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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

....

Registration O.A. No. 1356 of 1988

Iftakhar Ahmad Ansari Applicant

versus

Union of India and others Respondents

Hon' J.P. Sharma, J.M.

Hon' A.B. Gorthi, A.M.

(By Hon' A.B. Gorthi, A.M.)

By means of this application under section 19 of the Administrative Tribunal Act, 1985, the applicant Iftakhar Ahmad Ansari sought our intervention for quashing an order dated 31.10.88 (Annexure-F) issued by the Senior Superintendent of Post Offices, Azamgarh (Respondent no. 3) terminating the service of the applicant as Extra Departmental Branch Post Master (E.D.B.P.M.).

2. Briefly stated, the grievance of the applicant is that he was duly selected for the post of E.D.B.P.M. Ghaziapur and was appointed to the said post vide letter of appointment dated 4.11.1985 (Annexure-c) but before he could take charge, the appointment order was held in abeyance. Having learnt that this unpleasant development was the result of certain complaints from one of the unsuccessful candidates named Piyush Kumar to the effect that he (the applicant) was continuing to hold the elected post of Member of Gaon Panchayat, he clarified to the concerned authority (Respondent no. 3) that on the date that he applied for the post of E.D.B.P.M. (ise. 20.1.85) he submitted his resignation of his membership of the Gaon Panchayat and that ~~the~~ said Panchayat met and accepted his resignation from the same date. The subject matter was enquired into and thereafter, rejecting the complaint received in this regard, the competent authority allowed the applicant to

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assume the appointment of E.D.B.P.M.w.e.f. 6.3.86.

However, after the applicant had served on that post quite satisfactorily for over two years and 7 months, his services were suddenly terminated under Rule 6 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as E.D.A. Rules).

3. The respondents in their reply substantially admitted almost all the relevant facts alleged by the applicant. However, the stand taken by the respondents was that though they were initially satisfied that the applicant ceased to be a member of Gaon Panchayat on the date of his application, due to further complaints in this regard stating the contrary, it was decided at a very high level in the administrative hierarchy of the Postal Department to terminate the services of the applicant under Rule 6.

It was further contended that for terminating the services under Rule 6, there was no requirement of observance of any of the legal niceties or principles of natural justice and hence the action taken under Rule 6 in this case was fully justified. Before we proceed further, we may quote Rule 6:-

Rule 6. Termination of Service:-

The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice.

4. We would have unhesitatingly accepted the validity of the impugned order (Annexure-F) which ex-facie is an order of termination simpliciter.

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Moreover, respondent no. 3 was certainly empowered to pass such an order in respect of an extra departmental employee like the applicant who had not completed 3 years service. However, the circumstances surrounding the impugned order, as alleged by the applicant and sufficiently admitted by the respondents, compel us to critically scrutinise whether the said circumstances support the legality of the administrative action of the respondents under Rule 6.

5. A string of judicial pronouncements including some from the apex Court of the country, leaves us with no scope for doubt as to our responsibility, which is expected not to be abdicated but exercised, once the so called order of termination simpliciter does not appear to be all that innocuous when viewed in the light of the attendant circumstances. The sole disputed factor in this case is whether the applicant continued to be a member of Gaon Panchayat while working as an E.D.B.P.M. or whether he ceased to be so on the date of his application. We need not resolve this issue at this stage as the same was thrashed out sufficiently through inquiries conducted by the competent authorities who then came to a certain conclusion in favour of the applicant and accordingly allowed him to assume charge of E.D.B.P.M. SM 6.3.1986. The decisions taken both by respondent no. 3 and the Director of Postal Services, Allahabad were, after passage of two and half years, overruled by the Post Master General, U.P. Circle, for reasons best known to him. A careful examination of the communication emanating from the office of Post Master General (Annexure-CA-4 dated 28-10-88) shows that as a result of a representation from Piyush Kumar, it transpired that the applicant was not entitled to the post of E.D.B.P.M. since he was an elected member of Gaon Panchayat, in terms of rule 18. Accordingly, the communication gave a direction to the Senior Superintendent of Post Offices (Respondent no.3) in the following words:-

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" I have been directed to request you to kindly take suitable action against the BPM to dispense with his his services under rule 6 of EDA conduct and service rules without quoting any reference or direction of C.O. after observing usual formalities and report compliance enabling us to send reply to Sri Kalpnath Rai."

6. From the above, it is apparent that the services of the applicant were terminated for no other reason than that he was a member of Gaon Panchayat/in violation of Rule 18 of the E.D.A. Rules. If that be so, proper procedure as laid-down under Rule 8 of the said rules should have been followed and if the applicant was found guilty, awarded one of the penalties specified in the said rules, which include removal/dismissal from the service.

7. Rule 6 may with justification be invoked in cases where it is not possible to retain the individual in service for administrative reasons or on the ground of incompetency of the individual, although Rule 6, per se, does not say so. When the authorities are vested with powers which are absolute in nature, as in Rule 6, they are expected to exercise them judiciously and not arbitrarily. In this case, when the competent authorities namely, the Senior Superintendent of Post Offices (Respondent no.3) and the Director Postal Services satisfied themselves of the eligibility of the applicant to be appointed and retained in service, the action of the Post Master General in directing the respondent no. 3 to terminate the services of the applicant under Rule 6 cannot ^{but} be said to be arbitrary. Such direction from a higher authority smacks of administrative impropriety, in that, the competent authority was directed to act contrary to his own earlier decision and without any further

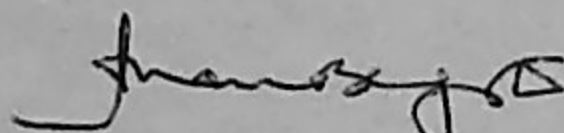
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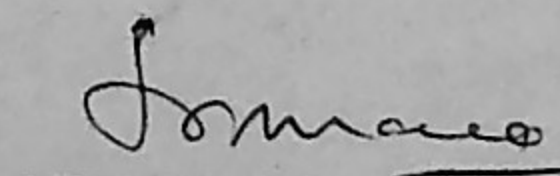
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application of mind. The consequential termination order issued by respondent no. 3 thus deserves to be set aside being arbitrary and punitive in nature.

8. A feeble contention was made on behalf of the respondents that the applicant should not have rushed to this Tribunal without first seeking relief under the E.D.A. Rules. The said rules do not provide for an appeal against action under Rule 6, which is evident from Rule 10. The applicant could have perhaps made a prayer for review under rule 16, but considering the peculiar circumstances of the case, we cannot reject the application on this count alone.

9. For the reasons afore-stated, we accept the application, quash the order of the Senior Superintendent of Post Offices dated 31.10.88 (Annexure-F) terminating the services of the applicant and direct that the applicant be reinstated in service with all consequential reliefs from the date on which his services were terminated. The authorities will be at liberty to proceed against the applicant under the E.D.A. Rules, if they deem it appropriate at this stage. We make no order as to costs.


MEMBER (A)


MEMBER (J)
at Delhi

Dated: 15 May 1991

Allahabad