

Despite this, the respondent no. 2 is seeking to terminate the services of the applicant without serving any termination order in writing or giving an opportunity to the applicant to show-cause against such termination.

3. The petitioner claims that the termination of his services is violative of Article 311 of the Constitution of India read with rule 7,8 & 9 of the Extra Departmental Agents(Conduct & Service) Rules, 1964.

4, Admitting the facts stated by the applicant, the respondents in their Counter-affidavit have submitted that the applicant was appointed to a post which fell vacant due to ^{dismissal} disposal of Sri Roop Narain Yadav, E.D.B.P.M., Rasoolpur, Distt. Azamgarh and it was clearly specified in the order dated 12.2.1982 (Ann.C.A-2) appointing the applicant that the said appointment was provisional and tenable till the disciplinary proceedings against Sri R.N. Yadav is finally disposed of and he has exhausted all channels of departmental and judicial appeal and petitions etc. It was also specified therein that the applicant should clearly understand that if it is ever decided to take Sri R.N. Yadav back into the service, the provisional appointment will be terminated without notice. The respondent further contended that the order of disposal of Sri R.N. Yadav was quashed by the Judgment and Order dated 10.10.1992 of this Tribunal in T.A. 406 of 1986.

Pursuant to this order of this Tri

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Pursuant to this order of this Tribunal Sri Roop Narain Yadav has been reinstated in service and hence the applicant has^{to} vacate the post which will now be occupied by Sri Roop Narain Yadav.

5. We have heard the arguments of counsel for both the parties and perused the records carefully.

6. The contention of the respondents is that the termination of the service of the applicant is consequent to their compliance with this Tribunal order dated 10.10.1992 by which Sri Roop Narain Yadav has been reinstated in service. The termination of the services of the applicant is not by way of penalty and as such the procedure contemplated under Rule 8 of E.D. Agents Conduct and Service Rules shall not be applicable in this case. They further contended that since it was clearly stipulated in the order appointing the applicant that the said appointment is provisionally and the same will be terminated without notice, incase Sri Roop Narain Yadav is taken back in service, the respondents are well within their right to terminate the services of applicant without notice since Sri Roop Narain Yadav has been reinstated in service.

7. A reference to Swamy's Compilation of the Service Rules for Extra Departmental Staff in Postal Department reveals that under the heading "Provisional Appointment of ED Agents" at page 62-63 of the compilation, there is a provision that where an ED Agent is put off from duty"

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pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made making it clear to the persons who^{is} appointed, that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment.

8. In view of the provisions of the rules indicated above and the conditions stipulated in the appointment letter, it may appear in the first flush that the respondents have a right to terminate the services of the applicant without giving him any notice. However, when these provisions are considered a little more in depth, the action on the part of the respondents to terminate the services of the applicant without any notice would not appear to be wholly tenable, particularly after the applicant has put in about eleven years of service without any blemish. Infact the para 2 of the D.G., P. & T., Letter No. 43-4-/77-Pen., dated 18.5.1979 which has been printed at page 62-63 of Swamy's Compilation of the Service Rules for Extra Departmental Staff also ^{contains} contends the para in addition to the provision regarding the provisional appointment, that ~~the~~ effort should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years service.

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In such cases their names should be included in the waiting list of ED Agents discharged from service. This provisions would appear to be just and fair, particularly in this case where the applicant has put in ~~his~~^{his} 11 years of satisfactory service and is being thrown out of employment when he ~~has~~^{is} already 36 years old and it would be very difficult to him to obtain any other Government Service.

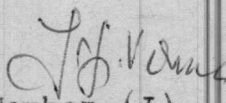
9. The case of the present applicant is fully covered by this Tribunal Judgment and order dated 04.12.1991 in O.A. No. 984 of 1991. In that case also, the applicant's services were being terminated on reinstatement of the employee who was earlier discharged and in whose vacancy the applicant was appointed provisionally. The Tribunal, while appreciating the situation that the respondents were faced with, held that the respondents are duty bound to utilise the services of the applicant as far as possible in the same capacity of E.D.B.P.M., if any vacancy exists. If no vacancy is immediately available, the Tribunal directed that the applicant be given some other alternative employment. In either case the applicant will be entitled to reckon his past services for all purposes including seniority and that he shall be deemed to continue in service without any break.

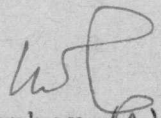
10. Since the present application is fully covered by the Judgment and direction dated 4.12.91

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in O.A. 984 of 1991, we follow the said decision of the Tribunal and direct the respondents to utilise the services of the present applicant in the same capacity as E.D.B.P.M. if any vacancy exists and if no vacancy is immediately available, the applicant be given some other alternative employment. In either case the applicant will be entitled to reckon his past services for all purpose including seniority and that he shall be deemed to continue in service without any break.

11. The application is disposed of with the above directions without any order as to costs.


Member (J)


Member (A)

Allahabad, Dated 10 February, 1994

/M.M./