

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

REGISTRATION T.A.NO.3/87

IN

(O.S.No.570/85)

Bhulan SinghApplicant

Versus

Union of India & OthersRespondents

Hon'ble Mr.K.Obayya,A.M.
Hon'ble Mr.S.N.Prasad,J.M.

(By Hon'ble Mr.K.Obayya,A.M.)

O.S.570/85 instituted in the Court Munsif (Haveli) District Azamgarh has been received in this Tribunal on transfer under section 29 of the Administrative Tribunals Act 1985 and the renumbered as T.A. 3/87. In this suit, the plaintiff has prayed for quashing the order dated 11.7.1985 passed by the Director of Postal Services, Allahabad, setting aside plaintiff's appointment order as EDBPM Aswania and order dated 19.7.1985 terminating his service from the said post.

2. Briefly stated the facts of the case are that the plaintiff was appointed as EDBPM, Aswania District Azamgarh on 7.1.1985. The appointment was after due selection from amongst employment exchange sponsored candidates, against a regular vacancy. The plaintiff joined his duties on 15.1.1985 and according to him acquainted well in his work. However, by the impugned order dated 11.7.1985 the Director of Postal Services, cancelled his appointment and by order dated 19.7.1985 the Senior

Superintendent of Post Offices terminated his services.

3. It is contended by the plaintiff that his appointment was on the basis of regular selection from among other eligible candidates, and that in discharge of his duties and responsibilities, he gave no room for any complaint, and in this background, cancellation of his appointment without any reason and termination without notice or opportunity, is arbitrary and violative of the Principles of natural justice; The impugned order therefore cannot be sustained.

4. In the counter affidavit filed by the defendants, the stand taken is that there was a representation against the selection of the plaintiff, by one of the competing candidates namely Udai Pratap Singh (defendant-5) the representation was considered by the Director of Postal Services who set aside the appointment of the plaintiff and directed the Senior Superintendent of Post Office to hold selection afresh from amongst the candidates already sponsored by the Employment Exchange. In the selection so held Sri Udai Pratap Singh was appointed as he was found to have secured more marks in Matriculation examination than the plaintiff.

5. We have heard Sri M.A.Siddiqui, counsel for the applicant and Sri Shirish Chandra, Brief holder of Sri N.B.Singh, Counsel for the Defendants. On the facts of the case there is no dispute. It is admitted by the defendants in para 2 of their counter that the plaintiff's selection and appointment was after due consideration by the Appointing Authority It is also admitted.

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by them that the cancellation of the plaintiff's appointment was passed by Director Postal Services, on a representation of Udai Pratap Singh one of the candidates who appeared at the selection for the post of EDBPM Ashwania along with the plaintiff, but was not successful. The record discloses that the qualifications of the plaintiff and defendant are same i.e. both are matriculates. The minimum qualifications prescribed for the post is VIII class pass; the plaintiff fulfilled all other conditions prescribed for selection. The termination of the plaintiff was not due to any non-fulfilment of the stipulated conditions for appointment, but that though a matriculate, he is alleged to have secured lesser marks in the matriculation examination than the other candidate Udai Pratap Singh, who was preferred in the later selection. If more marks in the matriculation examination signified higher merit, why was this not considered in the first instance, by the appointing authority namely the Senior Superintendent of Post Offices, who considered the applications and selected and appointed the plaintiff having found him more suitable than the others. is the question that has not been explained.

6. The learned counsel for the defendants has not been able to show us any instruction or guideline to suggest, that other things being equal, matriculation marks should be adopted as the criteria for selection. In the absence of any such instruction/guideline, the action of the Director of Postal Services, in cancelling a proper selection appears to be arbitrary.

7. Secondly it is noticed that the appointment order of the plaintiff was quashed, invoking the powers of Review under Rule 16 of the EDA (Conduct and Service

Rules) 1964. Rule 16 lays down that the Central Government, or Head of the Circle or an authority superior to the authority passing the order, may either on its own motion or otherwise call for records of any enquiry or disciplinary case and review any order, and confirm, modify or set aside the order or pass such order as deemed fit, provided the employee concerned has been given reasonable opportunity of making a representation against the penalty proposed. The termination of the service of the plaintiff is not due to any departmental proceeding, but in exercise of the Review Powers vested with the Director of Postal Services; Rule 16 clearly lays down that the Reviewing authority should not pass any order without providing opportunity to the affected employee. The plaintiff's contention is that no opportunity or notice was given to him before cancelling his appointment. This contention is not denied by the defendants; In these circumstances, we are of the opinion that the impugned order dated 11.7.1985 passed by the Director of Postal Service is arbitrary, and not in accordance with provisions of Rule 16 of the EDA (Conduct and Service) Rules 1964 and as such it cannot be sustained.

8. The order of termination dated 19.7.1985, was passed under Rule 6 of the rules referred to above. This rule lays down that the services of an employee may be terminated at any time without notice; though no reasons need be indicated in the termination order, the record does not disclose any other reason for termination except the cancellation of appointment of the plaintiff by higher authority namely Director of Postal Services, Rule 6 is invoked, normally in cases of unsatisfactory

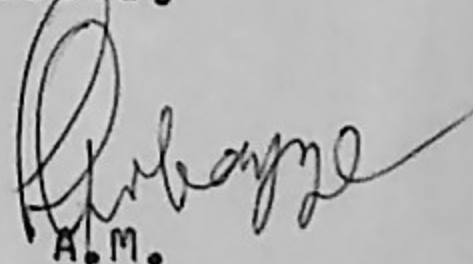
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work . This is not the case of the defendants in this suit. Therefore, the termination which followed the cancellation of appointment by higher authority in review, is void, being arbitrary and is bad in law.

9. For reasons discussed above, we are of the opinion that the order dated 11.7.1985 by which the appointment of the plaintiff was quashed and the order of plaintiff's termination from service dated 19.7.1985 and are liable to be quashed; accordingly we quash these orders. The defendants are directed to put back the plaintiff to duty as EDBPM Aswania with immediate effect. The plaintiff will be eligible to higher seniority reckoned from the date of his initial appointment i.e. . . . 7.1.1985. It is open to the defendants to provide alternative appointment to defendant-5, in any manner they consider suitable according to law. The suit is decreed as above. Parties shall bear their own costs.



J.M.



A.M.

DATED: 13th MAY, 1991

ALLAHABAD

(ss)

15/5/1991.

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