

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

C.A.No./T.A.No. 1781 of 1992

Date of decision 12/5/99

Suresh Dwivedi,

Applicant(s)

C/A

Shri Vijai Bahadur , Advt. COUNSEL for the
Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Km. Sadhna Srivastava

Counsel for the
Respondent(s)

C O R A M

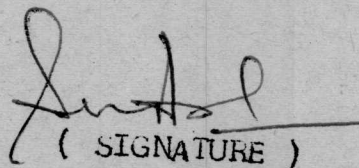
Hon'ble Mr. S.Dayal

V.G./Member(A)

Hon'ble Mr. S.K.Agrawal

Member (J)

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters or not ? Yes
3. Whether their Lordship wish to see the fair copy of the judgment ? Yes
4. Whether to be circulated to all Benches ? No


(SIGNATURE)

MANISH/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.1781 OF 1992

Allahabad, this the 12th day of May, 1999.

CORAM : Hon 'ble Mr.S.Dayal, Member(A)
Hon 'ble Mr.S.K.Agrawal, Member(J)

Suresh Dwivedi,
S/o. Sri Ganga Prasad Dwivedi,
Village and Pargana Palhanapur,
District - Kanpur Dehat.

.....Applicant

(C/A. Shri Vijai Bahadur, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Telecommunication,
New Delhi.
2. Superintendent of Post Offices,
Kanpur (Mufassil) Division,
Kanpur.
3. Director, Postal Services,
Care of Post Master General,
Kanpur Region, Kanpur.

.....Respondents

(C/R. Km.Sadhna Srivastava, Advocate)

ORDER

(By Hon 'ble Mr.S.K.Agrawal, Member(J))

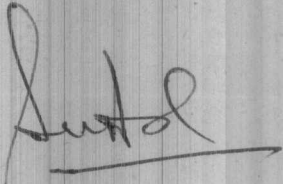
In this original application applicant makes
following prayer :-

1. to quash the order of termination of the applicant
dated 19-10-92;
2. to direct the respondents to allow the applicant
to function as EDBPM, Palhanapur (Sikandara)
District Kanpur Dehat.

9. On the other hand learned lawyer for respondents submits that the termination of the applicant under Rule-6 is termination simplicitor and no opportunity of hearing is required to be given. He has also argued that Rule-6 does not make any distinction between provisiona/temporary appointment, but makes it very clear that services of Extra Departmental Agent can be terminated on administrative grounds who has not completed the service of three years.

10. We have given thoughtful consideration to the rival contentions of both the parties and also perused the record.

11. In case of State of U.P. Vs. Kaushal Kishore Shukla (1991) 1 SCC 691 Hon'ble Supreme Court held that "a temporary government servant has no right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If the services of a temporary government servant is terminated in accordance with the terms and conditions of service, it will not visit him with any evil consequences."


12. In Superintendent of Post Offices and others Vs. E. Kunhiraman Nair Muliya 1998 SCC (L&S) 956 it was held by the Hon'ble Supreme Court that termination of the employment of the applicant on administrative grounds

4. Shri Suresh Dwivedi will be governed by the Extra Departmental Agents (Conduct & Service) Rules, 1964, as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

5. In case the above conditions are acceptable to Shri Suresh Dwivedi (name of the selected candidate) he should sign the duplicate copy that memo and return the same to the undersigned immediately.

Signature of
appointed person

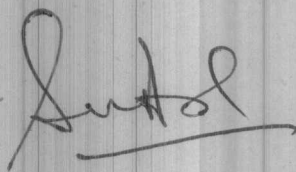
Sd/-
Supdt. of Post Offices
Kanpur (Mufassil) Division
KANPUR-208001 (UP)"

7. On the perusal of this order of appointment it appears that applicant was offered the provisional appointment and appointment was liable to be terminated when regular appointment is made and the applicant has no claim for the appointment to any post. It is further mentioned in the order of appointment that Appointing Authority also reserves the right to terminate the provisional appointment at any time before the period mentioned in the said order of appointment without notice and without assigning any reason.

8. Learned lawyer for the applicant has argued -

(i) Services of the applicant were terminated by impugned order of termination without giving an opportunity of hearing to the applicant, therefore termination of services of the applicant is arbitrary, illegal and in violation of Article 14 & 16 of the Constitution of India.

(ii) That provisions of Rule 6 of E.D. Agents (Conduct & Service) Rules 1964 are not applicable in case of provisional appointment.



29-10-92 was forwarded to respondent No.3 which is pending and process of fresh selection has been initiated for the post of EDBPM, Palhanpur by respondent No.2. It is denied that the order of termination is in violation of Article 14 and 16 of the Constitution of India. Further it is stated in the counter that this original application is devoid of any merit and liable to be dismissed.

4. Rejoinder was also filed, reiterating the facts stated in the original application.

5. Heard the learned lawyer for the applicant and learned lawyer for respondents and also perused the whole record.

6. The order of appointment issued in favour of the applicant dated 20-5-92 is produced below :-

"Where as the post of Extra Departmental (Name of the post and office duty) EDBPM, Palhanapur has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the (appointment authority) has decided to make provisional appointment to the said post for a period of period fromto or till regular appointment is made which ever period is shorter.

2. Shri Suresh Dwivedi, Vill. & PO Palhanapur Kanpur (name and address of the selected person) is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

3. The appointment authority also reserves the right to terminate the Provisional appointment at any time before the period mentioned in para-I above without notice and without assigning any reason.

3. to direct the respondents not to make any fresh appointment against the post during the pendency of this original application.

4. to direct the respondent No.3 to dispose off his representation dated 29-10-92.

2. Facts of the case as stated by the applicant are that to fill up the post of EDBPM, Palhnapur (Sikandara) Employment Exchange, Kanpur (Rural) sponsored the names of eligible candidates including the applicant. Applicant also furnished all necessary documents in support of his application, thereafter he was selected and took the charge of the post on 1-7-92, but suddenly on 20-10-92 at 3.00 PM applicant was served with an order dated 19-10-92 by which services of the applicant were terminated against which applicant filed representation on 29-10-92 which is pending. It is stated that applicant was on top of the list but inspite of this fact his services were terminated without any reason/rythem and order of termination is punitive, which can not be issued without giving an opportunity to the applicant for hearing. Therefore, applicant sought the relief as mentioned above filing this original application.

3. Counter was filed. In the counter it has been stated clearly that the appointment of the applicant was purely provisional for three months. Thereafter he was not entitle to be retained on the said post. It is stated that after completion of three months period as per terms & conditions laid down in the order of appointment applicant was not entitle to be retained on the post. It is admitted that the representation dated

