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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 17 day of May, 1996
Original Application No.1275 of 1994

District : Allahabad

COURT:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Vishnu Kant Shukla Son of Tribhuwan Nath Shukla,

Extra Departmental Branch Post Master, Mungari

Branch, Karchana, Allahabad

Resident of Village & Post-Mungari,

District-Allahabad.

(By Sri SN Srivastava, Advocate)

..... Applicant

Versus

1. Union of India through its Secretary

Ministry of Communication,

Department of Post,

New Delhi.

2. Senior Superintendent of Post Offices,

Allahabad Division,

District - Allahabad.

3. Sub Divisional Inspector of Post Office,

Sub Division,

District Allahabad.

(Km. Sadhna Srivastava, Advocate)

..... Respondents

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By Hon'ble Mr. S. Das Gupta, A.M.

The post of Extra Departmental Branch Post Master (EDBPM for short) of the Branch Post Office, Mungeri, Karchana, District-Allahabad fell vacant on 15-3-1993 on the retirement of the existing incumbent. On receipt of requisition from the postal authorities, the District Employment Exchange Allahabad sponsored the names of four candidates including that of the applicant. The applicant was found the most suitable among the candidates and, therefore, he was appointed on the post. He took charge of the post of EDBPM, Mungeri on 8-6-1993. According to the applicant, he was performing his duties with sincerity and to the full satisfaction of his superiors, yet the Senior Supdt. of Post Offices, Allahabad (Respondent No.2) issued a notice dated 8-8-1994 (Annexure-1) seeking to terminate his services on expiry of one month from the date of the notice.

2. The applicant filed this OA under Section 19 of the Administrative Tribunals Act, 1994 for quashing of the impugned notice dated 8-8-1994 and seeking a direction to the respondents not to interfere in the functioning of the applicant as EDBPM, Mungeri. On 8-9-1994 an order was passed by this Tribunal directing the respondents to maintain status quo as on date. This interim order has been extended from time to time and was still operative when the case was heard and order reserved.

3. The grievance of the applicant is that the impugned notice seeking termination of his services has been issued

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without affording any opportunity of hearing to him or to show cause and, therefore, the impugned notice is violative of the principles of natural justice. He has asserted that being fully qualified and eligible for holding the post of EDBPM for which he was regularly selected and appointed, he has ^{La} right to continue to hold the ~~said~~ post. He has alleged that the impugned notice is arbitrary and malefide in nature and has been issued solely with the purpose of harassing the applicant and getting the post vacated for accommodating the henchman of the respondents.

4. The respondents have contested the applicant's claim by filing a CA. The facts averred by the applicant have not been disputed. It has, however, been submitted that the appointment of the applicant was cancelled by DPS, Allahabad, Office of the Post Master General, Allahabad by an order dated 4-1-1994 issued under revised Rules 6(a) and (b) of EDA (Service and Conduct) Rules, 1964. It has been further submitted that there was a complaint against the applicant from Sri Surya Prakash Tewari based on which the Director Postal Services, Allahabad reviewed the appointment file of the applicant and found certain irregularities. He, therefore, cancelled the appointment of the applicant in pursuance of which respondent no.2 issued the impugned notice of termination of services of the applicant. The respondents have taken a stand that there is no provision in the rule to give any opportunity to the applicant before issuing notice of termination of his services, which was issued in accordance ^{with the} rules of the department and is neither arbitrary nor

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malafide in nature. They have also taken a stand that the applicant has filed the present OA without exhausting the departmental remedy available to him.

5. The applicant filed a RA, reaffirming his contention in the OA. He has further contended that there is no departmental remedy available to him for redressal of his grievance. He has further stated that the respondents Irregularity have not indicated the nature of Lxxxxxx which was noticed by the respondents in his appointment and in any case mere irregularity cannot justify the cancellation of the appointment of the applicant without affording opportunity of showing cause.

6. The respondents thereafter file a Supplementary Counter Affidavit to indicate the nature of irregularity which prompted the respondents to terminate the services of the applicant. It has been explained that one of the four candidates viz. Sri Asha Ram was a SC candidate and he was also fulfilling eligibility criteria for the appointment and, therefore, should have been given preference over the applicant in the matter of appointment on the post. It has been further stated that the respondent no.2 was wrong in ~~xx~~ deciding that the said Asha Ram did not fulfil the eligibility condition regarding residence, since he is resident of Dumari Ka Purwa, which is a part of the village Muhgari and is not a separate village as decided by respondent no.2. The further submission of the respondents is that the representation of the SC community was inadequate in Allahabad Division and, therefore, preference was to be

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given to ~~to~~ the SC candidates. Asha Ram, a SC candidate, has passed High Schools examination with 45% marks and he has adequate source of income in his own name as well as accommodation for maintaining post office. Therefore, he should not have been ignored in favour of the applicant. In this regard DG P&T communication dated 13-3-1984 and 8-3-1978 (Annexures SC A-1 and 2) have been referred to, ~~in this regard~~.

7. The applicant filed a Supplementary Rejoinder Affidavit in which he has stated that all the candidates sponsored by the Employment Exchange were duly considered by the appointing authority and it was only after finding the applicant as ^{the} ~~most~~ suitable candidate, he was appointed on the post. He has strongly denied that Sri Asha Ram was ignored in any manner. He has further averred that Dumari Ka Purwa is not ^{part} ~~part~~ of the village Mungeri. It constitutes a separate and independent revenue village, which is distinguished from the village Mungeri. In any case, the irregularity which the respondents are now pointing out should have been taken into consideration prior to issuance of the appointment letter, the applicant contends. He has also taken a stand that the DPS has no jurisdiction to cancel ^{/ appointment} ~~fix~~ of the applicants. He has denied the contention of the respondents that the representation of the SC candidate was inadequate in Allahabad Division and that nothing has been brought on record to prove this contention. He has stated that by a subsequent communication dated 13-3-1984 and 8-3-1978 have been superseded. He has, however, not annexed a copy of the communication allegedly issued by the department superseding the earlier communications.

8. The disputed facts in this case are that the applicant was one of the four candidates sponsored by the Employment Exchange. He had fulfilled all the eligibility criteria for appointment on the post of EOPM, Mungeri and he was adjudged the best amongst all the four candidates and, therefore, issued the letter of appointment in pursuance of which the applicant actually took over charge and started functioning. There is nothing on record to show that the conduct or performance of the applicant was in any manner unsatisfactory. The only reason why the DPS cancelled the appointment of the applicant pursuant to which the impugned notice of termination of his services was issued is that there was among the candidates a candidate belonging to the SC community and he also fulfilled all the eligibility criteria, though respondent no.2 did not consider that he had fulfilled the qualification relating to the respondents. Therefore, the DPS had taken a view that the departmental instructions for giving preference to the SC candidates have been contravened by ignoring the SC candidates in favour of the applicant. Therefore, the appointment of the applicant was cancelled. The question which, therefore, falls squarely for our consideration is whether the alleged irregularity committed by respondent no.2 in ignoring SC candidate would justify the cancellation of the appointment of the applicant and subsequent issue of notice of termination of his services without giving him any opportunity to show cause.

9. The services of the applicant are stated to have been terminated in exercise of powers vested by Rule 6 of the

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of the ED (Conduct & Service) Rules 1964. We may at this stage usefully reproduce the ~~xxx~~text of the Rule:-

"6. Termination of Services.-(a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing either by the employee to the appointing authority or by the appointing authority to the employee;

(b) The period of such notice shall be one month.

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

This Rule is somewhat analogous to the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. In other words, the termination of service of an employee under Rule 6 of the EDA (Conduct and Service) Rules, 1964, is in the nature of discharge simpliciter. The departmental instructions indicate that no reasons should be indicated in the order of termination. However, it has been stated that the termination of services under this Rule may normally be ordered only in cases of unsatisfactory services or for administrative reasons not connected with the conduct.

10. We have already mentioned that there is nothing on record to indicate that the applicant's services were unsatisfactory or his conduct was in any manner reprehensible. Therefore, the termination of the applicant's service is for administrative reasons not connected with the conduct. The respondents have ~~obviously~~ ^{disputed} levelled the administrative reasons in the Supplementary

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Counter Affidavit. It has been stated that the applicant was appointed ignoring the SC candidate and this was in contravention of certain departmental instruction by which the SC candidates were to be given preference in the matter of appointment as EA in order to make up the inadequate representation of the members of this community. The extent of powers of the competent authority in terminating services of an EA employee under Rule 6 of the EEA (Conduct and Service) Rules, 1964, has been subject of judicial scrutiny in numerous cases. The decisions given by various courts and benches of the Tribunal do not appear to be wholly consistent with regard to the nature of powers vested in the competent authority under this Rule. In fact, in view of this, this Bench has already made a reference of this matter for an authoritative pronouncement by a larger bench. However, on perusal of the various decisions one could say that it would render the appointment void ab initio, the appointment itself can be cancelled and the services of the employee can be terminated by a simpliciter order without giving any opportunity to the employee to show cause. If, however, the nature of irregularity is not fatal to the appointment, the principles of natural justice would dictate that the termination of the services of the employee is done only after affording a proper opportunity to the employee to show cause unless the termination of service is on account of unsatisfactory performance, in which case the order of termination would amount to discharge simpliciter.

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11. Before we consider the nature of irregularity involved in the appointment of the applicant in this case, we would like to dispose of the objection raised by the respondents to the maintainability of this application on the ground that he has approached the Tribunal without exhausting the departmental remedy. Under Section 20 of the Administrative Tribunals Act, 1985, the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of the remedies available to him under the relevant service rules as to redressal of grievances. The respondents have not indicated under which service rules, the applicant had a departmental remedy available to him against his grievance. We have, however, referred to the EDA (Conduct and Service) Rules, 1964 to ascertain whether there is any provision for departmental remedy against an order of termination of services. We have seen therefrom that the Director General Post & Telegraph Instruction No.8, below Rule 6 ibid, clearly states that there will be no right ~~of~~ appeal against an order of termination of services. However, an order of termination can be reviewed within a period of six months under Rule 16. We have also referred to Rule 16 ibid and it would appear therefrom that the provision of review in that Rule relates essentially to the orders passed by way of disciplinary action. We are satisfied that by approaching the Tribunal directly challenging the order of termination of his services, the applicant has not contravened the provisions of Section 20 of the Administrative Tribunals Act, 1985.

12. We may now consider the nature of irregularity involved in giving appointment to the applicant. The respondents have relied on two departmental circulars by which the SC/ST candidates are supposed to be given preference in the matter of employment as ED Agents. These are DG P&T communications dated 8-3-1978 and 13-3-1984. Extract of these communications printed in the Swamy's

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Compilation of Service Rules for ED Staff have been annexed as Annexure-SCAs- 1 and 2. The communication dated 8-3-1978 gives reference to certain earlier orders and then goes on to state the following :-

"It is hereby clarified that candidates belonging to the Scheduled Castes/Scheduled Tribes with the minimum educational qualifications prescribed in this Office Letter No.5-9/72-ED Cell, dated the 18th August, 1973, viz., VIII Standard for ED BPMs, VI Standard for ED DAs and ED SVs and working knowledge of the regional language and simple arithmetic for other EDAs (and working knowledge of English for ED Messengers) should be given preference over the candidates belonging to other communities, even if the latter are educationally better qualified, provided that the candidates belonging to Scheduled Castes/Scheduled Tribes are otherwise eligible for the post."

13. The communication dated 13-3-1984 reads as follows :-

"It has now been decided that while making selection to the posts of ED BPMs/ED SVs in divisions where SC/ST representation in ED appointment in general is inadequate, SC/ST may be given preference. This is, however, subject to the condition that they fully satisfy all criteria for such appointment; provided further that notwithstanding this concession, any candidate with matriculation qualification subject to satisfaction of all other criteria, will be preferred to those with less than matriculation qualification. No weightage need be given in qualification above the level of matriculation.

These instructions should be brought to the notice of the subordinate formations urgently."

14. It would appear from the perusal of the above communications that the intention of the authorities is that if there is among the candidates a SC/ST candidate and he fulfills all the eligibility qualifications for the ED posts, he shall be preferred over the other general candidates in the matter of appointment. The communication dated 8-3-1978 even states that if the general candidates are educationally better qualified even then they are to be ignored in favour of the SC/ST candidates fulfilling the minimum qualifications. This would factually make the posts reserved for the SC/ST community unless the Employment Exchange does not sponsor qualified SC/ST community candidates at all.

15. In this regard we also ~~refer~~ to the method of recruitment of ED Agents contained in Section III of the EDA (Conduct and Service) Rules 1964. In Para 1(2), which deals with educational qualification for the ED Posts itself interalia specifies that the educational qualification for the **EDBP** would be Matriculation and the selection should be based on the marks secured in the Matriculation or the equivalent examination. It has been elsewhere clarified that a candidate getting higher marks in the Matriculation ~~or~~ ^{equivalent}

examination shall be preferred over others who have obtained lesser marks. In a Full Bench decision in the case of S.Ranganayakulu Vs. Sub Divisional Inspector(Postal) and Others (1995) 30 ATC 473 (FB), it was held that in the absence of statutory rules, executive instructions issued by the competent authority will have full play. As there are no statutory rules governing recruitment of EDAs, the executive instructions which are contained in Section III, under the heading, "Method of Recruitment," would hold the field. Therefore, the condition that the selection should be based on the marks secured in the Matriculation or equivalent examination for appointment on the post of EDBPM, cannot be overridden unless certain posts are reserved for candidates of certain communities for whom, getting lower marks than the general candidates would not come in the way of their being selected for the post.

16. The communications relied upon by the respondents, extracts of which have been quoted above, do not indicate that there is any provision of reservation for the post of EDA for SC/ST candidates. In the absence of a provision for reservation of the post, it is difficult to hold that a SC/ST candidate shall be appointed in preference to a general candidate who is superior in merit ^{higher} by virtue of percentage of marks obtained in the Matriculation or equivalent examination.

17. We have in fact seen from Para 1.6 of Section III of the EDA (Conduct & Service) Rules, 1964, that it has been clearly specified that for the ED posts other than those of EDBPM/EDSPM (emphasis supplied), preference to SC/ST candidates may still be given in order to ensure the minimum fixed percentage as laid down in the letter dated 8-10-1980. For the convenience of reference, we quote the relevant extracts of Para 1.6 of Section III :-

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16. Preferential Categories:

The last orders issued in this connection under Letter No.43-191/79-Pen, dated 22-6-1979, fixing the four preferential categories according to the earlier orders issued vide D.G.P.&T., letter No.43-14/72-Pen., dated 2-3-1972, No.43-246/77-Pen., dated 8-3-1978, to Scheduled Castes and Scheduled Tribes candidates; and No.43-231/78-Pen., dated 17-2-1979 (regarding Ex-Army Postal Service Personnel); No.43-312/78-Pen., dated 20-1-1979 (regarding Backward Classes and weaker sections of Society) and to the educated unemployed persons, it is clarified that the above preference should be subject to first and foremost condition that the candidate selected should have an adequate means of livelihood, which though already prescribed, seems to have been ignored for some time past especially in view of these preferential categories being introduced in the above orders.

The criterion to judge "adequate means of livelihood" should be that in case he loses his main source of income, he should be adjudged as incurring a disqualification to continue as ED SPM/ED BPM. In other words, there must be absolute insistence on the adequate source of income of ED SPM/BPM and the allowances for his work as ED SPM/BPM must be just supplementary to his income. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such, business premises such as shops, etc. must be preferred regardless of the various categories of preferences mentioned above.

The preference earlier given to Back Ward Classes and weaker sections of society stipulated under D.G.P&T Letter No.43-312/73-Pen., dated 20-1-1979, should be dispensed with as no such categories have been defined on an All India basis.

For the ED Posts other than those of ED BPM/ED SPMs, preferences to Scheduled Caste/Tribe candidates may still be given in order to ensure the minimum fixed percentage as laid down in Letter No.43-117/30-Pen., dated 8-10-1980.

(D.G.P.&T. Letter No.43-84-Pen, dated the 30th January, 1981 and corrigendum, dated the 29th March, 1981, D.G., Posts Letter No.41-301/87-PE-II(ED & Trg.) dated the 6th June, 1988 and No.17-366/91-ED & Trg., dated the 12th March, 1993.).

18. It is, therefore, clear that unless the departmental instructions have been further amended, the preference to SC/ST candidates is not to be given in respect of EDSPM/EDSPM. As the applicant was selected for the post of EDBM, his appointment cannot be regarded irregular merely because another candidate, who, admittedly was inferior to the applicant, was not appointed on the strength of his belonging to SC community. The respondents have not placed before us any departmental circular in support of their contention that preference has to

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be given to SC/ST candidates even for the post of EDBPM except the circular dated 8-3-1978 and 13-3-1984. It would appear from the authority of the DGPMT letter quoted below, Para 1(6) of ^{III} ~~Section~~ of EDA Rules that the aforesaid circulars are modified to the extent that preference to SC/ST candidates will be available in respect of ED posts other than the post of EDBPM/EDSPM.

19. The learned counsel for the applicant cited several cases in support of his contention that the applicant's services could not have been terminated without giving him an opportunity to show cause. These are :-

(I)	Bishnukant Jha Vs. Union of India	- 1991 (15) ATC 15.
(II)	Ganesh Prasad Singh Vs. Union of India	- 1991 (15) ATC 20.
(III)	Vikram Kumar Vs. Union of India & Ors.	- 1990 (14) ATC 367.
(IV)	Amar Singh Vs. Union of India & Ors.	- 1995 (1) ATJ 64.

20. In Bishnukant Jha, the applicant was selected and appointed on the post of EDBPM. After he joined the post, on certain complaints from one of the unsuccessful candidates, his appointment was cancelled in pursuance of the direction of the Director of Postal Services.

Thereafter, his services were terminated by a simpliciter order. The plea taken by the respondent was that the applicant was not the best among the candidates since some other candidate had a higher qualification of Intermediate in Science than the applicant who was only a Matriculate and the said candidate had also better financial resources than the applicant. The Patna Bench of the Tribunal inter alia held that before cancellation of appointment, the applicant should have been afforded an opportunity of being heard. It further held that

where the order of appointment is void ab initio, the same can be cancelled without giving any notice or without giving any opportunity.

21. We are in respectful agreement with the above proposition of law which we have ~~had~~ occasion to refer to in the earlier portion of our order. Had the present applicant's appointment been void ab initio, the cancellation of his appointment and the termination of his services could have been done without giving any opportunity to him. We have, however, already seen that there is nothing to indicate that the applicant's appointment was void ab initio since there is no statutory rules which are **violated** by this appointment. Therefore, it was necessary to give him an opportunity to show cause before his appointment was cancelled or his services were terminated.

22. In Ganesh Prasad Singh, the applicant was appointed as EDBPM after proper selection. His appointment was, however, subsequently cancelled and another candidate, who was earlier unsuccessful was appointed on that post. The case of the respondents was that the said unsuccessful candidate had submitted a representation alleging irregularity in the appointment of the applicant. Thereupon the appointment file was called for by the administrative head of the circle and on review it was found that the earlier unsuccessful candidate was the most suitable candidate as he had higher marks in the Matriculation Examination and had more landed property than the applicant. In this case, the Patna Bench of the Tribunal held that unless there be a patent illegality in respect of the appointment, it is not proper that the appointment is cancelled and another person is appointed. It further held that on the facts of the case, the applicant should have been given an opportunity of being heard on the

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basis of the principles of natural justice.

23. We are not fully in agreement with the proposition of law laid down in the above cases since from the facts of the case, it was clear that the applicant had received lower marks in the Matriculation than the candidate who was initially unsuccessful and as the marks obtained in the Matriculation or equivalent examination is the determining factor in the selection and finds place under Section III of the EDA Rules, which has got a statutory force in terms of the Full Bench decision in the case of S. Ranganayakulu (Supra). We, however, are in full agreement with the proposition that unless there is a patent illegality in the appointment, it would not be possible to cancel the same without giving the opportunity to the appointee. This part of the proposition of law is fully applicable to the present applicant since there is no patent illegality in his appointment.

24. In Vikram Kumar, the applicant was appointed as EDBPM. After he joined the post, his appointment was cancelled in pursuance of the decision of Director of Postal Services. The respondents submitted that Vikram Kumar was not the best candidate as he has less income. The Patna Bench of the Tribunal *inter alia* held that this was a matter for consideration by the departmental authorities at the time of selection and not afterwards. After appointment, if any dissatisfaction, either in his work or conduct would have been found, action could have been taken against him under the provisions of Rule 6.

25. In the case before us also, the appointing authority should have considered the question of giving preference to the SC candidates, if such preference was required to be given even for the post of EDBPM

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before the applicant was selected and appointed. Once he was selected and appointed, his appointment could not have been cancelled nor his services could have been terminated without giving him an appropriate opportunity.

27. In Amar Singh also the appointment of the applicant as EDBPM was cancelled on review by the Director General of Postal Services. The Chandigarh Bench of the Tribunal inter alia held that the appointing authority being the Senior Supdt. of Post Offices, an authority administratively higher than the appointing authority had no power of review in the matter of appointment by the appointing authority.

28. From narration of facts in the present case in the foregoing paragraphs, we have brought out that the applicant's appointment was cancelled by the Director of Postal Services, Allahabad on review of appointment. On the basis of the ratio of Amar Singh's case, the Director of Postal Services, Allahabad has no power to review the appointment of the applicant or cancel it on such review. This proposition of law has also been propounded by the Full Bench of Hyderabad Bench of the Tribunal in OA No.57/91 in N. Ambujakshi Vs. UUI. In that case, the applicant was appointed as EDDPM by the Senior Superintendent of Post Offices. His appointment was reviewed by the Director of Postal Services, who issued direction that the candidate having more marks than the applicant should be appointed. The Full Bench inter alia held that Rule 16 of the EDA Rules which confers power of review of orders, does not confer upon a higher administrative authority the power to ~~not~~ revise the order of appointment purported to have been passed by a lower authority under Rule 3. It further held that a higher administrative authority has no power, either

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inherent or otherwise to revise the order of appointment passed by the lower administrative authority or to **set aside** the same. The Full Bench also independently upheld the decision of the Patna Bench in Ganesh Prasad Singh (supra) and overruled the decision of the same Bench in the case of Umesh Rai in which a view different from Ganesh Prasad Singh was taken.

29. It would be clear, therefore, that even otherwise, the Director of Postal Services, Allahabad, had no authority to review the appointment of the applicant and to cancel his appointment. This could have been done only by the appointing authority. Admittedly, in the present case, the appointing authority acted merely at the behest of the Director Postal Services in seeking to terminate the appointment of the petitioner.

30. In view of the reasons given in the foregoing, we have no hesitation in holding that the cancellation of the appointment of the applicant and the issuance of the impugned notice seeking to terminate his services are illegal, arbitrary, untenable and, therefore, cannot be sustained. The impugned notice dated 8-8-1994 is hereby quashed. If by virtue of the interim order passed earlier, the applicant is still working on the post, he shall continue to function on that post. If, he has been relieved of the charge during the pendency of the application, he should be reinstated forthwith

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on the post and would be deemed to have continued on that post as if his appointment was never cancelled. He shall also be entitled to the benefit of continuity of service for all purposes except back wages.

31. The parties shall, however, bear their own costs.

J. H. Merna
Member (J)

W. E.
Member (A)

Dube/