

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 8th day of June 1995.

Original Application no. 872 of 1994.

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

A.B. Asha Ram, S/o Shri Sheva Dayal, R/o Vill. Supa,
Distt-Hamirpur.

... Applicant

C/A: Shri R.S. Tiwari.

Versus

- i. Sub Divisional Inspector Mahaba, Postal Sub-Division,
Distt. Hamirpur.
- ii. Union of India through Secretary Post and Telegraph
Deptt. Govt. of India.

... Respondents.

C/R Shri C.S. Singh.

ORDER

Hon'ble Mr. S. Dayal, Administrative Member.

This is an application under section 19 of the Administrative Tribunal Act, 1985, seeking the quashing of order of termination dated 02.05.95 and direction to the respondents to give salary and allowances to the applicant regularly and not to interfere with the applicant functioning as Extra Departmental Male Peon, Supa, District Hamirpur.

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2. The relief has been sought on the ground that the order of termination was passed without giving any reason and opportunity of hearing to the applicant. It is said that the order contravenes Articles 14 and 16 of the constitution. It is said that the applicant had a right to hold the post because his uncle was holding the post which was permanent before his disability and the applicant was appointed on this clear permanent vacancy.

3. The facts given in the application show that Shri Uma Prasad real uncle of the applicant was the regular incumbent of the post of E.D.M.P., Supa and is to superannuate some times in 1995. He intimated to the department on 01.04.93 that he wanted to retire on medical grounds and that in his place his nephew Asha Ram may be allowed to work. The S.D.I., Mahoba, asked Shri Uma Prasad to apply for retirement to the S.D.I Postal Sub Division Mahoba. The applicant applied to the Inspector, Postal Division, for his appointment as E.D.M.P. in village Supa, District Supa, in place of his uncle who had become disabled. The applicant was appointed on 01.05.93. The Inspector, Postal Sub. Division, Mahoba, terminated the service on 02.05.94 after examining his service record. Shri Uma Prasad was asked to join as E.D.M.P Supa on 09.09.93.

4. The respondents in their counter affidavit have stated that the regular incumbent of the post Shri Uma Prasad sent his application to higher authorities on 01.04.93 and handed over the charge of his post to Shri Asha
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Ram in contravention of rules and procedure laid down in order of D.G.P & T no 45-22/71-SPB -I Pen dated 04.09.32. Shri Uma Prasad was not allowed to retire as he did not produce the certificate of the Civil Surgeon of his ill health . The appointment of the applicant was found irregular and terminated by appointing authority SDI (P) Mahoba on 2.5.94. It is contended that since the applicant had not rendered more than three years service, he was entitled to only one month's notice. It has also been denied that any application was sent by Shri Uma Prasad to the higher authorities nor was the appointment of his nephew on his post was solicited by Shri Uma Prasad. It is stated that Shri Asha Ram was not entitled to any compassionate appointment in place of Shri Uma Prasad as compassionate appointment was admissible only to heir of a deceased employee. It is stated that the applicant stands relieved from the post with effect from 02.05.94 afternoon. It is stated that no service book is maintained in the case of EDAs and, therefore, the applicant's claim that he sent his service book showing unblemished record is wrong. It is stated that as Shri Asha Ram refused to accept 30 days of pay and allowances on 02.05.94, it was remitted to him by money order on 03.05.94. It is also stated that the admission of this application was barred as alternative departmental remedies were not availed of.

5. The arguments of Shri R.S. Tiwari learned counsel for the applicant and Shri C.S. Singh learned counsel for the respondents were heard. They reiterated

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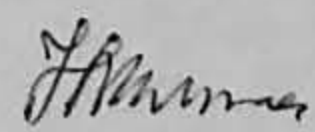
the grounds already contained in the written pleadings.

6. The pleadings make it clear that the applicant was working as a substitute in the place of his uncle Shri Uma Prasad who appeared to have sent a letter seeking retirement to higher authorities on 01.04.93 simultaneously appointing his nephew Shri Asha Ram as a substitute. The appointment of the applicant was thus for the period till decision on Shri Uma Prasad's letter was taken and decision regarding posting in place of Shri Uma Prasad was made. Since Uma Prasad's request for retirement was not accepted, the need for substitute was over. It appears that Shri Uma Prasad did not join inspite of letter dated 09.09.94 because his nephew was working as a substitute. Hence the S.D.I, Mohaba terminated the services of the applicant under Rule 6 of the E.D.A conduct of Service Rules, 1964, remitting him one month's notice pay and allowances which the applicant refused to accept. However, he stood relieved on 02.05.94 when the letter terminating his services was delivered and one month's pay and allowances was offered which the applicant refused to receive.

7. The application is, therefore, rejected as lacking merit.

8. There shall be no order as to costs.


Member-A


Member-J

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