

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.123 OF 2000

ALLAHABAD THIS THE 13<sup>th</sup> DAY OF October, 2004

HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

HON'BLE MR. S. C. CHAUBE, MEMBER-A

Anand Swaroop,

aged about 30 years,

S/o Shri Jai Pal Singh, R/o

Village & Post -Lakarhat,

District-J.P. Nagar (Jyotiwaphoole Nagar)-244501

. . . . .Petitioner

( By Advocate Shri R. Verma )

Versus

1. Union of India,

through the Secretary,

Ministry of Communication,

New Delhi.

2. The Senior Superintendent of

Post Offices, Moradabad Division,

Moradabad-244001.

. . . . .Respondents

( By Advocate Km. S. Srivastava)

— O R D E R —

HON'BLE MR. S. C. CHAUBE, MEMBER-A

The applicant has impugned notice of  
termination of service dated 24.01.2000 issued by  
Senior Superintendent of Post Offices, Moradabad  
Division, Moradabad (Respondent no.2) and further  
a direction to respondent no.2 to reinstate the

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petitioner in service with full backwages and continuity of service.

2. Briefly, the facts, as per the applicant, are that on 16.04.1999 the respondent no.2 issued a requisition to the District Employment Officer, Moradabad calling for names of suitable candidates for appointment on the post <sup>of</sup> Extra Departmental Branch Post Master, Lakarhat District Moradabad (Annexure-2).

3. The notice also provided the facility of open market candidates directly applying to respondent no.2 for the above mentioned post. The aforesaid post was <sup>Reserved</sup> ~~referred~~ for the O.B.C. category and the petitioner himself being an O.B.C. candidate fulfilling all the eligibility criteria applied directly vide his application dated 10.05.1999. After scrutiny of merits of each candidate, the petitioner was found most suitable fulfilling all the eligibility criteria and was duly appointed on the post of Extra Departmental Branch Post Master, Lakarhat, District-J.P. Nagar (Moradabad) in regular and substantive capacity vide appointment letter dated 29.09.1999 (Annexure-4). It <sup>was</sup> ~~is~~ however, clarified to the applicant that his employment as Extra Departmental Branch Post Master shall be in the nature of contract liable to ~~the~~ be terminated by either side by notifying the other

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in writing and his conduct and service shall also be governed by P&T EDAS (Conduct & Services ) Rules, 1964, as amended from time to time. An option was further given to the applicant that if these conditions were acceptable to him he could communicate his acceptance to the respondent no.2.

4. Accordingly the petitioner took charge of the aforesaid post from one Shri Sompal Singh on 07.10.1999, Since then the petitioner has been working satisfactorily without any complaint. On 24.01.2000 the respondent no.2 issued a notice to the applicant that his services shall stand terminated after one month from the date of service of the notice. According to the petitioner the notice was totally illegal, arbitrary and un-warranted. He has further stated that his was the regular appointment made after following a process of selection under the Rules and as such the petitioner has a right to continue on the post till the normal age of superannuation and further that he can only be removed against proven mis-conduct after a departmental enquiry giving him full opportunity of being heard. In the present case, no opportunity of personal hearing has ever been given to the applicant and straightaway the impugned notice of termination has been passed. In support of his contention the applicant has cited the judgment of the

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Hon'ble Supreme Court in Basudev Tewari's case, reported in 1999(1) A.T.J., 226. In this view of the fact no opportunity of hearing before issuing the impugned notice of termination has been given to the petitioner, there appears to be, as stated by the applicant, no valid reasons before respondent no.2 which may warrant termination of the services of the petitioner. Further since the appointment of the petitioner was done after completing due process of selection the petitioner has a right to continue on the post till his superannuation.

5. The respondents on the other hand have contended that in order to fill up the post of Extra Departmental Branch Post Master, Employment Exchange, Moradabad was requested to sponsor candidate and a copy of notice was also issued to Pradhan Gram Sabha and others. Three candidates out of five and nine direct candidates applied for the post. After verification of all 12 applications the applicant who had secured 216 marks out of 500 in High School Examination belonging to OBC category besides fulfilling all the conditions for appointment was appointed vide memo dated 29.9.1999 and <sup>was</sup> handed over charge <sup>by</sup> to EDBPM on 06.10.1999 after ~~noon~~ noon.

6. One Smt. Shashi Bala was also candidate <sup>and</sup> for the post of EDBPM/had secured 335 marks out of

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600 in the High School Examination could not be selected as she belonged <sup>to a place at</sup> a distance of 10kms away from the main village and has no proper space for keeping the Post Office at main village, nor had she given any declaration that she will reside at the main village after selection to the post of EDBPM and hence she was not selected. Aggrieved by this <sup>development</sup> ~~in~~ <sup>for</sup> ~~delivery~~ Smt. Shashi Bala represented to the Post Master General, Bareilly who called for the report and ultimately on review of the file, passed orders for cancellation of appointment orders of the petitioner vide letter dated 26.11.1999 and directed the respondent no.2 to appoint Smt. Shashi Bala after issuing termination notice to the petitioner. While the respondents have admitted that the termination of service on the applicant was issued and served on the applicant on the direction of Post Master General, Bareilly, they have cited Rule 6 of P & T EDAs (Conduct and Service) Rules, 1964 which provided that services of an Extra Departmental Employees having less than 3 years service can be terminated by issuing one month's notice or one months pay in lieu thereof. They have further contended that reasons for termination are not to be disclosed as provided under Rule 6 of the EDA's (Conduct and Service) Rules 1964.

7.

We have heard the counsel for the parties

and perused the pleadings as well.

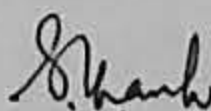
8. It is indisputable that the appointment of the applicant was on contractual basis and he had duly submitted himself to the terms and conditions attached with such appointments. The contractual appointment, it was clarified to the applicant, was liable to be terminated either by the applicant or by the respondent no.2 by notifying the other in writing. Further his Conduct and service was to be regulated by P&T ED's (Conduct and Service) Rules 1964. By joining the post of ED8PM the applicant ~~indirectly~~ <sup>in</sup> submitted himself to the Rules and Regulations <sup>in</sup> ~~and~~ <sup>en</sup> ~~enshrined~~ <sup>shrined</sup> in EDA (Conduct and Service) Rules. According to Rule 6, 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 <sup>be</sup> ~~terminated~~ <sup>terminated</sup> at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee. In accordance with the departmental instructions of D.G.P & T it was stipulated that while terminating the services of an ED Agent under Rule 6 (Supra) no reasons should be indicated in the orders. It is further laid down that there shall be no right to appeal against an order of termination of service. However, an order of termination can be reviewed within a period of six


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months under Rule 16 by any authority immediately superior to the authority passing the orders. In the present case the termination of service of the applicant was issued vide order dated 24.01.2000 by respondent no.2 while there is a provision for revision in the ED (Conduct and Service) Rules 1964. It is not the case of the applicant that he submitted a revision against the order of termination of his services. The Judgment of Hon'ble Supreme Court cited in Basudeo Tiwary's case (Supra) does not render help to the applicant.

9. It would thus, appear that the order of termination of the service of the applicant has been passed by the competent authority as per provisions contained in ED (Conduct and Service) Rules 1964. The applicant has not been able to avail the facility <sup>of</sup> revision available to him under Rule 16 of the above aforesaid rules for which he has none except himself to blame. We have not come across any illegality or irregularity or infirmity of law in the present case.

10. The O.A. of the applicant is bereft of merit and is liable to be dismissed. Accordingly, the O.A. is dismissed with no order as to costs.

  
Member-A

  
Member-J