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OPEN COURT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 23rd day of December, 1996

Original Application No. 1061 of 1994

District : pithoragarh

CORAM:-

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

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

Bahadur Singh Son of Shri Bhoop Singh,
Resident of Village Sujai,
post office-Jajar Dewal,
District-pithoragarh.

(By Sri SK Mishra, Advocate)
& Sri pS. Adhikari)

. Applicant

Versus

1. The Superintendent post and Telegraph Officers,
pithoragarh, Region, pithoragarh (Shri Pan Singh).
2. The Union of India, through Post Master General,
U.P. Lucknow.

(By Km. Sadhna Srivastava, Advocate)

..... Respondents

ORDER (Oral)

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

This application has been filed under Section
19 of the Administrative Tribunals Act, 1985, seeking
quashing of notice dated 24-6-1994 by which the services
of the applicant were sought to be terminated on

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completion of a period of one month from the date of notice. It has been prayed that the applicant may be permitted to function as usual on the post held by him.

2. From the facts averred the admitted position is that the applicant was one of the candidates sponsored by the Employment Exchange for the post of Extra Departmental Branch post Master (EDBPM for short) of Jajar Dewal. There were five candidates sponsored by the Employment Exchange and the applicant was selected having fulfilled all the necessary qualifications prescribed for the post and was appointed by the order dated 13-9-1991 (Annexure-A-1). Since then the applicant has been functioning on that post until the impugned notice of termination of services was served on him. However, by virtue of an interim order passed by the Tribunal at the time of admission of the matter, he continued to serve as EDBPM Jajar Dewal.

3. The respondents have stated in the counter affidavit that on a review of the appointment of the applicant by the Director ~~General~~ Postal Services (DPS) it was found that the applicant was not a resident of Jajar Dewal where the post office is situated and, therefore, he came to the conclusion that his first appointment was irregular. Accordingly, the appointment was cancelled and consequently the impugned notice was issued.

4. The applicant has filed a rejoinder affidavit and also a supplementary affidavit. It has been

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specifically stated that the applicant is ~~the~~ resident of the village Jajar Dewal, which is a hamlet of village Sujai and he possessed property worth Rs. 1,10,000/- in the village Jajar Dewal, which includes a pucca house having four rooms.

5. We heard learned counsel for both the parties and perused the record carefully.

6. The services of the applicant were sought to be terminated under Rule 6(a) of the EDA (Conduct & Service) Rules. This rule is somewhat analogous to Rule 5 of CCS(TS) Rules. In other words, if the order is a discharge simpliciter, the Courts/Tribunals will have no reason to interfere. The rules specifically however, state that the services of an EDA can be terminated for unsatisfactory performance of duty or for administrative reasons unconnected with the conduct. There is no averments by the respondents that the performance of the respondents was unsatisfactory and, therefore, the reason for termination of services has to be an administrative reason unconnected with the conduct. This reason has been disclosed by the respondents in the counter affidavit. It appears that the reason for cancellation of his appointment was that he is not the resident of the village in which the post office is situated. No doubt, the rules, extant at the time of the appointment of the applicant had provided that one of the essential qualifications

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for appointment as EDBPM is that the candidate must be a resident of the village in which the post office is situated. If, therefore, the applicant is not really a resident of the village, his appointment would be considered to be ab initio void and, therefore, liable to cancellation without any opportunity.

7. The applicant has specifically stated in his rejoinder that he is ~~the~~ ^{the} president of the village in which the post office is situated and he has also annexed several documents to indicate that he has landed property in the village. We cannot, therefore, conclude that the applicant was not a ~~president~~ of the village in which the post office is situated and, therefore the appointment of the applicant cannot be held to be void ab initio. In such a case, the services of the applicant could not have been terminated without giving him an opportunity to present his case.

8. We have also noticed that the appointment of the applicant has been cancelled by the DpS who is ~~an~~ ^{an} authority administratively higher than the appointing authority. In the case of Amar Singh, 1995(1) A.J., 54 the Chandigarh Bench had held that an authority higher than an appointing authority has no power of review of the appointment of an ED Agent. This view was also held by a Full Bench of the Hyderabad ^{Bench} of the Tribunal in the case of A Ambujakshi in OA No.57 of 1991. The review and consequent cancellation of the applicant's appointment by the DpS, who is administratively higher than the appointing authority is clearly irregular, particularly, when there is ^{no} a patent irregularity in the appointment

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of the applicant.

9. In view of the foregoing, the impugned notice dated 24-6-1994 is quashed. The applicant shall continue to work on the post of EDEPM Jajar Dewal until his superannuation unless his services are brought to an end ^{earlier} ~~otherwise~~ in accordance with law.

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

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Member (J)

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Member (A)

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