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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.352 of 1986

(Original Suit No.366 of 1984)

Avadh Behari

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Plaintiff

Vs.

1. Union of India

2. Senior Superintendent
of Post Offices, Bareilly

Defendants.

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

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

This original suit has been received by transfer from the Court of VI Additional Munsif Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff was appointed as Deputy Post Master, Branch Post Office, Dalpura in district Bareilly by the defendant no.2 on 22.2.1984. As other persons of the village were also trying for their appointment, they got disappointed on the appointment of the plaintiff and in order to get the plaintiff removed from his post, they started sending anonymous complaints to the defendant no.1 against the plaintiff. One such complaint was made by them stating that the plaintiff was sent to jail in connection with some offence under Section 420 IPC. As a matter of fact, crime case no.5 of 1984 under Sections 467/468/420

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IPC was registered against the plaintiff at P.S. Hafizganj on the basis of the said enmity and apprehending departmental action against him on that basis, the plaintiff initially filed this suit for permanent injunction to restrain the defendants from interfering with his working as Deputy Post Master on his post so long as the aforesaid Crime Case No.5 of 1984 was pending. During the pendency of the case, the plaintiff was removed from service by the defendants under order dated 30.3.1984, he accordingly got his plaint amended and his suit is now for setting aside the aforesaid order dated 30.3.1984 removing him from service.

3. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf, it has been stated that a new Branch Post Office was opened at Dalpura on 22.2.1984 and in order to appoint a suitable person to hold the charge of Branch Post Master, names of willing candidates were called from the Employment Exchange, Bareilly. The name of the plaintiff was sent by the Employment Exchange and due to urgency, the plaintiff was given the appointment on the basis of 2 character certificates subject to his character verification. The appointment letter dated 20.2.1984 had clearly contemplated that the contract could be terminated by the plaintiff or the defendant no.2 by notifying in writing

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and the appointment shall not be covered by Posts and Telegraphs Extra Departmental (Conduct and Service) Rules, 1964 (hereinafter referred to as the EDA Rules). The plaintiff had accepted the aforesaid condition. On receiving subsequent reports against the plaintiff, he was not found suitable for being retained in service and was accordingly discharged by the defendant no.2 vide order dated 28.3.1984 and since then, the plaintiff is not in service and has no right to maintain the suit or seek the injunction. The pleas of mis-joinder of defendant no.2 and the non-maintainability of the suit for want of notice under Section 80 of the Code of Civil Procedure were also taken.

4. The plaintiff did not appear before us to prosecute his case despite sufficient opportunity and instead of dismissing the suit in default, we decided to dispose it of on merits. We accordingly heard the learned counsel for the defendants, who laid stress on the pleas taken by the defendants in their written statement. It is an admitted case of the parties that the plaintiff was initially appointed as Extra Departmental Branch Post Master, Dalpura by the defendant no.2 on 20.2.1984. The appointment

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letter, paper no.27-C, shows that according to the terms and conditions of the appointment of the plaintiff, his employment could be terminated by him or the defendant no.2 by notifying in writing and the appointment was to be governed by this contract and the EDA Rules, 1964. It was wrongly alleged in paragraph 1 of the additional pleas of the written statement filed on behalf of the defendants that the appointment of the plaintiff is not to be governed by the EDA Rules. It is well settled law that the appointment of a Govt. servant ^{is} initially governed by the contract of appointment but after his entering into the service, he is governed by the rules of the Department. It is, therefore, wrong to allege that the terms and conditions of service of the plaintiff are not to be governed by the EDA Rules.

5. It is ^{also} an admitted case of the plaintiff as alleged in paragraph 6 of the plaint that he was involved in a case under Sections 467/468/420 IPC in connection with Crime Case No.5 of 1984 at P.S. Hafizganj. It appears from the report of the Court Constable of the Court of IX Munsif Magistrate Bareilly that the plaintiff was sent to jail in connection with aforesaid crime case on 16.1.1984 and was released from jail on his bail being granted by the Sessions Judge on 23.1.1984. A report

was called for by the defendant no.2 about the antecedents of the plaintiff from the District Police vide copy of letter dated 20.2.1984 and the Police had reported on 29.4.1984 about the involvement of the plaintiff in the said case. It further appears from the copy of order dated 30.3.1984 of the defendant no.2 that in exercise of the powers conferred on him under rule 6 of the EDA Rules, he terminated the services of the plaintiff with immediate effect. The plaintiff had already pleaded this thing by way of an amendment of his plaint and he now seeks the cancellation of this order of termination. It has been alleged in paragraph 6-A of the plaint that rule 8 of EDA Rules has no application to his case as he has not been convicted in the case so far. We have examined the matter and in our opinion, the plaintiff is bound by the EDA Rules regarding his employment. Rule 6, under which his services were terminated by the defendant no.2, runs as follows :-

" 6. Termination of service- The services of an employee who has not already rendered more than 3 years continuous service from the date of his appointment, shall be liable to termination by the appointing authority at any time without notice."

6. According to this rule, the defendant no.2 had full powers to terminate the employment of the plaintiff on 30.3.1984 i.e. within 3 years of his appointment without giving him any notice to show cause or without observing any other formality.

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7. The plaintiff has alleged that rule 8 has no application to his case as he has not been convicted so far, is correct. As a matter of fact, rule 8 relates to the procedure for imposing a penalty on an extra departmental agent after initiating departmental proceedings against him. The action against the plaintiff has not been taken under rule 8 by way of punishment but has been taken under rule 6 without assigning any reason. The impugned order is thus of innocuous nature and does not adversely affect the ^{future} prospects of the plaintiff in any manner. The action having been taken in accordance with law there is no ground for interference in this case by the Tribunal.

8. The suit is accordingly dismissed without any order as to costs.

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MEMBER (A)

Dated 19.3.1987
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} Sarvaria
19.3.1987
MEMBER (J)