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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.118/92

Date of decision : 9.2.2000

Mr. Patoliya Lkila Naran : Petitioner [s]

Mr.K. C. Bhatt : Advocate for the petitioner [s]

Versus

Union of India and Ors : Respondent [s]

Mrs. P. J. Davawala : Advocate for the Respondent [s]

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THE HON'BLE MR.V.RAMAKRISHNAN

VICE CHAIRMAN

THE HON'BLE MR. P. C. KANNAN

MEMBER [J]

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? ~
2. To be referred to the Reporter or not ? ~
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? ~

Patoliya Lila Naran,
Serving as E.D.A.,
Now under termination,
Residing at : Akshayagadh,
Keshod.

= Applicant =

Advocate : Mr. K. C. Bhatt

Versus

1. The Union of India,
Notice to be served through
The Department of Post,
Ministry of Communication,
New Delhi.
2. The Superintendent of Post Offices,
Junagadh Division,
Junagadh.

= Respondents =

Advocate : Mrs. P. J. Davawala

**ORAL ORDER
O.A 118 OF 1992**

Date : 09.02.2000

Per Hon'ble Shri. V. Ramakrishnan : Vice Chairman.

We have heard Mr. K. C. Bhatt for the applicant and Mrs. Davawala for the respondents.

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2. The applicant was engaged on regular basis as ED BPM in Panchala Branch office on 16.02.88. He is aggrieved by the order of the competent authority dated 27.09.1990 as at Annexure A which terminates his service with immediate effect in exercise of the powers conferred under Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964.

3. Mr. K. C. Bhatt for the applicant says that the applicant was engaged on regular basis and there has been no complaint with regard to his work etc. However the department had terminated his service without any notice. He further says that the respondents have branded the applicant as inefficient and negligent disregarding the fact that he has put considerable period of service and according to him the action is arbitrary.

4. Mr. K. C. Bhatt submits that following the decision of the Hon'ble Supreme Court in Krishna Prasad Gupta's case, this Tribunal has been holding for the last few years that it has no jurisdiction to entertain matters pertaining to the I.D. Act. This decision was rendered on Oct 8th, 1995. He states that the present O.A was filed on 1992 and had it been taken up before 1995, The Tribunal could have gone into the ground regarding violation of the provisions of the I.D. Act. Mr. Bhatt contends that the applicant would forego back wages and all that he requests is that he should be taken back in service in any post. Mr. Bhatt also states that the applicant was not given notice and it is contrary to the Rule-6 of EDA (Conduct & Service) Rules.

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5. Mrs. Davawala for the respondents brings out that the impugned order has been issued under the Rule-6 of the EDA (Conduct & Service) Rules. It is an innocuous order and does not cast any stigma as it does not refer to any negligence or un-satisfactory performance of duty. All the same the intention of the rule is that the employee would be assessed for some time and that period is called as probation. She says that there are rulings of the Supreme Court that if the probationer does not work satisfactorily during the probation period, it is open to the employer to terminate the probation and discharge him from service. She says that the termination order is innocuous and it was not done arbitrarily or in a mala fide manner as the applicant was given some warnings about his un-satisfactory working. It was noticed that he is not doing his work properly and on the other hand his sister was working and not the applicant himself. She submits that the subsequent averment in para 5 of the reply statement have not been rebutted by the applicant even in the rejoinder statement. She states that as the applicant's position is that of a temporary servant prior to completion of three years of service and that his work was not satisfactory the department had taken into account the rules as it existed then and terminated his service. Mrs. Davawala says that the impugned order was issued on 27th Sept'90 and the rule as it existed then did not require issue of any notice to empower the competent authority to terminate the service of an employee who has not rendered more than three years of continuous service from the date of his appointment at any time without notice. The requirement to give notice was imposed for the first time by the amended rules which was promulgated in February'93. She further contends that action of the department is in order and does not call for interference.

6. We have carefully considered the submissions of both counsel. We may at the out set mention that so far as the contention regarding non-compliance of the provision of Section 25 (f) of the I. D. Act, the same cannot be gone into by this Tribunal in the light of the directions of the Supreme Court in Krishna Prasad Gupta's case. It is not possible at this stage to anticipate as to what might have happened if the O.A had been dealt with at the admission stage itself. The fact is that when it has come up for hearing, the law which has been laid down by the Supreme Court clearly stipulates that this Tribunal cannot entertain matters pertaining to I.D. Act. If the applicant is of the view that he has a strong case, on that account, it is for him to have taken steps and approach the appropriate forum. We shall deal with the ^{other} ~~two~~ grounds. The first contention is that the impugned order is penal in nature and should not have been passed without holding an inquiry, and secondly, no notice was given before termination of the service of the applicant.

7. So far as the first aspect is concerned, the department has taken action in terms of Rule - 6 of the Rules which at the relevant time read as follows :

The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice.

This rule empowers the authorities to terminate the service of a person who ^{has} put in more than three years of service without any notice. We find that the impugned order does not cast any stigma against the applicant. The fact however is that the

department found his work to be un-satisfactory. On applying the analogy of the probationer, the service can be terminated only when the work is not satisfactory or the person is negligent and on the basis of the over all assessment of the concerned employee. It is not the case here that some extraneous matter like any allegation out side the course of his work was taken into account. In the present case the department on the basis of inspection conducted by some senior officers came to the finding that the applicant was not discharging the duties satisfactorily and according to them his sister was holding the charge. This allegation has not been met in the rejoinder statement. We therefore, reject the statement that the impugned order is a penal order.

8. The other contention of Mr. Bhatt during the hearing was that no notice was given before the orders were passed. We find that the relevant rules which was reproduced earlier was amended in 1993. We find that the department has acted as per the rules then in force at that time. The vires of the earlier rules had not been challenged. We thus hold that the department has acted in exercise of the powers available to them under Rule-6 of the Rules and as they came to an assessment that the work of the applicant was not satisfactory and as he has put in only 1½ years of service they have terminated his service.

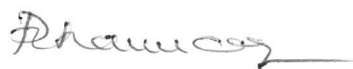
9. Mr. Bhatt has submitted that the applicant may be taken back in service and that he would forego his back wages. So far as this aspect is concerned, we hold that the order under rule - 6 is not a bar against future employment. It is open to the

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- 7 -

applicant to make any application for vacancies which may arise in the concerned organisation and if the department finds that he has improved meanwhile and is now fit to be taken back in service, they shall also consider his application along with others and act in terms of the relevant rules and instructions.

10. Subject to the above observation, we hold that it is not a fit case for us to interfere with the action of the department. The O.A is dismissed with no orders as to costs.



(P. C. Kannan)
Member (J)



(V. Ramakrishnan)
Vice Chairman

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