

54

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Central Administrative Tribunal, Allahabad.

Registration O.A.No.1197 of 1988

Satyendra Pratap Singh ...

Applicant

Vs.

Superintendent of Post Offices
Sultanpur and 3 others ...

Respondents.

5

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

In this Original Application u/s.19 of the Administrative Tribunals Act XIII of 1985, the Applicant has prayed that the order dated 29.9.1988, annexure 2, passed by the Respondent no.1 terminating his services be quashed and the Applicant be reinstated and treated in service with all consequential benefits.

2. Shortly stated, the relevant facts of this case are that due to the promotion of E.D.B.P.M Jageshwar Ganj in Distt. Sultanpur, the Respondent no.1 called for the names from the Employment Exchange for the appointment of his successor. The names of the Applicant and Respondent no.4 were also sponsored by the Employment Exchange with others. The Applicant was, however, found suitable by the Respondent no.1 and he was given the appointment orders dated 30.5.1988, annexure 1. It, however, appears that the father of the Respondent no.4 made complaint to the higher authorities regarding certain alleged irregularities in the appointment of the Applicant and in the inquiry made by the Director of Postal Services Allahabad- Respondent no.2, the Respondent no.4 was found to be a better candidate and the Respondent no.1 was asked to take suitable action in the matter. The Respondent no.1 thereafter, vide his impugned order dated 29.9.1988

terminated the services of the Applicant under R.6 of the Extra Departmental Agents' (Conduct and Service) Rules, 1968 (hereinafter referred to as Conduct Rules).

3. Aggrieved by this order, the Applicant has challenged the validity of the said orders on the ground that as the order of his termination was made on the basis of some complaint, his services could not be terminated without an inquiry after giving him an opportunity of hearing under R.4 and R.6 is not applicable in his case. It has also been alleged that the Respondent no.1 did not apply his mind in passing the impugned order and the impugned order is illegal. It is also alleged that in terms of the appointment order of the Applicant, his termination could not be made under R.6 and his services could be terminated only on the return of the former incumbent of this post.

4. The petition has been contested on behalf of the Respondents and on behalf of the Respondent nos. 1 to 3, a reply was filed by the Respondent no.1 stating that the Respondent no.4 was a better candidate and his candidature was wrongly rejected as found by the Respondent no.2 in his enquiry and the services of the Applicant therefore, were rightly terminated and the order of termination is not bad. It has been further alleged that the subsequent conduct of the Applicant, as stated in the reply, shows that he has acted in a manner unbecoming of a public servant and he is not a fit person to be kept in service and all the allegations made by him to the contrary are not correct. The Respondent no.4 has filed a separate reply stating that he was a better candidate than the Applicant and his candidature was wrongly ignored at the time of the selection and appointment

of the Applicant by Respondent no.1 and the Applicant's services were rightly terminated.

5. On behalf of the Applicant, reliance was placed on an earlier judgment of this Bench in Jagdamba Prasad Pandey Vs. Union of India (1988 U.P.L.B.E.C.-101 (Tri.) in which the services of an E.D.Agent appointed by the Superintendent of Post Offices Basti were terminated on the direction of the Director of Postal Services. It was held by this Bench that the order of cancelling the appointment of the E.D.Agent was without jurisdiction as it was passed by the competent authority without an application of mind under the direction of a superior officer. We have carefully examined the applicability of the ratio of that case to the case before us. In the present case, the Applicant has not been able to lay his hands on any direction of the Respondent no.2 to the Respondent no.1 for cancelling the appointment or terminating the services of the Applicant. What was actually done in the present case is that on the complaint made by the father of the Respondent no.4, the Respondent no.2 had made a detailed enquiry and he came to the conclusion that the Respondent no.4 was a better candidate than the Applicant. The copy of the report of the Respondent no.2 was sent to the Respondent no.1 for necessary action at his end. After getting the copy of this report, the Respondent no.1 terminated the services of the Applicant vide order annexure 2. In this order, there is no mention that the services of the Applicant were being terminated on the direction of the Respondent no.2 but the services were terminated under rule 6 of the Conduct Rules. It is, therefore, not correct to say that the services of the Applicant were terminated on the direction of a superior authority. In fact, the Respondent no.2 had done so on realising from the inquiry report that his decision in appointing the Applicant

(4) A2/4

and Respondent no.4 being a better candidate, his candidature was wrongly discarded. It, therefore, does not appear from the record that the Respondent no.1 had acted so mechanically without application of mind. It further appears from the reply filed by the Respondent no.1 himself that he too had realised that the Respondent no.4 was a better candidate and as such, the action taken by the Respondent no.1, who was the competent authority in the matter of appointment of the Applicant, was an independent action after taking into consideration the subsequent developments coming to his knowledge. The case law relied upon by the Applicant is, therefore, of no help to him.

6. Regarding the applicability of R.6 of the Conduct Rules, we are of the view that the contention of the Applicant that he could be removed from service only on the reversion of the former incumbent of this post is not correct. The appointment order, annexure 1 of the Applicant clearly states that the appointment of the Applicant was provisional and the appointing authority had reserved the right to terminate his appointment at any time. It was further stated in the letter of his appointment that he will be governed by Extra Departmental Agents (Conduct and Service) Rules, 1964 as amended from time to time and all other orders applicable to the EDAs. In view of this specific mention of the applicability of the EDA (Conduct and Service) Rules, 1964 in his appointment letter, the Applicant is estopped from saying that these Rules have no application to his case.

7. Regarding his other submission that he should have been given an opportunity of hearing on receiving a complaint and the order of cancellation is bad on this ground, we are of the view that copy of the complaint

58
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A2/5
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is on the record as ananexure C.A.-1 and it is mainly a complaint against the Respondent no.1 and there is no allegation of any misconduct against the Applicant in procuring the appointment. The complaint mainly deals with the irregularities made in the appointment of the Applicant and as such, the Applicant was not entitled to any opportunity of hearing for the disposal of this complaint and even his this contention is devoid of any force.

8. After giving our most anxious consideration to all the points raised by the Applicant in his petition, we are of the view that R.6 of the EDA (Conduct and Service) Rules, 1964 had full application to the case of the applicant and his services having been terminated in accordance with the said rule by the competent authority, we find no flaw in the impugned order. The Applicant thus, having failed to establish his case, his petition is liable to be dismissed.

9. The petition is accordingly dismissed without any order as to costs.

Sharma
MEMBER(J)

Dated July 4, 1989
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Sharma
MEMBER(A)