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Reserved

Central Administrative Tribunal, Allahabad.

LUCKNOW CIRCUIT BENCH.

Registration T.A.No.1523 of 1987 (Writ Petition No.904/84)

Pawan Kumar and two others ... Petitioners.

... Vs.

Sr. Superintendent, Railway Mail Service, Gorakhpur and 3 others ... Respondents.

Hon.G.S.Sharma, JM
Hon.K.J.Raman, AM

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

This writ petition under Art.226 of the Constitution of India has been received on transfer from the Lucknow Bench of the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act,XIII of 1985.

2. Shortly stated, the relevant facts of this case are that the Petitioners were appointed as Extra Departmental Mail Men (for short EDMM) in Railway Mail Service of the Postal Department by the Sub Record Officer (for short SRO) RMS,Gonda- Respondent no.2 and were posted at the Railway station Gonda on 9.9.1982. On 9.2.1984, the Petitioners were orally informed by the Respondent no.2 that their services have been terminated by the Superintendent Railway Mail Service,Gorakhpur Division- Respondent no.1 w.e.f. 28.2.1984. Three other EDMMs namely, Tripurari Prasad, Ejaj Ahmad and Cautam who were appointed in 1983 by the Respondent no.2 were decided to be kept on their respective duties. The Petitioners were not served with any notice and afterwards a notice signed by the Respondent no.2 was placed on the Notice Board on 18.2.1984 terminating the services of the Petitioners and one Kalpanath appointed with them w.e.f.14.2.84. The Petitioners have challenged the order of their termination from service passed by the Respondent no.2 and have prayed that they be allowed to continue on their post and that the Respondents be commanded not to terminate their services arbitrarily.

3. It is alleged by the Petitioners that before terminating their services, no notice of any kind was given to them. The juniors were retained and the order of their termination is, therefore, discriminatory and also hit by Art.311 of the Constitution. The Respondents are going to make five more appointments in place of the Petitioners and their action is against the principles of natural justice and arbitrary.

4. The Petition has been contested on behalf of the Respondents and two Counter Affidavits -one by Respondent no.1 and the other by Respondent no.2- were filed on their behalf. In the Counter Affidavit filed on behalf of the Respondent no.2 it has been stated that the Petitioners and two others, namely Chandra Prakash and Kalpanath were appointed as EDMM by the then SRO Gonda by his order dated 9.9.1982. Subsequent to their appointment, numerous complaints were received against their recruitment and the matter was investigated by the Vigilance Officer of the PMG Lucknow. On investigation the Vigilance Officer found that ^{there} were only 4 vacancies but 5 appointments were made and the applications of some candidates were summarily and wrongly rejected on the ground that they had passed the High School Examination while qualification prescribed for this post was only Class VIII. The Petition No.1 Pawan Kumar and two others, who were selected and appointed, had also passed the High School Examination. The applications were required to be submitted by the candidates by 7.9.1982 but the SRO rejected some applications received in the afternoon on 7.9.1982. No character certificate was required to be furnished with the applications but candidature of some candidates was rejected on the ground that character certificates were not furnished with the applications. No minimum educational qualification or maximum age was prescribed for this post but the candidature of persons of above 25 years was wrongly rejected on this ground.

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On such report of the Vigilance Officer, the PMC U.P. directed the Respondent no.1 to cancel the appointment of the Petitioners and two other persons, Chandra Prakash and Kalpanath, appointed with them and for making appointment in accordance with rules afresh. The Respondent no.1 communicated the said directions to the Respondents no.2 who accordingly cancelled the appointments of five persons made on 9.9.1982. Tripurari Prasad, Aziz Ahmad and Gautam, though junior to the Petitioners, were selected and appointed separately according to the rules and as such, the Petitioners ~~constitute~~ a separate class and there is no question of any discrimination against them and their appointments being illegal, their services were rightly terminated.

5. It has been stated in the Counter Affidavit filed by the Respondent no.1 that the appointment of the Petitioners was provisional and it has been terminated under rule 6 of the P&T Extra Departmental Staff (Conduct and Service) Rules (hereinafter referred to as the EDA Rules), 1964 on detecting serious irregularities committed by SRO Gonda in making this selection and appointment. The Petitioners were required to work for less than 5 hours each day and the provisions of Industrial Disputes Act are not applicable to them and the Petitioners are not entitled to any relief.

6. In the rejoinder filed on behalf of the Petitioners it has been stated that in case there were any complaints against the Petitioners, the same should have communicated to them and the inquiry should have ^{been} held in their presence and in the absence of the same, it is not open to the Respondents to ~~say~~ ^{say} that the rules were not followed and the appointments of the Petitioners were irregular.

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7. Reliance has been placed on behalf of the Petitioners on an unreported judgment dated 21.3.1984 of a Division Bench of the Allahabad High Court in Writ Petition No.11003 of 1983 Govind Saran Dwivedi Vs. Union of India in which the High Court had quashed an order of termination of service on the ground that they were not terminated in accordance with the terms and conditions of their service. It was also observed that since the Petitioners had been working for more than 2 years, they had acquired a right to continue in service unless the same were terminated in accordance with the service rules and in case there was any irregularity committed in the selection, the Petitioner should have been given an opportunity of hearing. It was a case of an ED Agent but the provisions of Rule 6 of the EDA Rule were not brought to the notice of the Hon. High Court by any party. We fully agree with the view that the services of the Petitioner could be terminated only in accordance with the terms and conditions of the service. Rule 6 of the EDA Rules clearly states that the services of an employee who has already rendered more than 3 years continuous service w.e.f. the date of his appointment, shall be liable to termination by the appointing authority at any time without notice. In our opinion, rule 6 is a condition of service and the services of the ED Agents can be terminated without assigning any reason before they complete the continuous service of 3 years. The provisions of temporary Govt. service are not applicable to the Petitioners and as such, the decision relied upon by the Petitioners is not applicable to their case.

8. The Petitioners have further placed their reliance on a decision dated 11.7.1988 of the Allahabad Bench of the Tribunal to which one of us was a party in T.A.No. 1451 of 1986 Union of India Vs. Bikramaditya. In that case the services of the Plaintiff-Respondent were termina

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ted on the ground that he had not applied through Employment Exchange. It was held by the Allahabad Bench that at the time the Plaintiff was appointed, it was not mandatory to entertain the applications of only such candidate whose name ~~was~~ register^{ed} in the Employment Exchange and as the services of the Plaintiff were terminated solely on that ground, his suit was ~~decided~~ ^{discreed} by the Munsif and the appeal filed by the Union of India was dismissed. In the present case, the position is, however, different. The various pleas taken by the Respondents in their Counter Affidavit regarding innumerable irregularities committed by the then SRO Gonda in arbitrarily rejecting the candidature of several persons and making 5 appointments in place of 4 vacancies, the appointments made cannot be said to be in accordance with rules specially when no minimum qualification or maximum age was prescribed under the rules.

9. We also came across one more decision of the Allahabad Bench of the Tribunal in Surya Bhan Gupta vs. Union of India (1988)7 A.T.C.-226) in which the termination of an ED Agent from service was made on the ground that an application of ~~one~~ ^{another} candidate was wrongly not considered at the time of selection and it was held that this could not be held to be a valid ground for terminating the appointment and as such, termination should have been made after affording an opportunity of hearing. In that case, the Bench had clearly observed that in case the appointment is made according to the rules, it cannot be later on cancelled arbitrarily. In the present case, we are clearly of the view that the appointments of the Petitioners and two others were not made according to the rules but were made in an arbitrary manner. As such, the Petitioners cannot claim any protection against termination of their services under rule 6 of the EDA Rules.

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10. There is yet another ground under which the Petitioners were not entitled to any opportunity of hearing. The complaints received in this case were against the SRO Gonda and not against any individual candidate in general or the Petitioners in particular. The record of inquiry produced by the Respondents before us bears out this contention. On finding the various irregularities committed by the SRO the PMG U.P.Circle, Lucknow not only opined that the appointments made by him should be cancelled but he also ordered a fresh selection to be made as per prescribed procedure without debarring ~~the~~^{any} candidates including the Petitioners. He has also directed the Respondent no.1 to take suitable action against the then SRO Gonda Sri Sahdeo Pathak. The Petitioners were, therefore, not entitled to any opportunity of hearing as there was no complaint against them and in case of a fresh selection, they will have a right to appear again. We, therefore, do not find it to be a fit case for our interference.

11. The Petition is accordingly dismissed without any order as to costs.

l. R. Ranjan

MEMBER (A)

Dated: Aug. 14, 1989
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L. Bhagwati

MEMBER (J)