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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Date of Decision : **16.7.2003**

O.A. No.128/2003.

Pukhraj S/o. Shri Padma Ram Meghwal, aged about 36 years, by caste Meghwal, R/o Village Bola Kuda, Post Pilowani, Via Khinwsara, Tehsil Desuri, District Pali (Rajasthan).

... Applicant.

V e r s u s

1. Union of India, through the Secretary to the Government of India, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. The Superintendent of Post Office, Pali Division, Pali, Marwar.
3. The Mail Oversier-II, Postal Department, Marwar Junction Sub Division, Marwar.

... Respondents.

Mr. Sangeet Purohit, counsel for the applicant.

CORAM

Hon'ble Mr. R.K.Upadhyaya, Administrative Member,
Hon'ble Mr. J.K.Kaushik, Judicial Member.

: O R D E R :

(R.K.Upadhyaya, Administrative Member)

This application is preferred against the order dt. 29.6.2002 issued by Mail Oversier-II, Marwar J. (Sub-Div) passed in pursuance of order No.F.7-11 Rule 8 dated 28.6.2002 passed by Superintendent of Post Office, Pali.

2. The applicant claims that he is permanent resident of Village Bolakuda (Pilowani), Tehsil Desuri, District Pali. He

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claims that being fully qualified, he was appointed on the post of Extra Departmental Branch Post Master (EDBPM for short) and accordingly took over charge on 2.8.1999 from one Shri N.S.Panwar. It is further stated by the applicant that he is fully qualified and is eligible therefore, subsequent termination of his service by impugned order w.e.f. 29.6.2002 was not justified. The Learned Counsel of the applicant invited attention to the Judgment of this Tribunal in OA No.229/2002 Ogar Mal Bhil Vs. Union of India & Ors. dt. 28.5.2003 wherein the termination of service of EDBPM was quashed.

3. After hearing the Learned Counsel of the applicant at some length, we find that there is no *prima facie* case made out in favour of the applicant. There does not appear to be regular selection of the applicant on the post of EDBPM in the year 1999. As a matter of fact, no appointment order has been placed for our perusal. The only charge report dt. 2.8.1999 has been filed as (Annexure – A-1) to the O.A. This does not contain the terms of appointment of the applicant. This also does not indicate how the applicant was selected for the said post. The Learned Counsel of the applicant laid much emphasis on the provisions contained in 6 (a) of Extra Departmental (Conduct and Service) Rules, 1964 which provides as under :

Termination of Services :

(a) 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 termination at any time by a notice in writing given either by the employee or by the appointing authority to the employee.

Ch. 2 in 2003

(b) The period of such notice shall be one month.

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his Basic Allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

In view of the provisions mentioned above, *prima facie*, the applicant should have been given one month's notice or a sum equivalent to the amount of his basic allowance plus D.A. for the period of notice. It appears that the applicant has not made any such claim. We are also not aware whether any prior intimation or notice was given to the applicant or not. In the circumstances, ends of justice will be served if the applicant is directed to make a representation to Respondent No.2 for claim of basic allowance plus D.A. for the period of notice. We order accordingly. The applicant may submit a representation along with a copy of this order to Respondent No.2 within a period of one month from the date of receipt of copy of this order. If such a representation is made, the Respondent No.2 is directed to consider the same in accordance with Rules. In case, any basic allowance and D.A. etc. is admissible to the applicant in lieu of notice (if not given), the same may be paid within a period of two months from the date of receipt of such a representation. In case, the same is not admissible to the applicant for any reason whatsoever, the Respondent No.2 is directed to pass a speaking



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order under intimation to the applicant within the same period of two months.

4. Before parting, it may be relevant to note that this Tribunal in O.A. No.229/2002 (supra) has observed as follows:-

"10. Rule 6 of the Post and Telegraph Extra Departmental (Conduct and Service) Rules, 1964, provides that 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 termination 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. The period of such notice shall be one month.

10.1. It is admitted position that the applicant had rendered more than three years continuous service. Therefore, the services of the applicant could not be terminated even under the provisions of Rule 6. As a matter of fact, by rendering more than three years continuous service, the applicant had attained higher status than that of an employee whose services could be terminated under Rule 6. He could be removed from service by following the procedure under Rule 7. It is relevant to point-out that it is not the case for the respondents that the posts on which the applicant was working has been abolished.

11.

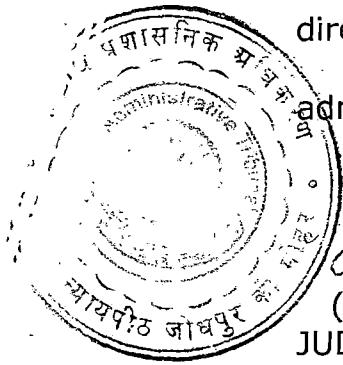
12. For the reasons stated above, it is held that the applicant had completed more than three years service and his services could not be terminated by way of order Annexure A/1. The order, being illegal, is not sustainable in law."

From the observations contained in the order of the Tribunal, it is clear that the case before the Bench was in respect of a person who had rendered more than three years service and was not governed by the provisions contained in Rule 6 of the Extra Departmental (Conduct) Rules, 1964. Therefore, the decision in that case does not apply to the facts of this case.

5. For the reasons mentioned in the preceding paragraph, this application is disposed of as per the observations and

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directions contained in the preceding paragraphs at the admission stage itself.



J.K. KAUSHIK
(J.K. KAUSHIK)
JUDICIAL MEMBER

R.K. UPADHYAYA

(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

B.

Copy to D.G.O. & C.R.P.C. 07/03
R.D.S. Panel sent to R.D.S. 23/3/03
R.D.S. Panel sent to 186 to 188 Dr. 23/3/03
R.D.S. Panel sent to 186 to 188 Dr. 23/3/03
AD Panel for R.D.S.
AD Panel for R.D.S.
R.D.S. Panel sent to 186 to 188 Dr. 23/3/03

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Part II and III destroyed
in the presence of 23/3/03
under the supervision of
Section Officer (1) as per
order dated 13/2/03

Section Officer (1) Record