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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
CIRCUIT BENCH ; LUCKNOW

Registration O.A.No. 275 of 1991(L)

Dwarika Prasad Tiwari Applicant
Vs.
Union of India & Others Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

Out previous judgment in respect of the permanent incumbent of the office has been made the subject matter to interpretation and basis of claim made by the applicant. The dispute^h in respect of the Extra Departmental Branch Postmaster (EDBPM) Silhaur, District Barabanki. One Shyam Narain Pandey was the Branch Post Master of the said Post Office. He was removed by the Superintendent of Post Offices on the basis of circular that those Extra Departmental Agent were working as School Teachers may be removed from service. There is a complaint against them from the public of Gramsabha that the work which is done simultaneously is not satisfactory. It appears that on this basis the services of Shyam Narain were terminated. Shyam Narain Pandey challenged the said order before Central Administrative Tribunal as the matter came too early it was dismissed. We found that although there were some overlapping^{was} in the working of the applicant as Teacher and Extra Departmental Branch Postmaster, but the action was not taken against the other persons^{and} working of his also satisfied. Thus there was no justification^{for} from removing him from service because they had^{no} reasons against the same. Accordingly we did not quashed^{the} the removal order as the appointment which could have been done in the circumstances as clearly^{we are} of the view that the appoint^{ment} should not have been set aside in this manner. Yet we granted limited relief

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and
to said Shyam Narayan Pandey/in as much his continuity put to an end, and we directed the respondents to re-appoint the applicant taking into consideration that there was no overlapping in duty and other persons were allowed for duty by ignoring the overlapping at the time, and he would be given priority and preference in the matter of appointment over any other persons.

2. It was also specifically ^{observed} by us that in case any other appointments have already ^{been} made in provisional nature even then the case Shyam Narain Pandey shall be considered first, and we also fixed the time same. It appears that the departmental authority had considered the case of the said Shyam Narain Pandey and found that he was fit to be taken back in service, and accordingly the order was passed. During this period the applicant was appointed vide letter dated 3.1.1986 as Extra Departmental Branch Post Master (EDBPM), and he thus continued to work for a period of 5 years. It is clear that the selection process was took place but his appointment was ^{made} provisionally as no clear cut vacancy come into existence at that time, ⁱⁿ view of the fact the ^{termination order} disciplinary action has been challenged by the said Shyam Narain Pandey. The appointment order which was issued to the applicant itself ^{is} make very clear. The conditions of the appointment order ^{are} as follows:-

1. The provisional appointment is tenable till the disciplinary proceedings against Shri Shyam Narain Pandey is finally disposed of and he has exhausted all channels of departmental and judicial appeals and petition etc (this clause may be deleted if the vacancy was caused by the dismissal/removal of an EDA) and in case it is finally decided not to take Shri Shyam Narain Pandey back into service till regular appointment is made.

2. Shri Dwarka Prasad Tiwari s/o Shri Raghwa Nath is offered the provisional appointment to the post

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of E.D.B.P.M.. Shri Dwarika Prasad Tiwari should clearly understand that if ever it is decided to take Shri Shyam Narain Pandey back into service the provisional appointment will be terminated without notice.

3. The appointing authority reserves the right to terminate the provisional appointment any time before the period mentioned in paragraphs above without notice and without assigning any reason.

The language of the order is very clear that it was a provisional appointment. The appointing authority reserves a right to terminate the services without any notice. Even otherwise it was not confined only some judicial order or some executive order for recalling of the removal order/dismissal order. But the language used is very wide and in case it is decided to take back him in service, it is not necessary to assume continuation in service after removing the legal hurdles which has been created by termination, dismissal or removal. It can even be by way of re-appointment. Undoubtedly, although major relief was admissible to Shyam Narain Pandey, but we found it not to grant a major relief but a minor relief in as much as he was only directed to be re-appointed. In case re-appointment was ordered, although when we found that of course his services were wrongly terminated and discriminatory action was taken, the removal order was to be quashed. But the same was not done. When the departmental authority found him fit the applicant has^{got}/no right to claim for the said post. Even if he had appeared in Test and qualified and whatever it may be, the appointment was only provisional. We are not impressed by the meaning which has been given by the learned counsel relying on a particular case what is the meaning of word 'provisional'. The appointment is

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very clear and we did not refer the rules in this regard. Accordingly after the re-appointment of Shyam Narain Pandey who is back to his post with a break in service, the applicant's services ^{have} been rightly ~~be~~ terminated which otherwise would have been terminated without assigning any reason in view of the terms of the appointed ^{term} which he had accepted. This petition accordingly ^{deserves} to be dismissed, but in view of the fact that the applicant had worked for 5 years and has gained experience of service, the respondents shall consider him for appointment to the post of E.D.B.P.M. taking into consideration the qualification ^{and} experience. Thus the application is dismissed in the above terms. No order as to costs.


Member (A)


Vice-Chairman.

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18th November, 1991, Lucknow

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