

(42/2)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD.

Registration T.A.No.1004 of 1986 (Original suit no.278 of 1985)

Lalta Plaintiff

Vs.

Superintendent of Post Offices,
Basti and two others Defendants.

Hon.Ajay Johri,AM
Hon.G.S.Sharma,JM

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

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

2. The plaintiff was appointed as Extra Departmental
Delivery Agent (for short EDDA) on 30.10.1984 by the Assistant
Superintendent of Post Offices, Basti-defendant no.2 in Rudra-
nagar sub-post office in district Basti. His case is that
though his appointment was made in accordance with the rules
and he was discharging his duties from 31.10.1984 without
any complaint, the defendant nos. 1 and 2 became inimical
to him on his failure to satisfy their unlawful expectations
and on account of that ill-will, they were bent upon appointing
someone else in his place. He, therefore, filed the present
suit on 29. 5.1985 for permanent injunction that the defendants
be restrained from dispensing with his services without giving
him an opportunity of hearing. He also obtained an ad-interim
injunction from the trial Court to this effect.

3. In the written statement filed on behalf of the defendants before the trial Court, it was stated that one Rabindra Mani Tripathi of the concerned village had complained to the competent authority- the Superintendent of Post Offices Basti, defendant no.1, against the selection and appointment of the plaintiff as EDDA and on the basis of an enquiry held under the direction of the defendant no.1 and on having his own satisfaction, the orders for terminating the services of the plaintiff were passed and Rabindra Mani Tripathi was appointed in his place but on account of the ad-interim injunction obtained by the plaintiff, the said Tripathi could not take charge of his office and the plaintiff is continuing in office on the basis of the order of the Court. It was further stated that the suit filed by the plaintiff is not proper and is not maintainable under the law.

4. On 7.11.1985 after the establishment of this Tribunal, the plaintiff moved an application for the amendment of the plaint before the trial Court, on 7.11.1985. The record of the case was transferred to this Tribunal by the learned Munsif without disposing of the said application. The plaintiff thereafter moved one other amendment application before this Tribunal to plead that in spite of the knowledge of the injunction order dated 6.6.1985, the defendants removed the plaintiff from service by order dated 7.5.1986 on the complaint of Rabindra Mani Tripathi without giving him any opportunity of defending himself. He wanted to seek one more relief for a declaration to the effect that the order dated 7.5.1986 of his removal from service is illegal, null and void and without jurisdiction and he continues to hold the post of EDDA. For the reasons



best known to him the plaintiff did not press his amendment applications before us. On the other hand, stress was laid on his behalf on the allegations made in paragraph 8 of the written statement filed by the defendants to the effect that it is correct that the plaintiff served the Department from 31.10.1984 to 27.5.1985 and thereafter under the orders of the Court. The arguments were advanced before us on behalf of both the parties under the assumption that the plaintiff continues to be in service under the temporary injunction issued by the trial Court in his favour and as such, it is not necessary for us to examine as a fact whether the services of the plaintiff were at all terminated by the defendants on 27.5.1985. It being so, it will not be necessary to examine the validity of such order, if any. We may also point out that perhaps in ignorance of the written statement filed by the defendants in the trial Court, the defendant no. 1 filed his counter affidavit before this Bench pointing out the irregularities made in the appointment of the plaintiff and quashing of the appointment order of the plaintiff by him on 27.5.1985. This counter affidavit was filed without taking any leave of the Bench and at the time of arguments, the facts stated therein were not relied upon and as such, for the same reasons as are applicable to the amendment applications of the plaintiff, we are not going to place any reliance on this counter affidavit of the defendants.

5. The simple point arising for determination in this case is whether the plaintiff is entitled to ^{an} opportunity of hearing under the law before his services as EDDA are dispensed with as apprehended by him. It has been contended on his behalf that under the rules of natural justice, the services

of the plaintiff cannot be taken away by the defendants without giving him an opportunity of hearing and in case of any complaint against his appointment, the enquiry has to be made in his presence so that he may prove the falsity of the complaint, and support of his appointment. On the other hand, the contention of the defendants is that the appointment of the plaintiff was not validly made and on receiving the complaint against his appointment an enquiry was held and in the said enquiry, the allegations made in the complaint were found correct and as such, an order for the termination of his services was made but on account of the temporary injunction of the Munsif, the plaintiff was allowed to continue to hold some post or the other and his services were not totally dispensed with.

6. The plaintiff has not filed the order of his appointment to show the terms and conditions of his appointment. The plaintiff was appointed Extra Departmental Delivery Agent and the services rules for Post and Telegraph Extra Departmental Staff are applicable to him. Rule 6 of the said rules runs as follows :-

"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."

7. On the own showing of the plaintiff, he was appointed as EDDA on 30.10.1984 and he was sought to be removed from the service in May 1985 within a period of about 8months. According to the defendants, they had actually passed the order of termination of his services on 27.5.1985. Rule 6 quoted

above is comprehensive enough to cover such cases and as the plaintiff had not rendered more than 3 years continuous service in May, 1985, his services could be terminated by the appointing authority at any time without notice. The fact that such appointment could be terminated without notice clearly shows that the plaintiff is not entitled to any opportunity of hearing before the order of termination of his services is actually passed. His claim is, therefore, misconcieved and is not supported by the terms and conditions of or the rules applicable to his service.

8. We are not inclined to enter into the circumstance, under which the defendants thought it expedient to terminate the services of the plaintiff or actually passed any such order on 27. 5.1985 as in view of the peculiar pleadings of the parties detailed above, we are not called upon to give any finding whether such order was passed in accordance with law or not. According to the amendment application of the plaintiff, his services were terminated by the defendants on 7.5.1985 while according to the defendants this was done on 27.5.1985. The suit was filed by the plaintiff on 29.5.1985 after the termination of his services and he preferred to keep mum regarding the validity of such order. We will like to point out the allegations made by the plaintiff in para 14 of his plaint to the effect that the plaintiff heard a rumour that his services were terminated on 27.5.1985 with malafide intention. This knowledge of the plaintiff about the termination of his services is very significant and if the plaintiff does not challenge the validity of the order dated 27.5.1985 by bringing the necessary facts rendering the said order invalid, and the defendants ^{could} _{have} no opportunity to defend themselves on this point, it will not be expedient on our part to embark upon an enquiry in this case on the point whether the said order is valid on facts or not. So far as the present case

APR 6

.6.

is concerned, we are clearly of the view that the defendants were fully justified to terminate the services of the plaintiff within 3 years of his appointment without giving him any notice or any opportunity of showing cause or hearing. As already made clear above, we refrain from expressing our opinion about the validity of the action of the defendants on any point other than rule 6 of the service rules.

9. The suit of the plaintiff is accordingly dismissed without any order as to costs.

MEMBER (A)

3. I. M. J. 16/7/87
MEMBER (J)

DATED 16.7.1987
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