

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH,
A_L_L_A_H_A_B_A_D

Dated : Allahabad February 29, 1996.

CORAM : Hon. Mr. S. Das Gupta, Member-A
Hon. Mr. T. L. Verma, Member-J

ORIGINAL APPLICATION NO. 400 of 1987

Rajendra Kumar
son of Sri Madan Lal Dubey,
R/o. Village and P.O. Agrana,
District Aligarh. Applicant.

(THROUGH ADVOCATE SHRI ARVIND KUMAR)

Versus

1. Union of India through the
Additional Post Master General,
U.P. Division, Kanpur.
 2. Senior Superintendent of Post Offices,
Aligarh.
 3. Assistant Superintendent of Post Offices,
Hathras, Sub-Division,
Hathras, District Aligarh.
 4. Ashok Kumar,
S/o. Sri Jamuna Prasad,
R/o. Village and P.O. Agrana,
District Aligarh.
- Respondents.

(BY ADVOCATE SRI G.C. TRIPATHI)

O_R_D_E_R (Oral)

(By Hon. Mr. S. Das Gupta, Member-A)

This application was filed under Section 19 of the Administrative Tribunals Act, 1985 challenging an order dated 4.9.1986 (Annexure-A-3) by which the services of the applicant were terminated and also the order dated 11.2.1987 by which the applicant's representation against the termination of his services was rejected. By way of relief he has sought ~~quashing of~~ both of these orders and also
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a direction to the respondents to treat him in service and to allow ^{him} to perform his duties as Extra Departmental Delivery Agent in place of respondent No.4. It has also been prayed that the respondents be directed to pay salary of the applicant from the date his services were terminated till the date of his reinstatement.

2. The facts of the case are that the applicant was allowed to perform the duties of Extra Departmental Delivery Agent in Agrana Post Office as a substitute for his uncle Sri Shiv Shanker Dwivedi who was on leave. The applicant started functioning with effect from 25.9.1978. The services of applicant's uncle were terminated on 1.4.1982 as he over-stayed on leave, but the applicant continued to perform the duties until his services were terminated on 10.3.1983. Thereafter, respondent No.4 was appointed in his place. The applicant represented against the appointment of respondent No.4 on the ground that of certain irregularities in the appointment and thereafter the services of the respondent No. 4 were terminated on 14.7.1986. Prior to this termination the respondents had asked the Employment Exchange to sponsor the names of candidates for the post of Extra Departmental Delivery Agent. The applicant's name was also sponsored and he was selected for the post. On termination of services of respondent No.4, the applicant was appointed on that post on 14.7.1986. Thereafter the respondent No.4 represented against the termination of service and then the competent authority came to the conclusion that his earlier selection was regular and therefore, the termination of his services was incorrect. Thereupon the services of the applicant were terminated by the impugned order dated 4.9.1986. He has submitted representation against this

order and it was rejected by the impugned order dated 11.2.1987. Hence this application for the reliefs aforementioned.

3. The respondents filed a counter-reply in which it has been stated that in order to fill the post of Extra Departmental Delivery Agent, which ~~was~~ ^{fell vacant} ~~cleared~~ by termination of service of Sri Shiv Shanker Dwivedi, applications were invited from open market by the Assistant Superintendent of Post Offices on 1.4.1982. Applications were received from 10 candidates including respondent No.4 who was selected and was appointed as Extra Departmental Delivery Agent. Respondent No.4 took over charge and relieved the applicant who was working as substitute on 10.3.1983. The applicant, thereupon submitted a representation to the respondent No.2 stating that the appointment of the respondent No.4 was irregular as the respondents did not call for names from the Employment Exchange as required under the rules. On ~~the~~ receipt of this representation, the respondent No.2 directed the Assistant Superintendent of Post Offices to make fresh appointment after asking for names from Employment Exchange. Accordingly the names were called for from the Employment Exchange and the applicant whose name was also sponsored, was selected for the Post of Extra Departmental Delivery Agent. Thereupon the services of respondent No.4 were terminated and the applicant was allowed to take over on 14.7.1986. It has further been stated that on the receipt of representation of respondent No.4, the matter was re-examined and it was found that the procedure of calling of name from Employment Exchange was not ^{in vogue} ~~followed~~ at the time when the selection of respondent No.4 was made and that it was open to the respondents to call for applications directly from open

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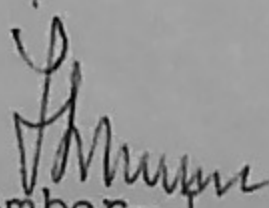
market. It was therefore, held that the earlier ~~xxle~~ cancellation of the appointment of respondent No.4 was not correct. Accordingly he was reinstated in service cancelling the appointment of the applicant.

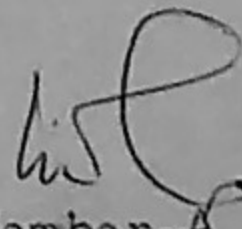
4. We have heard the learned counsel for the parties and perused the records. The facts are not in dispute. The applicant was actually appointed after proper selection on the post of Extra Departmental Delivery Agent after terminating the services of respondent No.4. It is not the case of the respondents that there was any irregularity in the appointment of the applicant, or in the method of his selection. It is, however, the case that earlier ~~selection~~ of the respondent No.4 was also a regular selection and his services could not have been terminated on the ground that his appointment was irregular, on the ground that his name was not sponsored by the Employment Exchange. We are ofcourse not adjudicating in this O.A. as to whether the appointment of the ~~applicant~~ ^{respondent No.4} in 1983 or his ~~cancellation~~ ^{termination} in 1986 was regular or not. We are however, concerned whether the appointment of the ~~respondent No.4~~ ^{applicant} in 1986 and its subsequent cancellation was regular. The respondents have not stated that there was any irregularity in the process of selection of applicant. Their case, however, is that the termination of his service was justified on the ground that post should have been continued to be occupied by the respondent No.4. His appointment was also regular. Respondent No.4 however, did not approach this Tribunal or any legal forum for redressal of his grievance. He ~~however~~, approached the departmental ~~authority~~ ^{authority} who considered his case and reinstated him in service.

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While his right has been protected by the department, we do not see on what ground the services of the applicant ^{shown} ~~were~~ on regularly appointed ~~at~~, could be terminated. Even under Rule 6 of the Extra Departmental Agents (Conduct and Service) Rules, there has to be a cogent reason for termination of service. It cannot be wholly arbitrary or capricious. The only reason in this case is that the earlier termination of the services of the respondent No.4 was erroneous. That cannot however, make the appointment of the applicant erroneous. We ^{are} also ^{conscious} ~~cautious~~ of the fact that ^a single post cannot be occupied by two incumbents at the same time. One has to make way for the other. But, the other person also has a right to be accommodated by the respondents. We, ~~xxx~~ therefore, cannot order the termination of services of the respondent No.4 as that would also be arbitrary but ~~we~~ can certainly direct the respondents ^{to accommodate} ~~to remain~~ the applicant as the termination of his services was wholly arbitrary.

5. In view of the foregoing, we direct that the applicant shall be appointed as Extra Departmental Agent on the next available vacancy in any Post Office preferably in an area adjacent ^{to} his village. The application is therefore, partly allowed in the manner stated above. There shall be no order as to costs.


Member-J.


Member-A.

Dt/- Allahabad February 29, 1996.

(pandey)