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In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur
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Date of Order : 7/11/2003

O.A. NO. 164/2002

Neeraj Kumar S/o Shri Veer Bhan By Caste Arora aged 19 years, Resident of Village Kundlanwala District Sri - Ganganagar at present posted as Gramin Dak Sewak, Branch Post Master Kundlanwala, District Sri Ganganagar.

.....Applicant.

versus

1. Union of India through Secretary, Ministry of Communication, Department of Postal Services, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Sri Ganganagar, Sri Ganganagar, District Sri Ganganagar.

.....Respondents.

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C O R A M :

Hon'ble Mr. A.P. Nagrath, Administrative Member
Hon'ble Mr. J.K. Kaushik, Judicial Member

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Present :

Mr. B.D. Mittal, Advocate, for the applicant.
Mr. Vineet Mathur, Advocate, for the respondents.

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ORDER

(PER MR. J.K. KAUSHIK, JUDICIAL MEMBER)

Shri Neeraj Kumar has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, assailing the notice-cum-termination order dated 14.5.2002 (Annex.A/1)

[Signature]

2. The brief facts of the case as narrated in the O.A. are that the applicant was given the charge of the post of Gramin Dak Sewak (erstwhile E.D.A.), Branch Post Master Kundlanwala from one Smt. Krishna Devi, on 24.7.2001. The post fell vacant on account of un-conditional resignation of Smt. Krishna Devi. The charge was given through a Charge Report (Annex.A/2). The applicant submitted a letter dated 31.8.2001 and requested for adding his name in A-Roll. He was also asked to submit Feudality Bond which was submitted by him.

3. The further case of the applicant is that his services were sought to be terminated by the 2nd respondent through-
notice-cum-termination order dated 14.5.2002 purported to be issued in exercise of power under Rule 8 of the Gramin Dak Sewak (Conduct & Employment) Rules, 2001 (for brevity hereinafter referred to as the Rules). The notice was for a period of one month. Despite the applicant fulfilling the requirement for continuing on the said post, the notice of termination has been issued arbitrarily without disclosing any reason and in clear violation of the principles of natural justice. The same is bad on the face of it and the satisfactory services rendered by him have been ignored. The grounds on which the O.A. has been filed are inter-mixed with the facts.

4. The respondents have contested the case and have resisted the same. The case as set-out on behalf of the respondents is that the applicant was appointed on provisional basis on 24.7.2001 and thereafter a regular





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selection was held. In such selection 19 candidates had applied and out of which the persons who were higher in merit, were not given appointment by the then Superintendent of Post Offices. There was a complaint and on an investigation, it was found that ~~selection~~ of applicant was irregular and, therefore, the impugned notice was given in accordance with the rules. The applicant has not submitted any representation against the said notice and his very appointment has been irregular and de hors of the rule. The further ground of defence of the respondents is that the very appointment of the applicant on 24.7.2001 was absolutely on stop-gap-arrangement on temporary basis and his services have been terminated as per Rule 8 of the Rules. Since he did not complete three years of regular service i.e. he rendered service of less than a year, there is no illegality or arbitrariness in the action and the O.A. deserves to be dismissed.



5. We have heard the learned counsel for the parties and have carefully perused the pleadings and records of the case.

6. The learned counsel for the applicant has submitted that the applicant was duly selected for the post of EDBPM and he has an indefeasible right to hold the post inasmuch as there is nothing adverse against him and his services have been satisfactory. Even though, the respondents have not issued an appointment letter to him but after selection even his provisional appointment ought to have been considered as a regular appointment. He has further

submitted that the services of EDBPM who is duly selected and deemed to be appointed on regular basis, cannot be terminated by invoking the provisions of Rule 8 of the Rules.

The learned counsel for the applicant has placed heavy reliance on a judgement of Rajasthan High Court , Jaipur Bench, in Anil K. Goyal Versus The Collector, Ajmer & Ors. reported in WLC (Raj.) UC 2000 Page 122, and has submitted that the ratio of the judgement squarely covers the controversy involved in the present case and this case should be allowed in favour of the applicant since there has been denial of principle of natural justice.

On the contrary, the learned counsel for the respondents has submitted that the applicant has no indefeasible right and his appointment was only provisional. His irregular selection also would not give any right to him to hold the post. He has submitted that the selection to the post of EDBPM is required to be made on the basis of the merit to be prepared as per the marks obtained in the matriculation examination and there were number of persons who had secured more marks than him and thus, were higher in merit. But ignoring their candidatures the applicant was declared as selected by the then Superintendent of Post Office. The applicant has not been issued with any order for regular appointment and his appointment continues to be provisional and temporary basis. Even otherwise, there is a specific provision under Rule 8 of the Rules wherein it has been provided that services of a Gramin Dak Sewak can be



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terminated under Rule 8 of the Rules, which does not make any distinction regarding ~~a~~ regular appointee or a provisional or temporary appointee. In the present case, the applicant did not complete even one year of service and he was issued one month's notice as per the rules. There is absolutely no infirmity, illegality or arbitrariness on the part of respondents in issuance of the termination order and the applicant does not have any case for interference by this Tribunal.

7. We have considered the rival contentions laid on behalf of the parties.

8. At the very out-set, to appreciate the controversy it would be necessary to examine the provisions of the rules. Rule 8 of the Rules is relevant and the contents thereof are extracted as under :-

"8. Termination of Employment :-

- (1) The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the appointing authority or by the appointing authority to the Sevak ;
- (2) The period of such notice shall be one month.

Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness



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Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment or as the case may be, for the period by which such notice fall short of one month.

NOTE: Where the intended effect of such termination has to be immediate, it should be mentioned that one month's Time Related Continuity Allowance plus Dearness Allowance as admissible is being remitted to the Sevaks in lieu of notice of one month through money order."

A perusal of the aforesaid rules provides that if an employee has not completed more than three years continuous employment from the date of his appointment, his employment shall be liable to termination at any time by a notice in writing given either by employee or by the appointing authority and the notice shall be of one month. There is no mention as to the appointment should be regular or on temporary basis. It only mentions that it should not be more than three years continuous employment. Thus, in the present case, making distinction as regards the nature of the employment of the applicant, would be only an academic exercise. This case is fully covered by Rule 8 of the Rules since the applicant has not completed more than three years continuous service as on the date of the notice.

A similar controversy has been settled in O.A. No. 16/2002 Mangilal Sharma versus UOI & others, decided by this Tribunal on 3rd May, 2002, wherein, Rule 6 of the E.D.A. (Conduct) Rules (similar to the Rule 8 of



the Rules). has been dealt with and the termination therein, if any was held to be in order. We have no reason to take a different view, rather in agreement to the proposition law held therein.

9. Next, a great emphasis has been laid on behalf of the applicant that there has been infraction of the doctrine of audi alter partem inasmuch as the principle of natural justice has not been followed. In the present case, as per the provisions of the rules, a notice of one month was given to the applicant and he even did not reply to the same or sent any representation in protest of the action of the respondents. We are unable to countenance the submissions of the learned counsel for the applicant. The case which has been cited by the learned counsel for the applicant is distinguishable and has no bearing or relevance to the controversy involved in the present case inasmuch as the present case is not that of completing of probation period satisfactorily but here applicant was not appointed on probation. Therefore, the same stands repelled.

10. As regards the reasons for termination of the services of the applicant, Rule 8 of the Rules does not envisage that any reasons are to be communicated. Interestingly, in the present case none of the parties have submitted the appointment letter in respect of the applicant. However, the applicant was appointed on 24.7.2001 and it is not in dispute that the selection proceedings for the post of EDBPM were initiated only in August 2001. Thus, question of giving any appointment on regular basis in the month of July 2001 did not arise. It is also not the case of the applicant that after selection any

appointment order on regular basis was at-all issued. Merely, a person has been placed on a select panel, does not acquire any right to appointment. On this count also, we do not find any infirmity in the action of the respondents. Therefore, there is no force in this O.A. and no judicial interference in the impugned order is called for.

11. In view of the foregoing discussions, provisions of rules and our observations, the Original Application is devoid of any merit and the same deserves to be dismissed and is dismissed accordingly. However, we pass no order as to costs.



(J.K. Kaushik)
Judl. Member


(A.P. Nagrath)
Admv. Member

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