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V

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated : Allahabad this the 3rd day of May 1996.

CORAM : Hon'ble Mr. T. L. Verma, Member-J
Hon'ble Mr. D. S. Bawejia, Member-A

ORIGINAL APPLICATION NO. 1143 of 1988

Manik Chand son of Sri Ram Anant
Resident of village and post
Kunwarpur (Ramdin-ka-pura),
District Jaunpur.Applicant.
(BY ADVOCATE SHRI VIRENDRA KUMAR)

Versus

1. Union of India through secretary,
Ministry of Communication,
New Delhi.
2. Postmaster General, U.P.
Lucknow.
3. Superintendent of Post-Offices,
Jaunpur.
4. Smt. Sarita Srivastava wife of Nabin son of
Kamlesh Kumar r/o. village and Post Kunwarpur,
(Ramdin-ka-pura) District Jaunpur.

...Respondents.

(THROUGH ADVOCATE SRI AMIT STHALEKAR & SRI A.V. SRIVASTAVA)

O R D E R

(By Hon. Mr. T. L. Verma, Member-J)

In this application, under Section 19 of the
Administrative Tribunals Act, 1985, order dated
12.9.1988 and 31.8.1988 whereby the services of the
applicant has been terminated are under challenge.

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2. Admitted facts of the case are that a requisition
was sent to Employment Exchange Jaunpur for sponsoring
names of suitable/eligible candidates for appointment
on the post of E.D.B.P.M. Kunwarpur, Jaunpur fallen
vacant due to death of Sri Brij Bansi Lal Srivastava.
Names recommended by the Employment Exchange were

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scrutinized. The applicant on being found suitable was selected, and given appointment as E.D.B.P.M. by letter dated 25.3.1988. He joined as E.D.B.P.M. Kunwarpur on 29.3.88 and was working on the said post till the date of filing of this application. After the appointment of the applicant on the said post, a representation was filed on behalf of Smt. Sarita Srivastava (respondent No.4) for her appointment on compassionate ground. The Post Master General, U. P. Circle, Lucknow directed that Smt. Sarita Singh be appointed as E.D. B.P.M. Kunwarpur, Jaunpur. Accordingly the service of the applicant was terminated by order dated 31.10.1988 and respondent No.4 (Smt. Sarita Srivastava) was appointed as EDBPM Kunwarpur Jaunpur by order dated 21.9.1988. This application has been filed for quashing the order dated 31.10.1988 terminating the service of the applicant and order dated 21.9.1988 appointing respondent No.4 in his place as EDBPM on the ground that both orders are arbitrary.

3. The respondents have appeared and contested the case. The only grounds on which the impugned orders are being challenged, is entitlement of Smt. Sarita Srivastava (respondent No.4) to appoint her on compassionate ground by virtue of her being daughter-in-law of late Brij Bansi Lal Srivastava who died in harness.

4. We have heard the learned counsels for the parties and perused the record. The learned counsel for the applicant has challenged the compassionate appointment of Smt. Sarita Srivastava (respondent No.4) on the ground that she does not come within the meaning of son or daughter or near relative of the deceased Government servant, eligible for appointment on compassionate ground. It was stated that she represented herself as daughter-in-law of late Brij Bansi Lal Srivastava although she is ~~not~~ the

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wife of nephew of late Brij ~~Xanshi~~ Lal Srivastava. She is, therefore, not the daughter-in-law of the deceased Govt. servant and as such has obtained the appointment by wrong representation. According to the instructions issued by Ministry of Personnel and Public Grievances & Pension, (Department of Personnel & Training) vide Memo No.14014/6/86-Estt(D) dated June 30, 1987, a son, or daughter or near relative of a government servant who dies in harness leaving his family in immediate need of assistance where there is no earning member in the family, are eligible for appointment on compassionate ground. Admittedly, Smt. Sarita Srivastava, respondent No.4 is not either daughter or wife of the son of late Brij Wasi Lal Srivastava. She is wife of one Nabin Kumar Srivastava, nephew of late Brij Wasi Lal Srivastava. The respondent No.4, thus is not the daughter-in-law of late Brij Wasi Lal Srivastava in the strict sense. In view of this, the question is whether she comes within the meaning of 'near relative' of late Brij Wasi Lal Srivastava or not. The term 'near relative' has not been defined in the instructions. She being wife of the nephew of the deceased government servant and forms part of the joint family as averred in the counter-affidavit filed by the respondent No.4, will come within the meaning of 'near relative'. This being so, we have no manner of doubt that in our mind that she was eligible for being appointed on compassionate ground in terms of instructions issued by the Government of India in that behalf.

5. In view of the foregoing conclusion next question that falls for our consideration is whether the respondents were justified in terminating the service of the applicant who was selected in due process for making appointment of respondent No.4 on compassionate ground. After selection

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in due course in accordance with rules the applicant acquired a right to hold that post. His services could have been terminated on the ground that ^{the} ~~some~~ was void-ab-nitio or for the reason as stated above. It is nobody's case that the appointment of the applicant was void-ab-nitio. The other elements, which would have been justified such termination are completely absent. The services of the applicant is stated to have been terminated in exercise of powers conferred under Rule 6 of the EDA(Conduct and Service) Rules. Rule 6 of the Rules reads as follows :-

"6. Termination of services:-(a) The services 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 at any time by a notice ~~or~~ in writing given either by the employee to the appointing authority or by the appointing authority to the employee.

(b) The period of such notice shall be one month:

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be for the period by which such notice falls short of one month."

Note: Where the intended effect of such termination has to be immediate, it should be mentioned that one month's basic allowance plus Dearness Allowance is being remitted to the ED Agent in lieu of the notice of one month. through money order."

Rule extracted above does empower the competent authority to terminate service of an employee who has not put in more than three years' service by a notice in writing but, the power is not unbridled. Order of termination of an employee under the aforesaid provision can be passed only for satisfactory reasons ~~as~~ such as un-satisfactory service or for administrative reasons unconnected with conduct. While terminating the services of an Extra Departmental Agent under the aforesaid provision, the appointing authority may not be required to give reason while terminating the service but, at the

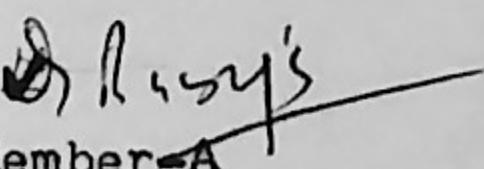
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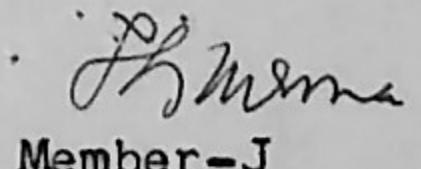
same time order, terminating the service has to be for some satisfactory reason as mentioned above.

6. The reason given by the respondents in my opinion is highly unsatisfactory, unfair and arbitrary. The respondents could have given compassionate appointment to a dependent of deceased employee who died in harness but, the power to make such appointment, however, does not extend to terminating the service of an employee who has been appointed in accordance with rules. In the instant case, the respondents have precisely done so and as such the same cannot be sustained.

7. For the reasons stated above, we find that the action of the respondents in terminating the service of the applicant for accommodating a compassionate appointee is arbitrary and as such cannot be sustained.

8. In the result this application is allowed and the impugned orders dated 12.9.1988 and 31.8.1988 are hereby quashed. The applicant if has already made over charge of the office will be reinstated forthwith with all service benefits except back wages. The respondents may accommodate the respondent No. 4 at any other place where a vacancy may be available and ^{if} she is willing to accept the appointment. The respondents will comply with this order within a period of three months from the production of certified copy of the order. There will be no order as to costs.


Member-A


Member-J

(pandey)