

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 945 of 199 1989

T.A. No: of 199

DATE OF DECISION: 15.4.93

Sugriva Rai PETITIONER.

----- ADVOCATE FOR THE
PETITIONER

V E R S U S

Union of India & others
(Postal Department)
----- RESPONDENTS

----- ADVOCATES FOR THE
RESPONDENTS

CORAM:-

The Hon'ble Mr. K.Obayya, Member(A)

The Hon'ble Mr. Maharaj Din, Member(J)

1. Whether Reporters of local papers may be allowed to see the judgement?
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the judgement?
 4. Whether to be circulated to all other Benches?
- } No

SIGNATURE

JAYANTI/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 945 of 1989

Sugriva Rai Applicants.

Versus

Union of India & others
(Postal Department) Respondents.

Hon'ble Mr. K.Obayya, Member(A)

Hon'ble Mr. Maharaj Din, Member(J)

(Hon'ble Mr. Maharaj Din, Member(J))

1. This is an application under Section 19 of the Administrative Tribunal's Act 1985 seeking relief to issue direction to the respondents to reinstate the applicant in service after quashing the impugned order of termination dated 18.2.1988 (Annexure-7) and also to pay arrears of allowances as per Rules.

2. The relevant facts giving rise to this application are that, Rajendra Vishwa Karma, respondent No. 4 was holding the charge of Extra Departmental Branch Post Master. Rajendra Vishwa Karma was involved in the departmental proceedings and was put off ~~from~~ duty on 30.11.1981. The appointment letter on the said post was issued to the applicant in performa 'B' contained in Section-2 under the heading 'Method of Recruitment' as given in Service Rules for Extra Departmental Staff 1964. The applicant joined duty on 17.8.1983 and that termination order is dated ^{18.2.1988} /as such he worked in the department for more than 6 years. It is stated that the services of the applicant cannot be terminated without giving ² ~~any~~ notice and the provisions of

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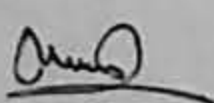
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Rule 6 of the Service Rules for Extra Departmental staff are not applicable to the facts and circumstances of this case. So according to the applicant, the impugned order of termination of the applicant is wholly illegal.

3. The respondents have filed their Counter Reply and resisted the claim of the applicant on the ground that under the performa 'B' of appointment letter issued in favour of the applicant, there was a condition that in case the regular incumbent is taken back on duty after finalisation of disciplinary proceeding, the service of the applicant will automatically be terminated. Since Rajendra Vishwa Karma was taken back on duty on 11.12.1987, the services of the applicant is to be terminated and he has no legal right to continue on the post of Extra Departmental Branch Post Master.

4. We have heard the learned counsels for the parties and perused the record.

5. It is not disputed that Rajendra Vishwa Karma who was working as E.D.B.P.M, Kataura was put off duty as he was involved in disciplinary proceeding. The applicant was appointed in his place as E.D.B.P.M, Kataura purely on provisional basis as would appear from Annexure-1 and the relevant portion of the same is extracted and reproduced as under:-



"Whereas Shri Rajendra Vishwa Karma, E.D.B.P.M. (Name and Designation of the ED Agent who has been put off duty/removed/dismissed) has been put off duty pending finalisation of disciplinary proceedings and judicial proceedings against him/has been removed/dismissed from service and the need has arisen to engage a person to look after the work of E.D.B.P.M. (Name of post) the undersigned (appointing authority) has decided to make a provisional appointment to the said post.

2. The provisional appointment is tenable till the disciplinary proceedings against Shri Rajendra Vishwa Karma are finally disposed of and he has exhausted all channels of departmental and judicial appeals and petition, etc. (this clause may be deleted if the vacancy was caused by the dismissal/removal of an EDA) and in case it is finally decided not to take Shri Rajendra Vishwa Karma (name of the ED Agent who has been put off/removed/dismissed) back into service till regular appointment is made.

3. Shri Sugriva Rai (name & address of the selected candidate) is offered the provisional appointment to the post of E.D.B.P.M. (name of the post). Shri Sugriva Rai (name of the selected candidate) should clearly understand that if ever it is decided to take Shri Rajendra Vishwa Karma (Name of the ED Agent who has been put off/removed, dismissed) back into service, the provisional appointment will be terminated without notice.

4. The Postal Services (appointing authority) reserves the right to terminate the provisional appointment any time before the period mentioned in Para. 2 above without notice and without assigning any reason.

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5. Shri Sugriva Rai (name of the selected candidate) shall be governed by the Extra-Departmental Agents (Conduct and Service) Rules, 1964 and all other rules and orders applicable to Extra-Departmental Agents.

6. In case the above conditions are acceptable to Shri Sugriva Rai (name of the selected candidate) he should sign the duplicate copy of this memo. and return the same to the undersigned immediately.

Appointing Authority

To.

Shri .Sugriva.Rai.....

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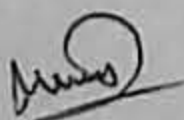
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6. It has been contended on behalf of the applicant that in the appointment letter it is written that the disciplinary proceedings are pending against the respondent No. 4 but according to the applicant, no disciplinary proceedings were initiated against the respondent No. 4, ^{as} such the conditions as laid down in the appointment letter have not been fulfilled by the department and the order of termination dated 18.2.1988 is illegal and arbitrary in the eye of law. It is further stated that according to the appointment letter, the appointment of the applicant on the post of E.D.B.P.M. was till the time, the disciplinary proceedings against the respondent No. 4 were finally disposed of. In order to ^{rebut} ~~revert~~ the allegation made by the applicant that no disciplinary proceedings were initiated, the respondents have filed copy of

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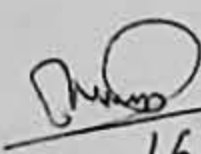
the order (Annexure CA-1) in which the reference of charges levelled^a against the respondent No. 4 are given. The applicant in Para. 4 (11) of the application himself^{has} stated that on the basis of the complaint made against the respondent No. 4, Shri Mumtaz Ahmad, Inspector Post Offices (West), Deoria carried^{out} on spot enquiry. Further in Para. 5 of the Rejoinder Affidavit, the applicant has admitted that the charge sheet was given to respondent No. 4,^{So²} it shall be deemed that the disciplinary proceedings were initiated against the respondent No. 4. It is also amply clear from Annexure CA-1 that respondent No. 4² was held guilty of the charges levelled against him and he was accordingly punished to pay Rs. 1000/- on account of loss caused to the department and he was not allowed to get his remuneration so long he was put off duty and this period shall be treated as a break in his service. Thus from the above discussion, it is borne out that the departmental proceedings were carried out against the respondent No. 4 and he remained put off duty for about 6 years during which the applicant was allowed to work as E.D.B.P.M. on provisional basis. In the appointment letter issued to the applicant it is clearly mentioned that on taking back respondent No. 4 in service the appointment of the applicant will be terminated without notice. Respondent No. 4 was held guilty of the charges levelled^c against him and the penalty was imposed on him but he has been taken



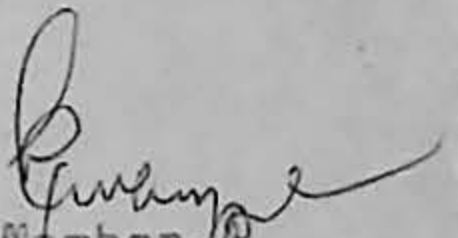
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back in service and none else, so according to the condition imposed in the appointment letter, the appointment of the applicant has been rightly terminated without notice. The applicant cannot challenge the legality of the departmental proceedings conducted against the respondent No.4 because this was the matter between the department and respondent No. 4.

7. In view of the discussions made above, we find no merit in the application of the applicant which is dismissed with no order as to cost. As the applicant has gained exercise, respondents may consider the applicant for suitable posting elsewhere in preference to outsiders and new comers.


16th April 1993
Member-J

Allahabad Dated: 16th.4.93
(jw)


Member-R