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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 02.11.1993.

OA 623/93

PRAYAG NARAIN SHARMA ... APPLICANT.

V/s.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).
HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI VIRENDRA LODHA.

For the Respondents ... ---

PER HON'BLE MR.O.P. SHARMA, MEMBER (A).

The applicant, Prayag Narain Sharma, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, praying that the order dated 13/14.9.93 (Annexure A-1) may be quashed and the respondents may be directed to allow the applicant to continue on the post of Extra Departmental Branch Post Master (for short 'EDBPM') as he was continuing prior to the issue of order dated 13/14.9.93 with all consequential benefits. He has further prayed that the services of the applicant may be regularised on the post of EDBPM. He has also prayed that the respondents No.1 and 3 may be directed to quash the fresh appointment order issued in favour of the respondent No.4 in pursuance of the judgement of this Tribunal. He has also prayed that the respondents may be directed to initiate disciplinary proceedings/departmental enquiry against the respondent No.4 considering the seriousness of the charges against him.

2. The applicant had earlier filed an application (OA No. 480/91) before this Bench of the Tribunal against the

apprehended termination of his services. The Tribunal by order dated 12.7.93 had observed that no order in writing had been passed terminating the services of the applicant and he had only been directed that he should hand over charge to one Shri Rajendra Prasad Sharma. The Tribunal, therefore, held that the applicant should be considered to be in service and should be paid the pay and allowances according to rules. It was further observed by the Tribunal that the respondents shall be at liberty to pass order according to law terminating the services, if necessary, in writing. The applicant was also given liberty to challenge the order, if so passed in future. Thereafter, now vide order dated 13/14.9.93 (Annexure A-1), the services of the applicant have been terminated. It has been stated in the said order that the services of the applicant were terminated earlier as he was appointed on a contract basis against the vacancy which had occurred in view of the penalty of removal from service, which had been imposed on Shri Rajendra Prasad Sharma (Respondent No.4). It has further been stated in the said order that in order to comply with the order dated 12.7.93 of the Tribunal in OA 480/91 in the case of the applicant, he has been allowed pay and allowances according to rules. The order further states that since his services were no more required in view of the facts and circumstances of the case, these are terminated with immediate effect.

3. The applicant's grievance is that he was not appointed vice Shri Rajendra Prasad Sharma. There is an order of this Tribunal in the case of Shri Rajendra Prasad Sharma in OA 162/90, dated 22.7.91, by which this Bench of the Tribunal quashed the order of removal issued against

him ~~applicant~~ on the ground that a copy of the enquiry report had not been supplied to Shri Rajendra Prasad Sharma before the aforesaid penalty of removal from service was imposed on him. However, the disciplinary authority was given liberty to revive the proceedings and continuing these in accordance with law from the stage of supply of the copy of the enquiry report to Shri Rajendra Prasad Sharma. Now that Shri Rajendra Prasad Sharma has been taken back in service by the said order of the Tribunal, the services of the applicant have been terminated with a view to accomodating Shri Rajendra Prasad Sharma.

4. The case of the learned counsel for the applicant is that when the applicant was appointed in the year 1988, it was not stated in the order of appointment that he was being posted in the vacancy caused by the removal from service of Shri Rajendra Prasad Sharma. Further, the applicant had been appointed after a regular process of selection. He has also stated that the order given by the Tribunal in QA 162/90, in the case of Shri Rajendra Prasad Sharma, was not correct inasmuch as the judgement of the Hon'ble Supreme Court in Mohd. Ramzan Khan's case, which had been relied upon by the Tribunal for giving a verdict in favour of Shri Rajendra Prasad Sharma, had only a prospective application. He has further prayed that the order terminating the services of the applicant may be quashed with all consequential benefits.

5. We have heard the learned counsel for the applicant and have gone through the records. Although the order of appointment of the applicant to the post of EDBPM may not have specifically stated that he was being appointed vice

Shri Rajendra Prasad Sharma, removed from service earlier, it is a fact that he was appointed at the same Branch Post Office, at which Shri Rajendra Prasad Sharma was earlier working. The post occupied by the applicant was also the same, which had earlier been occupied by Shri Rajendra Prasad Sharma. There is only one post to which earlier Shri Rajendra Prasad Sharma was appointed and later the applicant was appointed. Now the respondents have restored Shri Rajendra Prasad Sharma to that post in view of the order of reinstatement passed by this Tribunal in OA 162/90 dated 22.7.91. As far as the applicant is concerned, the formal order of appointment Annexure A-3 dated 20.7.90 clearly states that the services of the applicant are liable to be terminated as he has been appointed on a contract basis. Thus, the formal order of appointment has made it clear that the applicant's services were taken on a contract basis and these were liable for termination at any time. There is only one post of EDBPM to which either Shri Rajendra Prasad Sharma or the applicant could be appointed. In view of the Tribunal's order in the case of Shri Rajendra Prasad Sharma, to which reference has been made above, he is to be restored to the post held by him earlier. We, therefore, see no irregularity in the order of termination of the services of the applicant with a view to accomodating Shri Rajendra Prasad Sharma.

6. The learned counsel for the applicant has raised the point that the order of the Tribunal in which reliance has been placed on the judgement of the Hon'ble Supreme Court in the case of Mohd. Ramzan Khan for granting the relief to Shri Rajendra Prasad Sharma is erroneous inasmuch

as this judgement has only prospective application. We cannot however go into the question of correctness of the order passed by the Tribunal in the case of Shri Rajendra Prasad Sharma.

7. In the circumstances, we find no merit in this OA, which is accordingly dismissed at the admission stage.

(O.P. SHARMA)
MEMBER (A)

GK
(GOPAL KRISHNA)
MEMBER (J)