

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**

DATED : THIS THE 13, DAY OF SEPTEMBER 1996

ORIGINAL APPLICATION NO. 1062/94

Hon'ble Mr. S. Das Gupta AM  
CORAM : Hon'ble Mr. T. L. Verma JM

Govind Singh son of Sri Kheem Singh  
resident of Village Mawani-Diwani,  
Post Mawani, Tahsil Munshayari,  
District Pithoragarh. . . . .  
C/A Sri P. S. Adhikari.

Sri S. K. Mishra

## VERSUS

1. The Superintendent, Post and Telegraph  
Office, Pithoragrah Region,  
Pithorag-rah ( Sri Pan Singh)

2. The Union of India through  
Post Master General,

U. P. Lucknow . . . . . Respondents

C/R Km. Sadhna Srivastava

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ORDER

By Hon'ble Mr. S. Das Gupta AM

The applicant in this case filed under section 19 of the Administrative Tribunals Act, 1985 was selected on a regular basis for appointment as Extra Departmental Branch Post Master (E.D.B.P.M. for short) and he took over charge of the branch post office. On 27.9.1991, the Appointing authority notified vacancy to the local Employment Exchange and in response to that names of 5 candidates including that of the applicant ~~was~~ sponsored. The applicant was considered to be <sup>the</sup> best amongst the 5 candidates. Hence he was selected and appointed. After he had put in nearly 3 years of service, the impugned notice dated 4.6.1994 was served on him seeking to terminate of his services on expiry of one month from the date of notice in exercise of the powers conferred under Rule 6 E.D.A. ( Conduct and Service ) rules. It is this notice of termination of service, which the applicant has assailed in this O.A., seeking the relief that the said notice be quashed and the applicant be allowed to function as usual on the post held by him.

2. The applicant's case is that having been selected on regular basis and as there was no complaint what-so-ever against him either from public or from Officials of the department, termination of his services is wholly arbitrary and illegal, being against the settled principles of law. He has also alleged that ~~that~~ the notice of termination of his services is malafide as his services <sup>are</sup> being terminated to accomodate certain other person.

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3. The respondents have filed counter affidavit in which it has been stated that <sup>the</sup> post of E.D.B.P.M. Mawani-Dawani sub post office having fallen vacant, <sup>a</sup> requisition was sent on 10.7.1991 to the Employment Officer, Pithoragarh, requesting him to sponsor the names of suitable candidates. The Employment Exchange sponsored 5 candidates including the applicant. All the applicants were asked to submit application alongwith the relevant documents. The documents and applications received from all the 5 candidates were sent for verification to the Sub-Divisional Inspector on 3.9.1991 and these were received back after verification on 25.9.1991 in the office of the respondent no. 2. It has been further stated that among all the candidates that only the applicant had submitted registered Deed of transfer of land in his own name and the rest of the candidates failed to submit any income certificate from the Tahsildar. Thus it was only the applicant who had fulfilled the conditions for appointment as E.D.B.P.M. and accordingly he was selected and appointed on that post. Later on, however, the appointment file was called for by the Director, Postal Services for review and on review, he found that one Mahendra Singh, who was also one of the candidates had higher educational qualification and also had immoveable properties with independent source of income and thus was the most suitable candidate. He accordingly held that the appointment of the applicant was not in order. This resulted in issuance of the impugned notice for termination of the services of the applicant in exercise of the powers under Rule 16 of E.D.A ( Conduct and Service ) Rules, 1964. It is the contention of the respondents that the applicant was only VIIIth class passed, whereas the said Mahendra Singh had a Master's degree and therefore, he was a better

applies

candidate than the applicant and therefore, Director, Postal Services had ordered that the services of the applicant should be terminated.

4. In the rejoinder affidavit filed by the applicant, it has been contended that at the time of selection, he was found the best candidate and therefore his services could not have been terminated on the ground that there was a better candidate available.

5. We have heard the learned counsel for both the parties and perused the pleadings on record.

6. The power of the competent authority under rule 6 to terminate the services of E.D.Agent, who was regularly appointed has been the subject of controversy in a large number of cases decided by various courts. On the question of extent of such powers, there have been divergent views taken by the various benches of the Tribunal. For this reason, we have already made a reference of this matter for an authoritative pronouncement by a larger bench. It would, however, appear from the trend of decisions of various benches that the view which has been constantly held is that if the appointment of E. D. As is ab-initio void, their services can be terminated without giving an opportunity to the appointees and this could not constitute any violation of the principle of natural justice. If, however, there is no ~~apparent~~ patent illegality in the appointment, the trend of the decisions would indicate that principles of natural justice warrant giving an opportunity before the services of the E.D.As are terminated.

SL.

7. In the instant case, the applicant admittedly was sponsored by the Employment Exchange alongwith the other candidates. Also, admittedly, amongst the candidates sponsored, he was considered to be the best candidate by the Appointing authority at the time of selection, as only the applicant had produced a Deed of transfer of immoveable property in his name, whereas other candidates did not produce any such documents. Also the applicant was VIIIth class passed, which was the minimum qualification required in accordance with the rules of recruitment contained in section <sup>III</sup> ~~7~~ of E.D.A (Conduct and service) rules. In this rule, educational qualification prescribed for the post of E.D.B.P.M. is VIII standard with the stipulation that matriculate or equivalent may be preferred. No doubt the other candidate viz Mahendra Singh <sup>SL</sup> was subsequently found to be a better candidate who had passed High School examination. Infact he ~~being~~ had a much higher qualification being a Master's degree holder. Therefore, normally he should have been preferred to the applicant provided he had fulfilled the other conditions for the selection indicated in the aforesaid rules. In the same rule, it ~~was~~ stipulated that a person, who is selected for the post of E.D.B.P.M. must be one who had adequate means of livelihood and that he must be able to offer space to serve as agency premises for the postal operations. Admittedly at the time, selection was made, there was no

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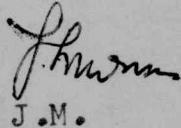
proof of the fact that Mahendra Singh had adequate means of livelihood or that he had space to offer as agency premises. On this ground his claim for selection on the post was ignored. If subsequently, it came to light that the said Mahendra Singh had ~~have~~ independent source of income, it could not negate that at the time of actual selection there was no proof of this fact. Thus the selection of the applicant did not suffer from any patent irregularity at the time the selection was actually made. On our direction, the Appointment file of the applicant was produced before us. We have seen from these records that there is a specific noting that other 4 candidates did not produce any document to indicate that they had any independent source of income. Therefore, it cannot be said that the appointment of the applicant was *ab initio* void and in that view of the matter, termination of the services of the applicant without giving him an opportunity is violative of the principle of natural justice. There is another matter to be considered in this case. Issuance of notice for the termination of the service of the applicant was clearly at the behest of the Director, Postal Services, who was not the appointing authority in respect of the applicant. He was an authority superior to the Appointing authority. A full bench of the Tribunal has decided in the case of Ambujakshi V/s Union of India in O.A.57/91 that Rule 16 of E.D. Conduct and service rules, which confers power of review of order does confer upon the higher departmental authority the power to review the order of appointment purported to have been passed by the lower authority under Rule 3 ibid. It further held that higher departmental authority has ~~not~~ power either inherent or otherwise to revise the order of appointment

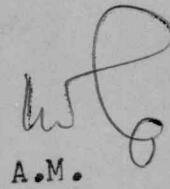
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passed by the lower departmental authority or to set aside the same. Thus the order passed by the Director, <sup>in directing</sup> Postal services, terminating the services of the applicant by reviewing his appointment is clearly without jurisdiction.

8. Inview of the foregoing, the application is allowed. The impugned notice of termination of service of the applicant is quashed. At the time of admission, ~~in~~ this matter an interim order was passed, restraining the respondents from filing the post vacated by the termination of service of the applicant. We now direct the respondents to reinstate the applicant on that post forthwith. The applicant would be deemed to have continued in service during the intervening period as if no notice for termination of his services was issued. The applicant shall, however, be not entitled to any back wages.

9. This application is disposed of with the above direction, leaving the parties to bear their own cost.

  
J.M.

  
A.M.

SOI