



RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

\*\*\*\*\*

Registration No. 23 (T) of 1987

Yogendra Kumar Tiwari ..... Petitioner.

Versus

Union of India & 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.10080 of 1985 has come on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The petitioner's case is that he was appointed Extra Departmental Stamp Vendor on 15.12.1982 (copy Annexure 'I'); that he was appointed through the Employment Exchange and had completed 240 days of continuous service without any complaint; that he received a memo dated 7.6.1985 terminating his services under Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964 (hereinafter referred to as the E.D.A. Rules); that the said order of termination dated 7.6.1985 was despatched on 7.7.1985 and received by the petitioner on 8.7.1985 (copy Annexure 2); that on enquiry the petitioner came to know that the Director, Postal Services, Kanpur Region has issued a letter dated 27.2.1985 to the Superintendent of Post Offices asking the him to terminate the services of the petitioner on the ground that his appointment was not regular; that the Inspector, Post Offices, issued

he

(P2)

the order of terminating the services of the petitioner without holding any enquiry and applying his mind; that Sri L.C. Ram, Director of Postal Services belongs to Scheduled Caste and has been persistently pressurising 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; that there is no condition that a person working as E.D. Stamp Vendor must be permanent resident of the area or village where the E.D. Post Office is situated; that the petitioner is a permanent resident of Kanpur City and he is qualified for appointment to the post of E.D. Stamp Vendor; that the Post & Telegraph Department is an industry and the termination of services of the petitioner is wholly arbitrary and in total violation of mandatory provision of Section 25-F of the Industrial Disputes Act, 1947 of the rules framed therein and it is, therefore, void in law; that before termination neither the petitioner was given any notice nor any opportunity of being heard and hence the order of termination is wholly against the principles of natural justice; that Rule 6 of the E.D.A. Rules is ineffective and void being inconsistent with the provisions of the Industrial Disputes Act, 1947; that the persons junior to the petitioner have been retained in service arbitrarily and principles of last come first go have not been followed in termination of services of the petitioner. The petitioner has sought a direction for quashing the order dated 7.6.1985 and for directing the respondents to treat the petitioner in continuous service and pay him all back wages and other consequential pay, allowances and other benefits admissible to him from time to time.

3. In the counter affidavit filed on behalf of the respondents it is stated that the services of the petitioner were terminated for unsatisfactory work under Rule 6 of the E.D.A. Rules; that the conduct of the petitioner has not been satisfactory so much so that on 19.3.1985 a sum of Rs.271.80 was found short in his stamp balance and he tendered written apology for the same; that he did not provide substitute on his risk <sup>on or</sup> and responsibility while proceeding on leave <sup>from</sup> 7.4.1983 to 8.4.1983, 8.6.1983, 26.4.1984, 16.9.1984 to 20.9.1984, 20.11.1984 to 23.11.1984, 16.4.1985 to 20.4.1985, 30.4.1985 to 2.5.1985, 24.5.1985 to 24.7.1985 which caused dislocation to Government work and created hardship to the members of public in purchasing postal stationary; that the petitioner thereby violated the provisions of Rule 5 of the E.D.A. Rules; that the grounds taken by the petitioner are irrelevant and baseless and the writ petition is liable to be dismissed with costs.

4. A rejoinder affidavit was filed by R.S.Pandey on behalf of the petitioner in which it is stated that it is wrong to say that the petitioner did not provide substitute on his risk and responsibility while proceeding on leave; that it is also wrong to say that any cash was found short; that Rule 5 of the E.D.A. Rules ~~is~~ not applicable and no proceedings have been drawn against him under Rule 8 of the E.D.A. Conduct Rules.

5. A supplementary counter affidavit was filed on behalf of the respondents in which the allegations made in the previous counter affidavit were reiterated.

(R2)  
4

-: 4 :-

6. A supplementary rejoinder affidavit was filed by Suresh Chandra Pandey on behalf of the petitioner in which the allegations made in the rejoinder affidavit were reiterated.

7. We have heard the arguments of the learned counsel for the parties and have also perused the record. A perusal of the Annexure '1' to the writ petition, the letter of appointment dated 15.12.1982 would show that the petitioner was appointed provisionally as Extra Departmental Stamp Vendor, Khapra Mohan Post Office subject to verification of his character and antecedents. In paragraph 2 of this letter it is stated that Yogendra Kumar Tiwari should clearly understand that his employment as E.D. Stamp Vendor shall be in the nature of a contract liable to be terminated by him or the undersigned by notifying the other in writing and that he shall also be governed by the Extra Departmental Agents (Conduct & Service) Rules, 1964, as amended from time to time. He was asked to acknowledge receipt of the same and communicate his acceptance in the proforma in which it is clearly stated as follows :-

"I, ..... acknowledge the receipt of your Memo No. ..... dt ..... and hereby accept the appointment of ..... under the specific conditions that my appointment is in the nature of a contract liable to be terminated by notifying in writing.

2. I further declare that I have ready the P.T. E D Agents (Conduct & Service) Rules, 1964 and clearly understand that I become liable to the provisions and penalties contained in these rules on being

b

(A2/3)

appointed as EDA..... in the  
P.T. Deptt."

Admittedly the petitioner sent his acceptance in the prescribed form and joined the service on 15.12.1982. His services were terminated by the order dated 7.7.1985, i.e. before he had completed three years of service.

8. We have examined the contention of the petitioner that his case is covered under Section 25-G of the Industrial Disputes Act and not under the provisions of E.D.A. Rules, 1964. We are unable to accept this contention of the applicant who had himself given his consent in writing that his service was governed by the Post & Telegraph Department E.D.A. (Conduct & Service Rules, 1964. It is not contested by the petitioner that he was appointed on provisional basis and that he had not completed three years of service. Rule 6 of the E.D.A. (Conduct & Service) Rules, 1964 reads as follows :-

"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."

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 petitioner 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 petitioner cited case law ~~xxxxxxxxxxxxxx~~ Superintendent of Post Offices etc. etc. v. K. Rajamma etc.

reported in A.I.R.1977,S.C.,1677 in which it has been held that Extra Departmental Agents connected with the postal department hold civil post under the Union of India. The validity of Rule 6 of the EDA,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.

9. A perusal of the order of termination available as Annexure '2' to the application would show that the order of termination does not give any reason for the order of termination and is thus in the nature of a simplicitor order without attaching any stigma. The order of termination is in accordance with the conditions of service rules and under the terms of the contract. In the case of Anant Ram Misra Vs.A.N.Dixit (AIR 1956 Alld.527), it has been held that if termination of service is under the terms of contract, Article 311 of the Constitution has no application. A similar view has been taken in the case of Anima Munshi Vs. Engineer in Chief and General Manager(AIR 1954 Calcutta -561). The Hon'ble Supreme Court has taken a similar view in the case of Heatwell Press Cot Singh Vs. Government of India(AIR 1957 S.C.,886). Rule 6 of the EDA Rules can be compared with Rule 5 of the Central Civil Services(Temporary Service) Rules,1965 where the services of a temporary Civil servant can be terminated by giving one month's notice. The main different between Rule of of the Central Civil Services(Temporary Service)Rules 1965 and Rule 6 of the ED Rule is that in the earlier case one month's notice or one month's salary in lieu of notice has to be paid but in the latter case no such payment is made and the service

can be terminated without any notice with immediate effect. In the case of Union of India Versus V.C.Gupta, reported in 1980 Labour and Industrial cases, 552, it was held that the incident of misconduct may be one of the factors taken into consideration with a number of factors but where the over all view taken to terminate was not the foundation of the order, it was held that it could not be vitiated. In the present case we find that the petitioner was found responsible for a shortage of Rs.271.80 on 19.3.1985 and he tendered written apology for the same. Similarly he failed to provide substitute on his risk and responsibility while proceeding on leave on more than one occasion which caused dislocation to Government work and created hardship to the public in purchasing postal stationery.

10. For the reasons mentioned above, we are of the opinion that there is no illegality in the order dated 3.1.1984 of the Superintendent of Post Offices, terminating the services of the applicant-petitioner. The application is accordingly dismissed. Parties will bear their own costs.

*Shri 27/5/87* { *Subarao 27/5/87*  
A.M. J.M.

Dt. 27.5.1987.

PG/JS