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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

.....
Registration (T.A.) No. 955 of 1987.

Sushil Kumar Shukla
vs.
Union of India & Others

Petitioner.
Respondents.

Hon'ble Mr K. Obayya, A.M.
Hon'ble Mr J.P. Sharma, JM.

(By Hon. K. Obayya, A.M.)

Writ Petition No. 1031 of 1983 filed in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, is before us on transfer under Section '29' of the Administrative Tribunals Act, 1985 and registered as T.A. No. 955 of 1987.

2. The petition was filed challenging orders of removal dated 12.02.1983 and 14.02.1983 and reversion from the post of Postman to the post of Extra-Departmental Agent (E.D.A.) by order dated 16.02.1983 (Annexure I) and to confirm the petitioner in the post of Postman, treating his service as continuous with all consequential benefits or to declare him as quasi-permanent.

3. The petitioner joined service under the jurisdiction of Postmaster, Unnao as Extra-Departmental Agent (E.D.A. in short) in 1976 on a fixed pat of Rs.170/- per month. According to him, in 1977 he was appointed as Postman and continued to work in the same capacity till the date of the impugned order i.e. 16.02.1983. His case is that he has worked for more than five years as Postman and has acquired the status of a quasi-permanent government servant; as such he is entitled for confirmation in the said post, but he was not confirmed in the said post though some of his juniors who entered the department later were confirmed. It is alleged by him that he was reverted from the post of Postman to that of ED Agent as a measure of punishment, since he refused to sign the

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register accepting the cut in the salary for Sundays and other holidays; as such the orders are arbitrary and against the principle of natural justice and should be set aside.

4. The respondents contested the case by filing a counter, in which they denied that the petitioner was appointed as Postman on a regular basis. Their stand is that the petitioner was appointed as ED Packer at Unnao Head Office. He was asked to work as a Postman whenever there was short-term vacancy as an unapproved candidate on payment of daily wages in terms of the order of Direct General, P & T, dated 07.12.1972 (Annexure C-I). It is stated by them that the appointment to the post of Postman is by a selection from amongst the Senior ED Agents, who qualify in the departmental examination. The petitioner being not an approved candidate and senior enough, was not eligible to appear for the departmental examination. It is denied by them that juniors to the petitioner were appointed as Postman, overlooking the seniority of the petitioner. According to them, one Shri Raja Ram Singh, who entered service as EDA in 1972, appeared in the departmental examination held in 1978, and on being successful; he was appointed as Postman in 1979. Shri Surendra Kumar joined the department in 1976, but is senior to the petitioner, appeared in the departmental examination against a reserved vacancy, and on being successful, he was posted as Postman in the reserved vacancy of Scheduled Castes in 1980. Shri Sheo Sharan Lal Tewari joined the department in 1974, appeared in the departmental examination and was declared successful, and was appointed as Postman in 1980. Shri Kanhya Lal was a permanent Class 'D' employee of the department and he appeared in the examination and was declared successful in 1980, and was appointed as Postman in 1980. The petitioner has no claim for appointment as Postman, as he has not passed the departmental examination; as such his confirmation in the said post does not arise. It is also stated that he was not reverted as a

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measure of punishment, but was not asked to do the work of a Postman, as he was not willing to perform his duties as per the conditions laid down; he was asked to do his original work of ED Packer. The petitioner was not recruited as Postman through departmental examination and he has no claim either for appointment as Postman or confirmation in the said post.

5. We have heard the learned counsel for the parties and also perused the record. So far as the facts are concerned it is on record that the petitioner was appointed as ED Packer and his appointment as Postman was not on regular basis, as the petitioner was not qualified in the departmental examination. The appointment of Postman is by selection after qualifying in the departmental examination. We have seen the instructions of the department contained in Annexure C-I. These instructions relate to appointment of approved candidate for the post of Postman, Mail Guard, and Class-IV cadre in Postal Department. The relevant paras are as under:-

"I am directed to invite your attention to this office letter No.47/21/71-SB-I dt. 28.03.72.....
.....

The matter has been considered carefully in all aspects. It has now been decided that where an Extra-Departmental Agent is available, there is no objection to his appointment in the vacancy of Postman/Class-IV in an approved capacity on daily wages basis in preference to an outsider.....
Lastly the ED should be clearly warned that such casual appointment does not confer on him any right for regular absorption in departmental post which will be done under the existing recruitment rules only."

6. We have also gone through the relevant rules and provisions regarding appointment of Postman from the cadre of Extra-Departmental Staff (E.D.S. in short). In Section-V of Swamy's Compilation of Service Rules for Extra-Departmental Staff (p.91), the criteria for promotion of ED Staff to the cadre of Postman has been explained. ED Agents are permitted to take the examination based on their seniority subject to the number of vacancies. Seniority is the main criteria for selection of

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candidates provided they are successful in the qualifying examination by securing 50% marks in each paper. A reading of these instructions clearly indicate that ED Agents have to appear for the departmental examination and to qualify for appointment by securing the minimum prescribed marks. Only after acquiring such minimum marks, the right for appointment subject to availability of vacancies accrues. The contention of the petitioner that his juniors were confirmed while he was overlooked, is found to be factually incorrect.

7. It is not the case of the petitioner that he had appeared for the departmental examination and qualified for appointment. That being the case, we see no merit in the petition. Mere seniority is not the criteria for appointment of ED Agent as Postman, but one has to be successful in the departmental qualifying examination held for promotion to the post of Postman. In the circumstances, we are of the view that no case is made out either for appointment or regularisation of the petitioner as a Postman, and his reversion to his substantial post as ED Packer, is on the ground that he is not eligible for regular promotion. We see no reason to interfere with the impugned orders under challenge. The petition fails and accordingly we dismiss it, with no order as to costs.

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MEMBER (J)

November 28, 1990.
Allahabad.

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Rubayye
MEMBER (A) 28/11/91