

(A.Y.)

Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

CIRCUIT BENCH AT LUCKNOW.

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Registration (O.A.) No. 6 of 1990 (L)

Dinesh Prasad Yadava .... Applicant.

Versus

Union of India & others .... Respondents.

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Hon'ble Justice K. Nath, V.C.  
Hon'ble K.J. Raman, A.M.

This application, under Section 19 of the Administrative Tribunals Act, 1985, is for quashing the order dated 21.12.1989 (Annexure '2') whereby the applicant's services as ED BPM, Paharpur Maheshpur, were terminated with immediate effect.

2. By the order dated 7.9.1988 (Annexure '1') the applicant was appointed as ED BPM after selection on certain candidates being sponsored by the Employment Exchange. The recital in para 2 of the counter affidavit indicates that the file of appointment was called for by the Director of Postal Services, Lucknow Region, Lucknow on 10.11.1989 and it was found that Shakti Ali, one of the candidates, was more deserving than the applicant, Dinesh Prasad Yadava, because the former had achieved 42.8% marks against the latter's only 40.16% marks in the High School examination. It is stated that other qualifications were equal. It is on this basis that the appointment of the applicant was ordered to be cancelled and in compliance thereof the Superintendent of Post Offices passed the impugned order (Annexure '2') terminating the services, probably under Rule 6 of the Post & Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964.



3. It is, however, admitted that no opportunity was given to the applicant before terminating his services. In view of the fact that the applicant had, admittedly, joined the post of ED BPM in consequence of the appointment order dated 7.9.1988, he had acquired enough interest in the appointment to entitle him to a show-cause notice before his services could be terminated only on the ground that some other person was more suitable in view of the latter's higher marks in the High School examination. It is noticeable that there is no allegation of any act of default by the applicant in the course of his employment. What is considered to be inappropriate ~~inconsist~~<sup>of</sup> precedent academic history. Our attention has/been invited to any provision in the Rules that for the purpose of judging suitability, the marks obtained academically are the determinative factors. The power to terminate services without reasons or without an opportunity have to be exercised in a fair manner and where such termination is not on account of unsuitability for the post, an opportunity cannot be done away with. There is ~~the~~<sup>a</sup> distinction between suitability for holding a post and suitability for selection to the post. We are of the opinion that fairness and justice demand that before the applicant's services could be terminated, an opportunity to show-cause should have been given to him.

4. In view of above, the petition is allowed. The impugned termination order dated 21.12.1989 (Annexure '2' to this petition) is quashed. The applicant shall be reinstated with effect from the date he reports for duty. It will be open to the competent authority to examine the

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question of the applicant's appointment in accordance with law and rules, after giving an opportunity to the applicant to show-cause against the proposed action.

*MEMBER (A)*

MEMBER (A).

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VICE-CHAIRMAN.

Dated: January 29, 1990.

PG.