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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 25th day of November 1994.

Original Application no. 1219 of 1993.

Hon'ble Mr. T.L. Verma, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Surendra Pal Singh, A/a 27 Years, S/o Shri B. Singh
R/o Jat, P.O. Jot S.O. (Rashulabad) Distt. Kanpur.

.... Applicant

C/A Shri R.C. Sinha

Versus

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Superintendent of Posts Offices, (Mufassil) Division, Kanpur.

.... Respondents

C/R Km. Sadhana Srivastava

O R D E R

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the Administrative Tribunal Act against the action of the respondents in asking the applicant to hand over charge on Termination of his services without service of any termination order.

2. We have satisfied ourselves that it is a service matter and the local area to which it pertains is Kanpur and, therefore, the matter comes within the jurisdiction of Allahabad Bench of the Central Administrative Tribunal.

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3. The cause of action arises in 1993 and this application was filed in the same year and we have satisfied ourselves that the application is not barred by limitation.

4. The applicant was an Extra Departmental Branch appointed post Master of village Jot (Rashulabad) on 14.6.90 after advertisement of the post (Annexure 1) and selection from amongst five applicants and working since 23.6.90 (Annexure 2). The Sub-Divisional Inspector of Billaur came to Rashulabad and informed the applicant that his services were terminated under Rule 6 of Extra Departmental Agents (Conduct and Service) Rules, 1964, and forced the applicant to hand over the charge which was in contravention of Rules as the applicant had completed three years of service and, therefore, he had to be given notice and opportunity before termination. The services of the applicant should have been regularised after completion of three years of service. The cases T.I. Sukumar vs. U.O.I. (1990-2-ATJ 306 Ernakulam) in which notice was considered necessary even for terminating short term temporary appointment, Superintendent of Post Office vs. P.K. Rajanna (AIR 1977 SC 1677) in which EDBPMs have been held to be holding a civil post and entitled protection of Article 311 (2) of the constitution have been cited by the applicant. It has been claimed by him the letter of Director General of Posts & Telegraph on 151/2/78 Dkso II dated 19.04.79 lays down, that services of Extra Departmental Agents cannot be terminated under Rule 6 if he has been put off duty. Rule 6 ~~can~~ can be invoked

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in case of E.D. Agent who have been put off duty if termination is not due to act of misconduct leading to put off. The officers are advised to satisfy themselves before taking action under Rule 6 that conditions laid down in the Rule are satisfied. It is claimed that cancellation of appointment amounted to termination violating Article 14, 16 and 31 of the constitution. It is claimed that the applicant is still working as he has not handed over the charge.

5. The applicant has claimed the following reliefs in the application:-

- a. Quashing of termination order dated 06.08.93
- b. Direction to the respondents to continue the services of the applicant and give all consequential benefits.
- c. give ~~other~~ directions deemed fit and proper.
- d. Award costs of application.

6. The respondents in their reply has stated that the applicant was appointed on the vacancy created by the dismissal of one Shri Rajendra Pal Singh from the post of EDBPM, Jot (Rashulabad) on a provisional basis subject to the condition that if it was decided to take back Shri Rajendra Pal Singh into service, the provisional appointment would be terminated without notice. This is confirmed by the terms 2 and 3 of appointment of the applicant in the appointment order. (Annexure SA 1). It has also been stated that the charge of post was taken over by Shri Rajendra Pal Singh on 17.08.93 in the absence of the applicant ~~and~~ that the physical attributes of the office were handed over to

Shri Rejendra Pal Singh by applicant's wife on 19.08.93. It has been stated that no representation was made by the applicant to the respondents before approaching the Tribunal and that the departmental remedies were not exhausted by the applicant.

7. In the rejoinder, the applicant claims the right to continuation on the post of E.D.B.P.M, Jot, because the vacancy was filled up after following the due procedure and because the setting aside of punishment order of shri Rajendra Pal Singh was illegal. The applicant has generally denied the averments made in the reply of the respondents and said that suitable reply will be given at the time of hearing. He has claimed continuance on the post of E.D.B.P.M. because of stay order given by the court.

8. The arguments of Shri R.C. Sinha, learned counsel for the applicant and Km. Sadhana Srivastava learned counsel for the respondents, were heard. They have reiterated the pleadings contained in the case papers.

9. The first ground of the application that since the post was advertised as a regular vacancy and filled up after fulfilling all the formalities as for a regular vacancy, the applicant was entitled to all the rights of a regular appointment is not acceptable in view of the fact that the filling up of vacancies arising from the dismissal of Shri Rajendra Pal Singh was provisional and the appointment was to continue if the dismissal order of the employee was

not reversed and was to come to an end without notice in case of such a reversal. This was in the knowledge of the applicant at the time he accepted the order of appointment and he cannot derive any advantage by concealing this fact in his original application.

10. The appointment of the applicant came to an end in terms of condition no 3 of the order of appointment dated 14.06.90 (Annexure CA-1). Passage of an order under Rule 6 of the Extra Departmental Agents (Conduct and Service) Rules, 1964, was a superfluity which does not give any right of notice and opportunity to show cause to the applicant.

11. The contention that the order of termination of service does not show any application of mind is not correct. This order (CA 3) clearly shows that the appointment was terminated on the setting aside of punishment in disciplinary proceedings against Shri Surendra Pal Singh. As mentioned in the last paragraph, this order was a superfluity and at best an intimation of the appointment of the applicant coming to an end due to the occurrence of a contingency envisaged in the order of appointment.

12. We, therefore, find that the application of the applicant has no merit and the applicant is entitled to no relief. The application, is, therefore, dismissed.

13. Since we find that the applicant has made this application without stating all the facts-particularly the terms of his appointment in the facts stated in

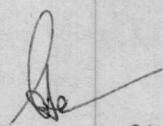
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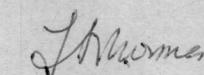
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the application, we award the cost of defending this application to the respondents which may be worked out as per rules and recovered from the applicant.

14. There shall be no order as to costs.


(S. Dayal)
Member-A


(T.L. Verma)
Member-J

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