

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH

LUCKNOW

Original Application No. 175 of 1990 (L)

Date: 16-8-1990

Hari Prakash Mishra

... Applicant

Vs.

Union of India & others

... Opp. Parties

Hon'ble Mr. P. Srinivasan, AM

Hon'ble Mr. J.P. Sharma, JM

J U D G M E N T

(Delivered by Hon'ble Mr. P. Srinivasan)


The applicant was appointed as <sup>Extra</sup> Departmental Branch Postmaster (EDBPM), Lawani Kalan, District Unnao, by an order dated 1-11-1989 passed by the Superintendent of Post Offices (SPO), Kanpur (M), Division. But within about 6 months thereafter, the same SPO passed another order on 2/7-5-1990, terminating the services of the applicant under Rule 6 of the P & T EDA (C & S) Rules, 1964 with immediate effect. Aggrieved with this last mentioned order, the applicant has filed this application.

2. Shri M. Dubey, learned counsel for the applicant and Dr. Dinesh Chandra for the respondents have been heard. The respondents have also filed a reply resisting the application. Though allegations have been made in the application that respondent no. 3 named therein was interested in another person and had therefore manoeuvred the termination of the applicant's services, the said respondent no. 3 has not filed a separate reply, but respondent no. 2 who has filed reply on behalf of all the three respondents has sought

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to deny the allegations against respondent no. 3, particularly the allegation that respondent no. 3 had played a role in the impugned order terminating the applicant's services.

3. The facts of the case are as follows: after two unsuccessful attempts to fill up the post of EDBPM, Lawani Kalan, Unnao, an advertisement calling for applications was issued on 24-2-1989. Nine candidates, including the applicant applied in response thereto and "after making the necessary enquiry" (see para 4 of the respondents' reply) the applicant was appointed to the post by order dated 1-11-1989<sup>H</sup> which narrated, inter-alia that the appointment "shall be in the nature of a contract liable to be terminated by him or by the undersigned by notifying the other<sup>H</sup> in writing .....". The applicant states - and the respondents do not deny - that respondent no. 3 had inspected the applicant's cloth shop and had reported that the cloth lying there did not belong to the applicant and that the shop premises were not suitable to house the post office; that the Pradhan<sup>-s</sup> of the applicant's village and of the other villages served by the Lawani Kalan Branch Post Office wrote to the authorities that the report of respondent no. 3 was not right and that the applicant was the most suitable person for appointment as EDBPM while two others, viz. Rama Krishna Rathore and Raghunath Prasad were not suitable; whereupon another official Shri G.P. Dwivedi, was deputed to make enquiry and he reported in the applicant's favour resulting in the appointment of the applicant on 1-11-1989; that thereafter Ram Krishan Rathore had made allegations against the applicant which

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were inquired into by Shri K.K. Nigam and found to be untrue. In short, it is admitted by the respondents that the applicant's initial appointment was made after following a proper process of selection and after making proper inquiry into the allegation by Ram Krishna Rathore that the applicant was not suitable for the post <sup>which</sup> had been found to be untrue.

4. In the above circumstances why were the applicant's services terminated? The respondents say that the selection and appointment which was made by the SPO was subject to review by the Director of Postal Services (DPS). On such a review, the DPS, Kanpur, found that while selecting the applicant, "the appointing authority had ignored the candidate (sic) of more suitable candidates for the said post". Therefore the services of the applicant were terminated. Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964, (the Rules for short) specifically provided that the service of an employee who had not rendered more than three years' continuous service was liable to termination by the appointing authority at any time without notice. The letter appointing the applicant had also stated that his appointment was in the nature of a contract which could be terminated by either side without assigning any reason. Learned counsel for the respondents therefore submitted that it was in exercise of the power vested in him by Rule 6 of the Rules, that the SPO terminated the services of the applicant who had not put in continuous service of three years by then.

5. Normally we would have no hesitation in upholding an order passed in pursuance of Rule 6 of the

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Rules purporting to terminate the services of an Extra Departmental Agent who had not put in 3 years of continuous service. But in this case when the appointment was made after a proper selection to a vacant post and <sup>after</sup> <sup>M</sup> complaint, against the suitability of the applicant were specifically enquired into and found to be untrue, it is somewhat strange that the DPS should come to the conclusion that more suitable candidates had been ignored while selecting the applicant; it is all the more so when the respondents themselves say that on two earlier occasions suitable candidates were not forthcoming to fill the post. It is admitted that the applicant's services were not terminated due to complaints received against him.

Though the power to terminate the services of an EDA without assigning reasons is given to the appointing authority where the employee has not put in three years of continuous service, that power is meant to be exercised when the appointee is found to be unsuitable for continuance in service or for any other administrative reason. In this case, allegations against the applicant's suitability were enquired into and found to be untrue. It was admitted by learned counsel for the respondents that the DPS did not name any particular candidate or candidates who were more suitable and had been ignored; that being so, the question arises <sup>as to whether</sup> ~~what~~ for the conclusion was drawn by him on the basis of any evidence before him or was an arbitrary decision.

6. Having said so much, we must notice one more fact. The respondents say that Ram Krishan Rathore - one of the persons who applied for the post and were not selected when the applicant was selected

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and who complained unsuccessfully against the applicant's appointment - has been appointed in his (applicants) place and that he should have been impleaded as a respondent, but has not been so impleaded. <sup>by</sup> While Rathore's appointment in the background of the facts set out earlier itself raises more questions, <sup>H</sup> we would not like to decide the matter in his absence so as to affect his interest adversely. Moreover, the respondents point out that the applicant has a departmental remedy of review available to him under Rule 16 of the Rules. We feel that the applicant should first approach the reviewing authority before seeking remedy from this Tribunal. The Reviewing authority should <sup>H</sup> go into all the aspects of the matter, <sup>H</sup> particularly, those referred to above, give the applicant an opportunity of being heard and pass a speaking order. He will also hear Ram Krishan Rathore before disposing of the review application. The applicant will make his application for review within fifteen days from the date of receipt of this order. The reviewing authority will treat it as having been filed in time, consider the same as directed by us above and intimate his decision to the applicant within one month thereafter. If the decision goes against him, the applicant will be at liberty to approach this Tribunal.

7. The application is disposed of on the above terms leaving the parties to bear their own costs.

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MEMBER (J)

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MEMBER (A)

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