post Offices had received information about the irregularity committed by the Inspector of Post Offices in issuing advertisement and making selection for the post of Extra Departmental Stamp Vendor and after making necessary inquiry into the matter under rule 16 of the said rules had come to the conclusion that the advertisement issued by the Inspector of Post Offices and the selection made by him were not in accordance with the rules. This action of the Superintendent of Post Offices can not be considered without jurisdiction or without a valid cause of action. We are of the opinion that the learned trial court has not confined its findings to the limited question of legality or otherwise of the order passed by the Superintendent of Post Offices cancelling the advertisement which resulted in the termination of the services of the plaintiff-respondent. Learned trial court has gone into the extraneous matters of the appointment of Sri Dhananjay Kumar Tiwari which was not the issue under consideration. Any finding regarding the appointment of Sri Dhananjay Kumar Tiwari being illegal could not be passed without the latter having been given an opportunity to defend himself in the court. We are of the opinion that the order passed by the Superint-

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endent of Post Offices Western Region, Varanasi, cancelling the advertisement and the cancellation of the Selection made on the basis of that advertisement was in accordance with rules 6 and 16 of the Rules and the consequent order terminating the services of the plaintiff-respondent was in accordance with Rule 6 of the EDA (Conduct and Service) Rules, 1964.

7. For the reasons mentioned above, the appeal is allowed and the judgment and decree passed by the learned trial court are hereby set aside and the suit of the plaintiff is dismissed. The parties shall bear their own costs.

[Signature]
A.M. 5.3.87

[Signature]
J.M. 5/3/87

Dt. 5.3.1987.

JSingh