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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 22 (T) of 1987

Virendra Kumar Pandey & others Petitioners

Versus

Union of India and others Respondents.

Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. D.S. Misra, A.M.)

This Civil Misc. Writ Petition No.10082 of 1985 has come on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The petitioners' case is that they were appointed as Extra Departmental Delivery Agents and Packer after being selected for the post by the Inspector of Post Offices, Kanpur (respondent no.5); they they had been working on the said post continuously for more than 240 days and their services were terminated by a memo dated 1.7.1985 under Rule 6 of the Extra Departmental (Service & Conduct) Rules, 1964 (copies Annexures 1-A, 1-B & 1-C); that the Senior Superintendent of Post Offices, Kanpur City Division, Kanpur (respondent no.4) had passed the order of termination on receipt of a directive dated 27.2.1985 from the Director, Postal Services, Kanpur Region, Kanpur (respondent no.3); that the respondent no.3, Sri L.C. Ram, belongs to

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Scheduled Caste and has pressurised the Superintendent and Inspector of Post Offices to remove all upper caste Extra Departmental Employees on some pretext or the other; that the Director, Postal Services, is also biased against the petitioners as they are active members of National Union of Postal Employees; that the Post & Telegraph Department is an Industry and the termination of services of the petitioners is wholly arbitrary and in total violation of mandatory provisions of section 25 -F of the Industrial Disputes Act, 1947 and the rules framed thereunder and it is, therefore, void in law; that the petitioners were not given any notice nor any opportunity of being heard and hence the order is wholly against the principles of natural justice; that the persons junior to the petitioners have been retained in service arbitrarily and principles of last come first go have not been followed in the termination of services of the petitioners; that the petitioners are permanent residents of Kanpur and the termination of their services on the ground that they were not permanent residents of Kanpur is wholly illegal. The petitioners have sought issue of an order or direction quashing the order dated 27.2.1985 passed by the Director, Postal Services, Kanpur Division, Kanpur (respondent no.2) and also termination order dated 1.7.1985 and to treat all the petitioners in continuous service and pay them all wages and other consequential benefits and allowances admissible to them under the rules.

3. In the reply filed on behalf of the respondents it is stated that the petitioner no.1, V.K. Pandey, wa

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was appointed on provisional basis on certain terms and conditions mentioned in the appointment memo dated 15.12.1982 (copy Annexure CA-3). He took charge of the post of Extra Departmental Packer, Anand Nagar on 18.12.1982; that in the application for appointment submitted by V.K. Pandey, the permanent residence was noted as village Sahjadepur, Post Office Amethi, District Lucknow (copy Annexure CA-4); that the case of the appointments made by the Sub-Divisional Inspector (E), City Sub-Division, Kanpur, on 15.12.1982 in respect of the applicant-petitioner was examined along with the appointment of some other Extra Departmental Agents by the Director, Postal Services, Kanpur and an order under his letter dated 27.2.1985 was sent to the Senior Superintendent of Post Offices, Kanpur City Division, Kanpur for termination of services of the petitioner and some other Extra Departmental Delivery Agents as they were not permanent residents of the place where the vacancies had occurred (copy Annexure CA-5); that in compliance of the aforesaid order the services of all the petitioners were terminated under Rule 6 of the Extra Departmental Delivery Agents Service and Conduct Rules, 1964 under office memo dated 28.6.1985; that the petitioner no.2, S.C. Pandey, was appointed by the Sub-Divisional Inspector (E), City Sub-Division, Kanpur as Extra Departmental Delivery Agent, Shiwans Tennery Post Office, Kanpur vide memo dated 17.10.1982; that the name of S.C. Pandey, petitioner, was not received from the Employment Exchange Office, Kanpur, despite lapse of period of one month's notice; that S.C. Pandey has mentioned his permanent address in the application for appointment as village Pure Tori, Post

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Office Katray Gulabsingh, District Pratapgarh and the present address 102/6, Juhi Lal Colony, Kanpur; that petitioner no.3, P.N. Bajpai, was appointed as Extra Departmental Packer, Kidwai Nagar, Kanpur vide memo dated 15.12.1982; that in the application of appointment the petitioner-applicant had mentioned his permanent address as village Bhatkherawa, Post Office Bhagwant Nagar, District Unnao and present address 133/113 'M' Block, Kidwainagar, Kanpur; that the petitioner no.4, Mohd. Idris, was appointed as Rickshaw Puller vide memo dated 16.12.1982; that in the application for appointment the petitioner has mentioned his permanent address as village and Post Office Puran Purwa, District Kanpur and present address 25/374, Karanchi Khana, Kanpur; that the cases of the appointments of the petitioners were examined by the Director, Postal Services, Kanpur, and found that the applicants were not the permanent residents of the place where the vacancies occurred; that the services of the petitioners were terminated under Rule 6 of the Extra Departmental Agents (Service & Conduct) Rules, 1964 due to their irregular appointments; that the grounds taken in support of the petition are not tenable and the petition is liable to be dismissed with costs.

4. A rejoinder affidavit was filed on behalf of V.K. Pandey and others in which it was stated that some persons similarly situated were retained in service whereas the petitioners' services sought to be terminated resulting in violent discrimination (list Annexure RA-1); that the findings of the Director, Postal Services, Kanpur that the petitioners were not residents of Kanpur

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is perverse and against the record; that Rule 6 of the Extra Departmental Agents (Service & Conduct) Rules, 1964 was not applicable to their case.

5. A supplementary counter affidavit was filed on behalf of the respondents that the petitioner, V.K. Pandey, was appointed as Extra Departmental Packer, Anand Nagar on 18.12.1982 on a provisional basis and his services were terminated as his appointment was found irregular; that the other petitioners' services were also terminated because their appointments were found to be irregular.

6. A supplementary rejoinder affidavit was filed by Suresh Chandra Pandey, petitioner no.2, in which it is stated that all the petitioners are aggrieved by the alleged termination order.

7. We have heard the arguments of the learned counsel for the parties and have perused the record. We have examined the contention of the petitioners that their case was covered under Section 25 of the Industrial Disputes Act and not under the provisions of Extra Departmental Agents (Service & Conduct) Rule, 1964. We are unable to accept this contention of the applicants-petitioners as admittedly the petitioners were working as Extra Departmental Agents before issuance of the termination order dated 1.7.1985. In any case this Tribunal has no jurisdiction to hear petition under the Industrial Disputes Act and we will examine this case under the provisions of E.D.A. Rules. It is not contested by the petitioners that they were appointed on provisional basis, as alleged by the respondents. The respondents have

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contended that their services were liable for termination under Rule 6 of the E.D.A. Rules. The petitioners nos. 1 and 3 were appointed on 15.12.82, the petitioner no.2 was appointed on 17.11.1982, and the petitioner no.4 was appointed on 16.12.1982. Their services were terminated by the order dated 1.7.85. None of these four petitioners had completed three years of continuous service as Extra Departmental Agents on various posts. Rule 6 of the E.D.A. (Conduct and Service) Rules, 1964 reads as follows:-

" 6. Termination of Services:

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

Rule-6 gives full power to the appointing authority to terminate the services of an E.D. Agent who had not completed three years' continuous service as Extra Departmental Agent. The learned counsel for the petitioners contended that this Rule was void as it gave unlimited arbitrary power to the appointing authority against the principles of natural justice. The learned counsel for the petitioners cited case law in the case of Superintendent of Post Offices etc. Vs. P.K. Rajamma etc. reported in A.I.R. 1977, S.C. 1677 in which

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it has been held that Extra Departmental Agents connected with the Postal Departmental hold civil post under the Union of India. The validity of Rule-6 of the E.D.A., Conduct and Service, Rules, 1964 has not been discussed therein and we are of the opinion that this case law is not applicable to the present case.

8. The learned counsel for the petitioners contended that the service of the petitioners were terminated due to the personal bias of one Sri L.C. Ram Director, Postal Services, Kanpur Region, Kanpur, who was a Scheduled Caste Officer and had developed a bias against all upper castes employees of the Postal Department. The only evidence cited in support of this contention is that the order dated 27.2.1985 was passed by Sri L.C. Ram, the then Director, Postal Services Kanpur. A perusal of the letter dated 27.2.1985 available as Annexure '2' to the writ petition indicates that in the course of enquiry into a complaint against Sri V.P. Dixit, S.D.I., Kanpur, it was found that serious irregularities had been committed by the S.D.I. in the matter of appointment of Extra-Departmental Agents. In this letter there is a reference to the method of filling in the vacancies of Extra-Departmental Agents and it is stated that vacancies occurring in a particular office should be dealt with separately and all the vacancies occurring in

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the various offices under a Sub-Divisional Inspector Post Offices, should not be consolidated for purposes of making recruitment. It is further observed that the employment Exchange were addressed on 18.12.1982 for sending nomination for 12 different posts and a list of 54 candidates was received on 7.12.1982. Out of the above list 38 applications were rejected due to non-mention of either the particulars of the post or office of employment and only 16 applications were considered for making appointments against 12 vacancies. In the case of the four petitioners, who were not permanent residents of the place where the vacancies had occurred, the selection made were irregular and the appointments made were declared irregular. The Director, Postal Services, directed the Superintendent of Post Offices, Kanpur City to consider the termination of services of E.D.As. appointed irregularly and to make fresh selection for filling in those vacancies. S.D.O., Kanpur City was also asked to consider to initiate disciplinary proceedings against S.D.I. for the irregularities committed by him. We have considered this matter and we find that the wordings of the above letter does not indicate any bias or prejudice on the part of the Director, Postal Services and the observations made in this letter about the candidature of the petitioners cannot be considered biased or against the facts on record. The petitioners have not contested the respondents' allegation that in their applications for the post, all the four petitioners had mentioned their permanent residence which was away from the place of their posting subsequently. The learned counsel for the

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petitioners contended that in the proforma for making application the applicants were required to give their permanent address as well as their present address and as the petitioners were born in rural areas they had given their place of birth as their permanent residence but they **had** clearly stated their present address in the city of Kanpur which cannot be considered being away from the place of their permanent residence. The learned counsel further contended that Rule 4 of the **Method** for recruitment of E.D. Agents does not make it compulsory that the candidate must be a resident of the place of posting and the words used 'as far as possible' would fully cover the case of the petitioners, who were residing in the city of Kanpur for several years. We have considered this matter. Rule 4 of the Method of Recruitment reads as follows :

"4. Residence:

(i) The ED BPM/ED SPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which need not be adapted to suit his convenience or his main avocation.

(ii) ED Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherefrom mails originate/terminate i.e., they should be permanent residents of the delivery jurisdiction of the post office.

(iii) ED Agents of other categories may, as far as possible, reside in or near the place of their work. (Letter No.5-9/72-EL Cell, dated 18.8.1973 and 43-312/78 Pen, dated 20.1.1979 stand modified to this extent)."

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The learned counsel for the respondents contended that the words 'asfar as possible' should mean within the jurisdiction of the post office where the particular petitioner was required to work. He also contended that the initial action of the Sub-Divisional Inspector in consolidating the vacancies existing in various post offices under his charge was in violation of the departmental instructions as the person to be appointed against such vacancies should be a resident of the area under the jurisdiction of that Post Office. The words 'extra-departmental agents' suggests a class of employees outside the regular civil services. In the case law mentioned earlier their Lordships of the Hon'ble Supreme Court have observed as follows :

"4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra Dutta's case (supra) are clearly satisfied in the case of the extra departmental agents."

Although these extra-departmental agents work under the direct control and supervision of the postal authorities the duties performed by them are of a special kind. It must be for this reason that Rule 4 mentioned earlier provides for selection from amongst permanent residents of the locality within the jurisdiction of the concerned office.

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In our opinion the words 'as far as possible' should be construed to mean that outsiders may be considered and employed if no qualified local resident is available for filling in the vacancy. The petitioners have not stated the approximate distance in kilometres between the place of their work and the place of their residence in the Kanpur city mentioned in their application. We are, therefore, unable to take a view in their favour on this ground.

9. The petitioners had also alleged malafide and bias on the part of Sri L.C. Ram, Director Postal Services Kanpur Division, but did not produce any evidence in support of this allegation. Similarly the petitioners had also contended that some persons junior ^{and} to them were allowed to continue ~~but~~ their services were ~~not~~ terminated. No details of the method and the date of their appointment was produced before us to enable us to determine this point. In view of this, it is not possible to accept the allegation of bias and malafide on the part of Director Postal Services Kanpur and any discrimination by the respondents in passing the order of termination of their services. No other points have been raised in this petition.

10. For the reasons mentioned above, we are of the opinion that the petitioners had not acquired any right on the post held by them on a provisional basis and the termination of their services under Rule 6 of the E.D.A. Rules was well within the powers of the authority, who passed the order of termination. We also hold that it was not necessary for the competent authority to issue any show cause notice to the petitioners before terminating their services.

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The petition is accordingly dismissed without
any order as to costs.

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A.M. 27/5/87 J.M. *27/5/87*

Dt. May. 27. 1987
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