

(A2)  
AT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

\* \* \* \* \*

Allahabad : Dated the 29 th day of September 1995

Original Application No.554 of 1988

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Jagdamba Prasad Pandey, son of  
Sri Ram Pati Pandey, resident of  
Village Arzi, Post Arzi, Distt-Basti.

Sri S.K. Lal

• • • • • Applicant

Versus

1. The Union of India, through its Secretary,  
Department of Post & Telegraph, New Delhi.
2. The Superintendent of Post Offices, Basti,  
Division, Distt-Basti.

Sri N.B. Singh

• • • • • Respondents

O R D E R

Mr. S. Das Gupta, A.M.

This O.A. has been filed under Section 19  
of the Central Administrative Tribunal Act 1985  
seeking the relief of quashing the order dated  
23-4-1988 by which the services of the Applicant  
were terminated and a direction to the Respondents  
not to appoint Shatrughan Nath Pandey in place  
of the Applicant.

SL

2. The services of the Applicant were earlier terminated on 3-12-1987 which was challenged by him by filing an O.A. No.1249/87. A Bench of this ~~Supreme~~ Tribunal disposed of this OA by setting aside the order dated 9-2-1988, <sup>i.e.</sup> the order of termination of <sup>his</sup> services. Subsequently, by an order dated 13-4-1988, the Applicant was re-instated in service and he took over the charge as Extra Departmental Branch Post Master (in short EDBPM) on 16-4-1988. However, on 23-4-1988, a fresh order of termination of his services which is impugned in this OA, was served on him.

3. The Applicant's contention is that the said order dated 23-4-1988 has been passed as an act of vengeance on the part of the Respondents as the Applicant had got an order of termination passed earlier set aside by filing an application before this Tribunal. It is contended that the order of termination dated 23-4-1988 was illegal and in contravention of the provisions of Rule 6 of the Extra Departmental Agents (Conduct and Service) Rules. It is further averred that no notice or opportunity was given to the Applicant before passing the impugned order and there was no complaint against him.

4. The Respondents have filed Counter Affidavit contesting the claim of the Applicant. It has been

SL

submitted herein that due to sudden death of the Extra Departmental Branch Post Master (Basti), <sup>APC</sup> the post fell vacant w.e.f. 17-11-1986 and in order to fill up the said vacancy on a regular basis, a request was sent to the Employment Exchange, Basti on 19-1-1987 fixing the last date of receipt of the names of the sponsored candidates by 23-2-1987. It has been further averred that the Employment Officer submitted the list of four candidates on 23-2-1987, which included the name of the Applicant. After examining the applications of the candidates on the basis of merit, a provisional appointment order was issued in favour of Applicant on the said post of Extra Departmental Branch Post Master on 19-5-1987 in pursuance of which the Applicant took over charge on 9-6-1987. Subsequently, under instructions of the Director General Posts and Telegraphs, the Director Postal Services, Allahabad reviewed the appointment of the Applicant and it was found that the said appointment order was irregular. <sup>In service of the</sup> ~~The~~ The Applicant were, therefore, terminated in exercise of the powers conferred under Rule 6 of the EDA (Conduct and Service) Rules, 1964. The Applicant filed an O.A. No. 1249/87 before Tribunal challenging the order of termination. This O.A. was disposed of finally on 19-2-1988 and in view of the observations made by the Tribunal in

WL.

its order, the Applicant was reinstated as EDBPM, Arzi, Basti. He took over charge on 16-4-1988 and thereafter services of the Applicant were terminated again in terms of the provisions of Rule 6 of EDA (Conduct and Service) Rules, 1964 by the impugned order dated 23-4-1988. There is no provision for assigning any reason for exercising the power conferred under the said rule. They have also stated that the Applicant had not availed of the Departmental remedy available to him as he has not submitted any representation to the higher authorities against the order of termination of his services.

5. The Applicant has filed Rejoinder Affidavit reaffirming the contention made in the O.A.

6. We have heard the Learned Counsel for both the parties and perused the pleadings ~~and on~~ record carefully.

7. Neither the Applicant nor the Respondents have made available a copy of the order passed by a Bench of this Tribunal in the earlier O.A. No. 1249 of 1987. We, therefore, obtained the records of that O.A. from the Record Room of the Tribunal and have gone through the order dated 9-2-1988. A perusal of the order revealed that the earlier order of termination was quashed

vle.

on a technical ground that the same was passed by the Director Postal Services whereas the appointing authority for the Applicant was Superintendent of Post Offices.

5. ~~Q.S.~~  
Also, by quashing the impugned order of termination of service, the Tribunal granted liberty to the competent authority to pass suitable order under the powers vested in such authority under the EDA (Service and Conduct) Rules.

8. The order under Rule 6 of the EDA (Conduct and Service) Rules is one of termination simpliciter. The rule itself provides that no reason has to be indicated in the order. It is the settled position of law that the courts/~~or~~ Tribunals will not normally interfere with the simpliciter orders unless there is any imputations of malafide in which case, it may be necessary to lift the veil and ascertain the reason for such termination. After ~~lifting~~ such veil if it transpires that the termination of service was on account of misconduct or similar other reasons and the order of termination is only a simpliciter order on face of it, there can be valid reason for interference by the courts/~~or~~ tribunals. We have seen from the order dated dated 9-2-1988 passed by the Bench of this Tribunal that there was no attempt to ascertain the reasons for termination of the services of the Applicant. We have also seen from the averments in the O.A. that

W.L.

there was no imputation of malafide against any of the Respondents and this perhaps was the reason why the Bench of the Tribunal which passed the order dated 9-2-1988 did not make any attempt to ascertain the underlying reasons for the termination of the services of the Applicant.

9. In the present O.A. also there is no imputation of malafides. The only plea is that the impugned order of termination is not in accordance with the provisions contained in Rule 6 of the EDA(Conduct and Service), Rules.

10. Rule 6 of EDA(Conduct and Service) Rules reads as follows:-

"(4) Termination of medical grounds: - A reference is invited to this Office Letter N1.43-1/7/66-Pen. dated the 7th October, 1967, in which it has been laid down that an ED Agent may be discharged before the age of 62 years (now 65 years) if physically or mentally unfit or he is found to be unfit to discharge the responsibilities placed on him.

(D.G.,P & T letter No.43-23/60-Pen. dated the 20th February, 1980.)

Director General Instruction no. 1 below rule 6 indicates that termination of services under this rule may normally be ordered only in cases of unsatisfactory service or for administrative reasons unconnected with the conduct.

11. There is no averment in the application or in the C.A. that determination of the services of the applicant is due to unsatisfactory service. However, it appears from a perusal of the averments in the earlier OA No.1249/1987 that an irregularity was found in the selection of the applicant and the same was detected on review of the matter after receipt of a complaint

W.L.

from another candidate, Sri Shatrughan Nath Pandey. Although it has not been specified anywhere as to what was the nature of irregularity, we do not consider it necessary for us to delve into the matter, as no malafides have been imputed. We are, therefore, of the view that the impugned order of termination of services of the applicant is an order of termination simplicitor.

In view of the foregoing, this application has no merit and the same is dismissed accordingly. Parties shall bear their own costs.

*J.M.*  
J.M.

*W.C.*  
A.M.

ss.