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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 754 of 1987

Jagdish Prasad Tripathi Petitioner.

Versus

Union of India & another Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this petition ~~referred~~ under Section 19 of the Administrative Tribunals Act XIII of 1985 the petitioner, Jagdish Prasad Tripathi, who was appointed as Extra Departmental Delivery Agent at Sakardaha on 25.5.1983, has challenged the order dated 14.8.1987 issued by the Deputy Divisional Inspector of Post Offices, Pratapgarh posting another person in his place thereby resulting in termination of his service without any justification and without any notice or pay in lieu of notice. He has challenged the legality and resulting termination and, therefore, prayed for quashing of the order saying that he is entitled to continue on the post with all the benefits attached to the post.

2. The petitioner was appointed on 25.5.1983 by respondent no.2 and he took over from one Baboo Lal Yadav on 6.6.1983. According to the petitioner under Rule 6 of the Extra Departmental Delivery Agent Rules, 1964 the services of an employee could be

terminated by the appointing authority at any time without notice if he had not worked for more than three years and since he has completed more than four years' service, as such termination could not be done without prior notice to the petitioner. He has also not been given any opportunity to explain his position in the matter. According to the petitioner his services can only be terminated by following the provisions of the C.C.S. (C.C.A.) Rules, 1965 and C.C.S. (Temporary Service) Rules, 1949. Under the Temporary Service Rules a temporary Government servant, who is not in quasi-permanent service, can be terminated only by giving him proper notice. The petitioner has, therefore, prayed that the order dated 14.8.1987 may be declared illegal, inoperative and without jurisdiction and respondents be directed to allow him to continue on the post of Extra Departmental Delivery Agent with all benefits attached to the post.

3. The respondents in their reply have said that one Suresh Kumar Mishra was working as Extra Departmental Delivery Agent at Sakardaha. He was put off duty on 29.10.1982 pending an enquiry. Efforts were made to fill up the temporary vacancy caused by putting off duty of Suresh Kumar Mishra. Ultimately applications had to be invited from the public at large and in response to the notice of 20.4.1983, three applications were received including the application of the petitioner and he was given the appointment against the temporary vacancy caused due to the putting off from duty of Suresh Kumar Mishra. On 14.8.1987 Suresh Kumar Mishra was put back to his duty with immediate effect terminating the previous arrangement. Since the petitioner

had been appointed provisionally in a temporary vacancy of Suresh Kumar Mishra, the services of the petitioner automatically stand terminated when Suresh Kumar Mishra is put back. Baboo Lal Yadav, who handed over the charge to the petitioner, was working for a very short period during the time arrangements could be made to fill up the post. According to the respondents it is not necessary under the provisions of the Extra Departmental Agents Conduct and Service Rules, 1964 to give one month's pay or notice in lieu thereof and as such the contentions raised on this point are not correct. The respondents have further submitted that the provision of completion of three years' service entitles a Government servant for being quasi-permanent and it is not applicable in the case of Extra-Departmental Delivery Agent. Therefore, the petitioner has no *prima facie* case in his favour.

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4. We have heard the learned counsel for the parties. The learned counsel for the petitioner made a submission on the point that the petitioner was appointed in a temporary vacancy on contract and he had worked for more than three years and, therefore, he could not be shunted out in the manner in which he has been so terminated. While the learned counsel for the respondents has said that it is not under Rule 6 ^{an appointment order} but in terms of ~~service~~ that the services of the petitioner have been terminated.

5. In the chapter on Method of Recruitment in Swamy's Compilation of Service Rules for Posts and Telegraphs Extra-Departmental Staff, para 9 deals with Provisional Appointment of Extra-Departmental Agent.

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The instructions laid down that as far as possible Provisional Appointment should be avoided and if they are made they should be made only for specific periods. The appointed persons should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. In the case where an E.D. Agent is put off duty and it is not possible to ascertain the period by which the departmental proceedings are likely to be finalised, the provisional appointment which is to be made has to be made in the form annexed as Annexure 'B' to this Chapter. It has to be made clear to the provisionally appointed persons that if ever it is decided to reinstate the previous incumbent the provisional appointment will be terminated and that he shall have no claim for any appointment. It has also been said in para 9(2) that efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of their discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service.

6. The appointment order of the petitioner is not in the form as Annexure 'B' as required under the rules. It only says that the petitioner is provisionally appointed as ED Agent purely on temporary basis and the appointment is in the nature of a contract liable to be terminated by either side informing each other. It also says that the services will be governed by the

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Post and Telegraphs Extra-Departmental Agents Conduct and Service Rules, 1964. It is, therefore, clear that the respondents have violated their own ³⁴ ~~peculiar rule~~ ~~orders~~ on the subject of provisional appointment as laid down in para 9 on the instructions on Method of Recruitment. They did give due publicity but it was essential that the appointment order should have been clear in accordance with the provisions of Annexure 'B' wherein it was essential to indicate that the appointment of the petitioner was in place of Suresh Kumar Mishra, who had been put off duty. Though the appointment order does indicate that it is in the nature of contract but such indefinite appointments for a period which ^{is} ~~is~~ upto four years without specific mention of the reason why the appointment is provisional, ^{is} ~~not~~ give a false sense of security to a person who gets appointment against such orders. The petitioner was not covered by Rule 6 on termination of service as he has done more than three years of service but the fact remains that he was put to work in a vacancy which was likely to terminate on the conclusion of the disciplinary proceedings against Suresh Kumar Mishra, who was put off duty. A submission was made by the learned counsel for the respondents that the petitioner was in the knowledge of the fact that the vacancy has been caused by putting off duty of Suresh Kumar Mishra but such a knowledge cannot absolve the respondents ² ~~from~~ ² ~~faulty~~ ³ ~~erroneous~~ action that they have taken in not issuing a correct appointment order for the petitioner.

7. The instructions in regard to provisional appointees, who have worked for more than three years,

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are also very clear. The respondents had to make efforts to give alternative employment to such ED Agents who were appointed provisionally but subsequently who stand terminated due to administrative reasons. The reason for termination in the case of petitioner can only be administrative reason, in the absence of any specific mention in the letter of appointment. The contention of the respondents, therefore, that since Suresh Kumar Mishra has come back they have to take no other action and the petitioner's services stand terminated is not based on the instructions on the subject. There is no doubt that they could terminate the services in terms of the appointment order which lays down that the services were in the nature of contract liable to termination on either side without notice but the safe guards provided for provisional ED Agents must be honoured.

8. We, therefore, order that the petitioner's name should be kept on the list and he should be given suitable employment in terms of the instructions laid down in para 9(2). We find no merit in the request of the petitioner that the impugned order dated 14.8.1987 posting Suresh Kumar Mishra back to duty should be quashed. The petition is disposed of accordingly. Parties will bear their own costs.

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Vice-Chairman.

27/10/87
Member (A).

Dated: October 27th 1987.

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