

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO.117 of 1991.

this the 12th day of July '99.

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

HON'BLE MR A.K. MISRA, MEMBER(A)

Hari Prakash Misra, aged about 33 years, S/o Shri Devi Gulam Misra, R/o Village & Post Lawani Kalan, District Unnao and erstwhile EDBPM, Lawani Kalan, District Unnao.

Applicant.

By Advocate: Shri R.S. Gupta

Versus.

Union of India through the Secretary to the Ministry of Communication, Department of Posts, Government of India, New Delhi.

2. Director Postal Services, Kanpur Region, Postmaster General, Kanpur.

3. Superintendent of Post Offices, Kanpur (M) Division, Kanpur.

4. Sri B.L. Kureel, the then Sub divisional Inspector of Post Offices, Safipur, District Unnao.

5. Sub Divisional Inspector, Safipur, District Unnao.

Respondents.

By Advocate: Dr. D. Chandra.

O R D E R.

A.K. MISRA, MEMBER(A)

In this O.A. the applicant has challenged the order dated 2/7.5.90 whereby he was terminated by Superintendent of Post Offices (in short, SP) Kanpur (M) Division (respondent No.3). The applicant also seeks quashing of the order dated 27.2.91 whereby review application of the applicant filed on 24.8.90, was rejected.

2. The applicant was appointed as Extra

Departmental Branch Post Master (in short EDBPM) Lawani Kalan, District Unnao by order dated 1.11.1989. As per the appointment letter, the appointment of the applicant was contractual in nature and was liable for termination by either party. The applicant was terminated by order dated 2/7.5.90 by SP, Kanpur (M) Division under the powers vested in him, under Rule 6 of E.D.A. (Conduct & Service) Rules 1964, which reads as under:-

"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 for termination by the appointing authority at any time without notice."

Against the said termination order dated 2/7.5.90, the applicant preferred an application before this Tribunal which was registered as O.A. No. 175/90. The said O.A. was disposed of by order dated 16.8.90 whereby this Tribunal directed the applicant first to approach the Reviewing authority, who was directed to pass a speaking order within one month from the date of submission of the application to him, after hearing the applicant and ^{also} one Shri Ram Krishna Rathore. The applicant in compliance of the order dated 16.8.90 passed by this Tribunal, submitted his application for review on 24.8.90, but no action was taken by the Reviewing authority in spite of a registered reminder sent on 3.12.90. Since no action was taken by the Reviewing authority on the applicant's petition for review dated 24.8.90, a contempt petition was filed by the applicant against the Director, Postal Services, Kanpur (M) Division (respondent No.2) which was registered as C.C.P. No. 7/91. On receipt of the contempt notice from this Tribunal, the Director, Postal Services filed his reply on 6.3.91 enclosing a copy of the order dated 27.2.91 whereby the applicant's petition for review filed on 24.8.90, was rejected.

3. On behalf of the applicant, it was submitted

that the termination of the applicant's service by invoking Rule 6 of EDA (Conduct & Service) Rules, 1964 was wrong as the applicant was appointed against a regular vacancy after observing all necessary formalities and hence, the appointment could not be revoked without a charge of inefficiency. In this regard, it was submitted that the applicant's appointment was neither adhoc nor provisional as for such appointments different proformas are prescribed. It was alleged that one Sri Ram Krishan Rathore made complaints against the applicant as he became jealous of him and further that Sri Rathore had close proximity with Sri B.L. Kureel, the then Sub-Divisional Inspector Post Office, Safipur, District Unnao (respondent No.4). It was submitted on the applicant's behalf that method of recruitment of EDBPM and EDSPM is laid down in section III of Service Rules for ED Staff, according to which the qualification prescribed is Matriculation with preference to a candidate having higher percentage and further it has been laid down that the person who takes-over an agency must be one, who has adequate means of livelihood. The person selected for the post of EDBPM/EDSPM must be able to offer space to serve as agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO. It is also provided that business premises such as shops etc. may be preferred. It was submitted on the applicant's behalf that there was no condition of possession of landed property for appointment of EDBPM/EDSPM. During the course of hearing, it was brought to our notice that the applicant is High School and has a cloth shop and his income as verified by Local Revenue Authority

AK

was Rs.6000/- per annum. Accordingly, it was stated that the applicant fulfils all the conditions for appointment as EDBPM/EDSPM. It was stated that plea of respondent No.2 that the applicant should have landed property is wholly misconcieved and so his plea that Sri Rajendra Prasad had 43.8% marks as against 37% marks of the applicant and, therefore, had a better claim. in High School. Further, it was brought to our notice that Sri Rajendra Prasad, who was appointed in place of the applicant could not produce any certificate certifying his income and his entire land stood mortgaged to the State Bank of India Bangarmau, District Unnao. Further it was submitted that the applicant was terminated not by the respondent No.3, who was the competent authority to terminate the applicant, but his termination was made on the directions given by Director, Postal Services (respondent No.2) to SP, Kanpur (M) Division. Thus, it was stated that the termination of the applicant was at the behest of the respondent No.2, although SP, Kanpur (M) Division had not taken the view that the applicant should be terminated. It was also stated that the only other condidate to the post of EDBPM, Lawani Kalan Post Office, District Unnao, Sri Ram Krishna Rathore was already debarred from appointment since he was a member of the Gram Panchayat. It was accordingly averred that the applicant was the best available candidate for appointment as EDBPM. Further, it was brought to our notice that by a joint representation dated 19.10.89 all the Gram Pradhans served by the said post office unanimously recommended and certified the suitability of the applicant for appointment as EDBPM to SP, Kanpur (M) Division. It was stated that in the light of the above facts, there was no justification for taking charge of the post of EDBPM forcibly from the applicant and in his absence, opening a parallel post office and reporting the matter to police for transfer of charge.

AK

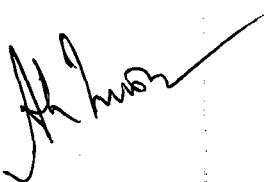
4. The respondents in their Counter have admitted that the applicant was appointed after enquiry and was preferential given ~~preference~~ treatment in view of the fact that he owned a shop and in view of the letter no. 43-84/80. Pen dated 30.1.81 issued by DG P&T and subsequent corrigendum dated 19.3.81. It was further submitted on behalf of the respondents Nos. 1 & 3 that the appointment of the applicant was terminated as a better candidate was available who had secured higher marks in the matriculation examination. Further it was brought to our notice by the respondents Nos. 1 & 3 in their Counter that the termination order of the applicant under Rule 6 of EDA (Conduct & Service) Rules 1964 was issued by the appointing authority i.e. CSP, Kanpur (M) Division, in compliance of the directions of the Reviewing authority i.e. Director, Postal Services (respondent No.2) which is quite in order because an authority superior to the appointing authority is fully competent ~~authority~~ either to pass an order of termination or to direct the appointing authority to terminate a subordinate official. The respondent No.2 has stated in the Counter that the applicant did not have any cloth shop and was only doing business of cloth on pheri basis from which an annual income of Rs.6000/- could not be earned. Although, the respondent No.2 has stated that subsequently a certificate from Local Revenue Authority showed that the applicant did not have adequate source of income but in support of this stand, no documentary evidence in the shape of certificate from Local Revenue Authority has been filed. The respondent No.2 has also ^{not} stated what income was certified by the Local Revenue Authority in the subsequent certificate obtained, if any. The applicant has submitted that he has a cloth shop in his house since 1983-84, in support of which a licence was

AK

obtained on 8.6.83, which was renewed from time to time. The photostat copies of the licence so renewed for the years 1983-84 to 1992-93 have been filed for our record as Annexures SR-1 to SR-10. Further, it was brought to our notice on behalf of the applicant that his father expired on 21.8.92 after which agricultural land measuring 3.5 bighas has come to the applicant and now stands mutated in his name as per Khatauni filed as Annexure SR-11. The certificate from Gram Pradhans also shows that the applicant has been running a cloth shop at his residence since 1983-84 and has inherited 3.5 bighas of land after his father's death on 21.8.1992.

5. In the light of the above facts, it was submitted on behalf of the applicant that his appointment should not have been terminated under Rule 6 of E.D.A. (Conduct & Service) Rules 1964 as there was no charge of inefficiency or dereliction of duty and further that termination should not have been made in a routine manner, merely because the applicant has not completed 3 years of continuous service. Further, it was argued on behalf of the applicant that his services were terminated under Rule 6 of EDA (Conduct & Service) Rules 1964 without affording him an opportunity of being heard and, therefore, it was submitted that the termination of his service was without observing the principles of natural justice. On this score also, the termination was stated to be unlawful.

6. In the light of the facts discussed above, it is clear that the applicant was terminated by the respondent No.3 i.e. SSP, Kanpur (M) Division, on the directions of the Director, Postal Services (respondent No.2). The termination of the applicant was made in a routine manner merely on the ground that an alternative



candidate had secured higher marks in the matriculation examination and ^{was} having landed property. The termination order was passed by the appointing authority i.e. SSP, Kanpur (M) Division but ^{the behest of} at the next higher authority i.e. Director, Postal Services. As regards the educational qualification for EDBPM/EdSPM, matriculation is prescribed as necessary qualification with the rider that the selection should be based on the marks obtained in the matriculation examination. There is further no requirement that the candidate ^{should} concerned possess landed property. The only requirement is that the candidate should have adequate means of livelihood and should be able to offer space to serve as the agency premises for postal operations and further that the premises should be such as can serve as a small post office with provision for installation of PCO. The business premises ^{as} such a shop is to be preferred as per section III of the Service Rules of ED staff. It is no-doubt true that the alternative candidate had secured higher percentage of marks in matriculation, but he did not have any premises to serve as a small post office, which the applicant had in the shape of cloth shop run at his residence since 1983-84. The alternative candidate also did not show that he had any regular income; whereas the applicant had regular income of Rs.6000/- per annum from the cloth shop. Therefore, on facts, we are of the view that there was no justification for terminating the services of the applicant by invoking Rule 6 of EDA (Conduct & Service) Rules 1964.

7. As regards the question of natural justice, we find that the applicant was not given any opportunity of being heard and, therefore, the termination order passed in his case was vitiated in law. Reliance for this purpose is placed on the following decisions:-

- (1) S.S. Raj Vs. Union of India & others (1998)
- (6) ATC 712 CAT Madras.

2. Kamal Singh Vs. Union of India & others

reported in 1991 1 UPLBEC 25 Lucknow Bench of CAT.

3. Satendra Pratap Singh Vs. SSP reported in 1993 (23) ATC 243.

4. P.S. Rao Vs. Asstt. SSP reported in 1993 23 ATC 594.

5. Jagdamba Prasad Pandey Vs. Union of India & others reported in 1988 UPLBEC 101.

8. In the above cases, it was held that where the appointment of an ED staff was cancelled/terminated by an authority superior to appointing authority without affording an opportunity of being heard, the cancellation/termination was in violation of the principles of natural justice and was therefore, unlawful. Accordingly, we hold that since the applicant was not given an opportunity of being heard, before his appointment was cancelled, the cancellation/termination of his appointment was not in accordance with law.

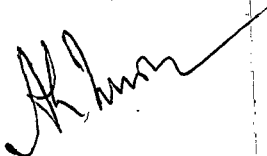
9. Further, the appointment of the applicant was terminated by the respondent No.3 on the directions of the Director, Postal Services (respondent No.2). Since the termination was not made on the basis of the satisfaction of SP, Kanpur (M) Division, but on the directions of the superior authority, the termination/cancellation cannot be said to be in accordance with law. Reliance for this purpose is placed on the following decisions:-

1. Vikram Kumar Vs. Union of India & others 1990 14 ATC 367 Patna Bench of CAT.

2. K.K. Ramkrishna Vs. PMG & others 1996 34 ATC 566 Ernakulam Bench of CAT

3. Anirudhsinji Karanshinji Jadeja Vs. State of Gujrat (1995) 5 SCC 302.

10. In the above cases, it was held that if the discretion vested in the appointing authority is exercised under the directions or in compliance of the instructions of the higher/superior authority, then it



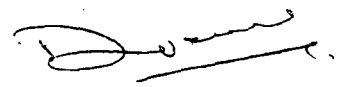
18/03

will be a case of failure to exercise, discretion altogether. It was held that discretion vested in the appointing authority cannot be exercised by the Reviewing authority.

11. In the light of the factual discussion made in the foregoing paragraphs and legal position as discussed in paras 7 to 10, we are of the view that termination of the applicant as EDBPM Lawani Kalan, District Unnao was unlawful. We, therefore, direct the respondents Nos. 2 & 3 to reinstate the applicant with immediate effect. The termination order dated 2/7.5.90 is accordingly quashed. The applicant shall be deemed to be in-continuous service with all benefits of pay and allowances as admissible. He will also be entitled to arrears of pay and allowances for the period during which he was out of service. The O.A. is accordingly allowed. Costs easy.



MEMBER(A)



MEMBER(J)

LUCKNOW:DATED: 12th July '99

GIRISH/-