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18/10

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH:

LUCKNOW

Original Application No.154 of 1989.

Lucknow this the 10<sup>th</sup> day of March 1997.

HON'BLE MR. V.K. SETH, MEMBER(A.)

HON'BLE MR. D.C. VERMA, MEMBER(J.)

Jitendra Nath Pathak S/o Sri Janardan Prasad  
Pathak  
R/o Village and Post Chauhan Purwa. Gonda.

Versus

Director (Postal Services), U.P., Lucknow & Another  
..Respondents

For the applicant: Sri T.N. Gupta, Advocate

For the respondents: Sri J.P. Sharma, Advocate

ORDER

D.C. VERMA, MEMBER(J.)

By this O.A. applicant Jitendra Nath Pathak has challenged the order dated 16.9.88 (Annexure-A-7) to the O.A.) by which the services of the applicant as Branch Post Master, Chauhan Purwa(Katra Bazar) Gonda has been terminated u/R 6 of Extra-Departmental Conduct & Service Rules, 1964( in short E.D.A. Rules, 1964). The order dated 13.12.88(Annexure A-10 to the O.A.) has also been challenged, by which appeal of the applicant was rejected.

2. The grounds on which the said order has been challenged is that the same is illegal, malafide and arbitrary and also on the ground that the post of Branch Post Master, Chauhan Purwa, District Gonda is still existing and has not been abolished or upgraded.

8

3. The respondents have filed counter affidavit and have contested the claim of the applicant.

4. We have heard the learned counsel for the parties.

5. The main contention on behalf of the applicant is that there is breach of sub-rule 5 to Rule 6 of E.D.A. Rules, 1964, which provides for termination on abolition of post. According to the learned counsel for the applicant service of an E.D. Agent are liable to be terminated under sub-rule on the abolition of post or upgradation of the post, obviously an E.D. Agent can continue to be in service so long as there is a post. The contention is that as the said post of Branch Post Master has not been abolished nor upgraded, termination of services of the applicant u/R 6 is clear violation of sub-rule 5 to Rule 6.

6. Learned counsel for the respondents has pointed out and has also inter alia mentioned in counter reply that there is no sub-rule 5 to Rule 6 of the E.D.A. Rules, 1964. Under the heading "Termination on abolition of Post held" instructions <sup>at Sl.no.5</sup> issued by the D.G., P. & T. on 3.9.65 are recorded. Thus the contention of the learned counsel for the applicant, it is submitted, has no merit.

7. We have examined the provisions and we find that Rule 6 of E.D.A. Rules, 1964 has no sub-rule 5. The submission of the learned counsel for the respondents that termination on abolition of post is only based on the instructions issued by the Director General, P. & T. is correct. It is also found that the said letter of the Director General provides only an instance under which services of an E.D. Agent can

be terminated. D.G., P. & T. has issued various instructions on the point, which are in the Swamy's Compilation of Service Rule for Extra-Departmental Staff u/R 6. Rule-6, as stood at the time of impugned order, is quoted in para 20 of the counter affidavit jointly filed by respondent no.1,2 & 3, which is as below:

"6. Termination of Service:

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."

8. No doubt Rule-6 has been amended in the year 1993 but we are ~~not~~ concerned with the rule as it stood in 1988. The rule only provides that services of an employee, who has not already rendered more than <sup>3</sup> years three / continuous service from the date of appointment, shall be liable to be terminated at any time without notice. The applicant had joined the post on 2.5.88 and his services were terminated on 16.4.88. Thus the applicant had not completed the required period of three years. Thus there is no violation or breach of Rule-6 of E.D.A Rule, 1964.

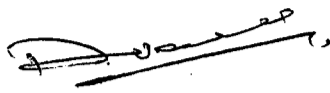
9. Coming to the facts, it is seen that the post fell vacant due to retirement of one Raj Narain Pathak. The names of suitable candidates were asked from Employment Exchange by 4.2.88. The Employment Exchange sent two lists; the first list contained four names and the second list contained one name of Lakhnesh Kumar Patkik. Both the lists were received in the office on 4.2.88 but the name of Lakhnesh Kumar Patkik was not considered and only <sup>the applicant</sup> four candidates including / whose names were in the first list, were considered. Jitendra Nath Pathak, the applicant, was selected and provisionally appointed subject to verification of character and antecedents and he took over charge on 2.5.88.

Lakhnesh Kumar Pathak , whose name was in the second list made a representation, which was considered by the Director, Postal Services and it was found that the selection was not proper as the name of Jitendra Nath Pathak was not considered and therefore, a fresh selection after considering the name of Lakhnesh Kumar Pathak was ordered. The Appointing Authority, therefore, terminated the services of the applicant u/R 6 through a simple termination order dated 16.9.88 without assigning any reason. It is, however, seen that it was only on 15.3.89 the District Magistrate, Gonda intimated that Jitendra Nath Pathak had been acquitted by the court of law. This shows that the applicant was involved in a criminal case at the time of appointment and was acquitted subsequently and his character was verified by the District Magistrate only after acquittal from the criminal case.

10. By a subsequent amendment the applicant challenged the appointment of Lakhnesh Kumar Pathak, who was impleaded as the respondent no.4, <sup>Respd. no. 4</sup> was found better than any other candidate as he had secured 64% marks in the High School Examination. This fact has not been denied by the applicant in the rejoinder affidavit. Thus on comparative merit, respondent no.4 was a better candidate, which is established and not challenged.

11. The main contention of the learned counsel for the applicant is that the termination of the applicant's services and holding of the second selection is bad in law. We have already discussed this point in our earlier part of the judgment and we have found that the termination of the services of the applicant u/R 6, as it then stood, is perfectly in order and holding of the second selection is also justified.

12. We are, therefore, of the view that the O.A. has no merit. The same is dismissed. Cost on parties.



MEMBER(J.)



MEMBER(A.)

Dated: Lucknow: March 10, 1997.

Narendra/