

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH,  
ALLAHABAD.

Dated : ALLahabad On this 23 Day of December96.

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

ORIGINAL APPLICATION NO: 501 OF 1995:

LalJi son of Sri Thakurdin, aged about  
39 years resident of village and post  
Office Bisauna, district: Allahabad .

At present working as Extra-Departmental  
Branch Post Master, Bisauna, district:  
Allahabad. — — — Applicant.

( C/A:Sri R.P.Singh.)

Vs.

1. Union of India, through its Secretary,  
Ministry of Communication Dak Bhawan,  
New Delhi.

2. Director Postal Services, Allahabad.

3. Senior Superintendant of Post offices,  
Allahabad.

4. Post Master General Allahabad.

C/A: (Through Counsel Sri — .. Respondents.  
Sri Vikram Gulati.  
Sri Amit gthalekar.

ORDER:

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

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Under challenge in this O.A. filed under Sec. 19 of the Administrative Tribunals Act, 1985 is a notice dated 28.4.1995 by which, the services of the applicant, who was appointed as Extra Departmental Branch Post Master (EDBPM) in the branch post office at Bisauna was sought to be terminated on the expiry of a period of one month from the date of service of notice. By way of relief, the applicant has prayed that the aforesaid notice be quashed with all the benefits and the privileges of continuity of service being given to him.

2. The facts averred in the O.A. are that the post of EDBPM at Bisauna, in the district Allahabad fell vacant and respondents requested Employment Exchange Allahabad to sponsor the names of the suitable candidates. According to the applicant, four names including his own name was sponsored by the Employment Exchange. After scrutiny and verification and also after considering the merits of the candidates, the applicant was selected for the post and an appointment letter dated 27.4.1993 was issued in response to which, he took charge of the post on 13.5.1993. It is stated that since then, he had been working without any complaint by the superior authorities and by the general public. Yet, the impugned notice dated 20.8.1995 was issued seeking termination of his service after expiry of the period of one month from the date of receipt of the same. This notice has been challenged by the applicant on the ground that the post on which the applicant was holding was neither abolished, nor upgraded and that before issuing the aforesaid notice of termination of his service, he was not given any opportunity.

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3. In the first Counter affidavit filed on behalf of the respondents by Sri Shyam Dhari, Senior Superintendent Of Post offices, Allahabad it was submitted that initially, only two candidates were sponsored by the Employment Exchange. Since in accordance with the rules, at least 3 candidates are to be sponsored an open advertisement was issued on 4.1.1993. Five candidates including the applicant applied in response to the advertisement. Out of these candidates, the applicant belonged to the Scheduled caste community which is a preferential category. He had obtained 49.2% marks in the High School Examination and since he had fulfilled all the other conditions eligible for the post of EDBPM he was given preference over the others and was appointed on the post. However, on review the Post Master General, Allahabad found the appointment of the applicant irregular and cancelled his appointment following which, the applicant was served with the impudic notice for termination of his service under rule 6(a) of Extra-Departmental Agents (Contract and Service), Rules 1964 (hereinafter referred to as the 'Rules'). This Counter affidavit also indicates reasons for termination of the applicant's services by stating that the applicant did not possess landed property. It was further indicated that a review was undertaken by the Director Of Postal Services (D.P.S), Allahabad in the office of Post Master General, Allahabad on receipt of the representation from one Sri Rajendra Kumar Yadav, against the appointment of the applicant as EDBPM. The applicant filed rejoinder affidavit and reiterated his contentions

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in O.A., and denied the contentions of the respondents in the counter affidavit that he did not have any landed property. He enclosed a sale-deed to indicate that he was in possession of a piece of land.

4. The respondents thereafter, filed another Counter affidavit through Sri R.S.Yada, Assistant Director Postal Services, Allahabad. In this counter affidavit, the reason for holding the applicant's appointment as irregular was specifically pointed out. It was submitted that the applicant's income was from Daily Wages. Such income could not be considered adequate for the purposes of the appointment to the post of EDBPM. <sup>in accordance with the</sup> letter dated 9.3.1993, issued by the Chief Post Master General, a copy of which, was placed as (annexure CA-1). It was further stated that the matter was enquired through the Assistant Superintendent Of Posts, who in his report dated 6.4.1993, [a copy of the report is Annexure (CA-II)] stated that the applicant did not have any landed property, or any other immovable property. Only source of income was Daily wages and through tuitions. <sup>Since</sup> Such income cannot be treated as income for the purposes of appointment of EDBPM. In terms of the aforesaid letter of the C.P.M.G., DPS, who reviewed the appointment, cancelled the appointment of the applicant. In a further rejoinder affidavit filed by the applicant, it was reiterated that the applicant possessed landed property, <sup>in support of</sup> which, he filed a copy of the sale-deed with the earlier rejoinder affidavit.

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5. We have heard the learned counsel for both the parties and perused the records. There is no dispute that the applicant was one of the candidates, who applied in response of an open advertisement and having been considered to have fulfilled all the eligibility criteria for the appointment of EDBPM, he was selected for the post in the preferential category of scheduled caste candidates. Subsequently, however, on review of the appointment file, the DPS noticed that the applicant's income was from tuition and daily wages and that he did not possess any landed property, or any immovable property. It was therefore, concluded that he did not have any adequate source of income as required for the purpose of holding the office of EDBPM. Therefore, his appointment was considered to be irregular and hence, cancelled by DPS. The question which therefore, falls for our consideration is whether the alleged irregularity shall justify cancellation of the appointment of the applicant and the consequent issue of termination of his service without giving any opportunity.

6. Rule 6(a) of the Rules provides that the services of Extra Departmental Employee, who has already rendered more than 3 year's continuous service from the date of his appointment shall be liable to termination at any time by a notice of one month by the Appointing Authority. It can be easily seen that this rule is somewhat analogous to the rule 5 of the

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Central Civil Service (Temporary Service) Rules, 1965  
Thus, the termination of the service of an employee  
Under rule 6(a) of the Rules is in the nature of  
simplicitor discharge. Departmental instructions  
below the rule indicates that no reasons should be  
indicated in the order of termination of service.  
However, it has been stated that the termination of  
the service under this rule may normally be considere-  
-d only in the case of unsatisfactory service, or  
for administrative reasons unconnected with the  
conduct.

7. From the averments made we could not discern  
anything to indicate that the applicant's services  
were found unsatisfactory, or that his conduct was  
in any way reprehensible. Therefore, termination of  
the applicant's services must be for reasons  
unconnected with his conduct. The respondents  
themselves have disclosed the reasons in their  
second counter affidavit filed by the Assistant  
Director Postal Services. It appears therefrom that  
the cancellation of his appointment was due to the  
fact that the DPS found that he did not have an  
adequate source of income in the circumstances which  
have already been indicated (supra).

8. The extent of powers of the competent authority  
in terminating the services of an ED Employee under  
Rule 6 of the EED (Conduct and service) Rule, 1964  
has been subjected to 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

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vested in the competent authority under this Rule. Infact, inview 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 if the irregularity is such as would render the appointment void ab-initio, the appointment itself can be cancelled and the services of the employee can be terminated by a simplicitor order without giving any opportunity to the employee to show cause. If, however, there is no patent irregularity in 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.

9. We have seen from the annexures to the pleadings that the applicant was appointed by a letter dated 27.4.1993. By that time, a report of the Assistant Superintendant Of Posts dated 6.4.1993 was already available to the appointing authority. The appointing authority did have knowledge that the applicant's income was from giving tuitions and by working as daily wager. They however, must have considered the means of livelihood as adequate and therefore, selected him and appointed him on the post of EDBPM.

10. Section-III of the Rules lays down instructions governing method of recruitment of Extra departmental

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employees. One of the criteria for the appointment on post of EDBPM is that a candidate must have adequate means of livelihood. Even if, therefore, a candidate fulfills all the other criteria including educational qualifications, he can be rejected on the ground that he does not have adequate means of livelihood. These instructions which have been held to have statutory force of law in the matter of recruitment of Extra-Departmental Agents by a full bench of the Tribunal in the case of ' S. Rungaraya ~~Kutlu~~ VS. Sub-Divisional Inspector (Postal) and others' (1995) 30 ATS 473(FB) do not specify as to what should be the measures of adequacy in the matter of means of livelihood. It has nowhere been stated therein that the possession of landed property is a sine qua non of adequate means of livelihood. However, we have also seen that C.P.M.G., U.P.Circle, Lucknow issued a clarification in this regard through his letter dated 9.3.1993. It was stated therein that the income from Daily wages should not be treated as income for the purpose of the appointment of EDBPM also indicating reasons for taking such a stand. This clarification of C.P.M.G. is in the nature of executive instructions and since this does not find a place in Sec.III of the Rules in which, the executive instructions issued by D.G.Posts are compiled, we cannot hold that the aforesaid instructions issued by C.P.M.G. would have the force of statutory law and that in contravention of such instructions would make the appointment ab-initio void. In any case, the Appointing Authority had in his possession all the materials relating to the source of income of the applicant at the time he was considered fit for the post. Therefore, We do not see any patent irregularity in the appointment of the

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applicant as would render it liable to cancellation without any opportunity to the appointee.

11. We have also noticed that the appointment was cancelled by the DPS on a review. In the case of 'Amar Singh Vs. Union of India and Others' 1995(1)ATJ 64 Chandigarh Bench of the Tribunal inter alia held that the appointing authority being senior Superintendent of Post offices, an authority administratively higher than the appointing authority had no powers of review in the matter of appointments made by the appointing authority. This proposition of law was also propounded by the Full Bench of Hyderabad bench of the Tribunal in the case of 'A.Ambujakshi. VS. Union Of India and Others' in O.A. No. 57/91. This principle of the law has been consistently followed by several benches including Allahabad Bench of the Tribunal. The respondents have specifically admitted that the appointment was reviewed by DPS earlier. After cancellation of the appointment, notice issued by the appointing authority was consequential action. The cancellation of the appointment was actually made by the D.P.S. In view of the principles of law as indicated above, the action of the DPS in reviewing and cancelling the appointment of the applicant is wholly irregular. Therefore, the consequent notice of termination of the service of the applicant which proceeded on an irregular on the part of DPS cannot also be sustained.

12. In view of the foregoing, the impugned notice dated 28.4.1995 is quashed. An interim order was granted at the time of admission. Presumably, the applicant was working on the post of EDBPM by virtue of interim order. If so, the applicant would continue to hold the post of EDBPM until his superannuation.unless his services are earlier terminated in a lawful manner.

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In case, however, his services were terminated, he shall be reinstated forthwith on the post of EDBPM and he shall be deemed to have continued on the post during the intervening period <sup>if</sup> ~~as~~ his services were never terminated. He shall, however, not be paid back-wages. The parties shall bear their own costs.

J. L. Mura

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