

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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O.A. No.
T.A. No.

520/97

199

DATE OF DECISION 5.12.1997

Mahendra Singh

Petitioner

Mr. C.B.Sharma

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

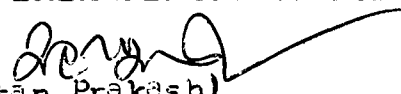
Advocate for the Respondent (s)


CORAM :

The Hon'ble Mr. O.P.Sharma, Member (Administrative)

The Hon'ble Mr. Ratan Prakash, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? yes
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ? yes
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(Ratan Prakash)
Judicial Member


(O.P.Sharma)
Administrative Member

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

O.A.No. 520/97

Date of order: 5.12.1997

Mahendra Singh Meena S/o Shri Moola Ram Meena, aged about 23 years, Resident of Village & Post Kithana. Presently working on the post of EDMC (Extra Departmental Mail Carrier) Kithana EDBO under Sultana Sub Post Office, Distt. Jhunjhunu.

: Applicant

Versus

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communications, New Delhi - 110 001.
2. Chief Post Master General, Rajasthan Circle, Jaipur-302 007.
3. Post Master General, Western Region, Jodhpur.
4. Superintendent of Post Office, Jhunjhunu Postal Division, Jhunjhunu.
5. Sub Divisional Inspector (Postal) Chirawa Sub Dn., Chirawa.

: Respondents

Mr. C.B.Sharma, counsel for the applicant

CORAM:

HON' BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON' BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

ORDER

(PER HON' BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein Shri Mahendra Singh Meena has approached this Tribunal under Section 19 of the Administrative Tribunals' Act, 1985, to quash the impugned order dated 18.11.1997 (Annex.A-1) by which his services on the post of Extra Departmental Mail Carrier (for short 'E.D.M.C.') have been terminated, with all consequential benefits and a direction to the respondents to continue the applicant on the post. He has also sought a declaration that Rule 6(b) of the Posts & Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as 'EDA Rules, 1964') be declared ultravires as it does not provide

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any chance for hearing before termination of the services.

2. Facts which are relevant for the disposal of this application, in brief, are that the applicant was selected to the post of E.D.M.C., Kithana EDBO vide order dated 13.1.1997 (Annex.A-3) after his name was duly sponsored through the Employment Exchange, Jhunjhunu alongwith other candidates. He took over the charge on the post of EDMC on 14.1.1997 (Annex.A-4) and also complied with the formalities of submitting surety as desired by respondent No.5 i.e. Sub Divisional Inspector (Postal) Chirawa Sub Dn., Chirawa.

3. It is the grievance of the applicant that though he was discharging his duties since his entry without any complaint from the respondents, yet Sub Divisional Inspector (Postal) Chirawa Sub Division, Chirawa has terminated his services without any reasons invoking provisions of Rule 6(b) of the EDA Rules, 1964. Aggrieved that his services have been terminated without giving him any chance of hearing and also without disclosing the reasons for it, he has sought the quashing of the impugned order dated 18.11.1997 as also has challenged the vires of Rule 6(b) of the EDA Rules, 1964; being illegal and arbitrary.

4. We heard the learned counsel for the applicant at great length and have also perused the material on record besides the authorities cited by the learned counsel for the applicant in support of his arguments.

5. The argument of the learned counsel for the applicant is that since no opportunity of hearing has been afforded

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to him before the termination of his services vide impugned order dated 18.11.1997 (Annex.A-1), the Rules are not only ultravires the Constitution, arbitrary and illegal; but are also against the principles of natural justice. He has also urged that the aforesaid EDA Rules, 1964 are ~~not~~ statutory in nature as they have been framed simply to regulate the services of the Staff by the Postal Department and cannot be equated with Service Rules for temporary staff or regular employees of the Central Government. In support the learned counsel has cited the cases of Dharam Pal Vs. UOI & Ors., 1997 (1) CAT 314 514 and S. Ranganayakulu V. Sub Divisional Inspector (Postal) and others, (1995) 30 ATC 473 (FB). In Dharam Pal's case, the applicant therein was appointed as Extra Departmental Delivery Agent and his services were terminated vide order dated 17.9.1989. Besides challenging the termination order; the applicant therein had also sought a declaration to declare Rule 6 of the EDA Rules, 1964 as ultravires. Allahabad Bench of the Tribunal relying upon the observations in the Full Bench decision of the Hyderabad Bench of the Central Administrative Tribunal in the case of S. Ranganayakulu (supra) to the effect "that in the absence of statutory rules regarding the recruitment of E.D.A., any contravention of the executive orders regulating recruitment of EDAs would be invalid", held that the respondents could not have terminated the services of the applicant without giving him an opportunity of hearing. It has, therefore, been vehemently urged by the

learned counsel for the applicant that this OA should be admitted and Rule 6(b) of the EDA Rules, 1964 be declared ultravires.

6. Before examining the merits of the argument of the learned counsel for the applicant, it is necessary to reproduce the full text of Rule 6 of the aforesaid E.D.A. Rules, 1964 as amended:

"6. Termination of Services-. (a) The services 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 at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month:

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

It is thus in the background of this amended provision that it has to be seen whether the impugned order dated 18.11.1997 (Annx.A-1) is violative of this provision. This order dated 18.11.1997 reads as under:-

"ORDER

In pursuance of the Proviso to Rule 6(b) and the Note below Rule 6(b) of P&T Extra Departmental Agents (Conduct & Service) Rules, 1964, I Bihari Lal SDI(P) Chirawa hereby terminate (forthwith) the services of Shri Mahendra Singh Meena, EDMC Kithana and direct that he shall be entitled to claim a sum equivalent to the amount of his basic allowance plus dearness allowance for the period of notice at the same rates at which he was drawing

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them immediately before the termination of his services.

The due amount of basic allowance plus dearness allowance is being remitted in lieu of the notice of one month."

From a perusal of this impugned order dated 18.11.1997 there remains no ambiguity that the services of the applicant have been terminated in strict compliance of Rule 6(b) of the aforesaid EDA Rules, 1964. The applicant is an appointee of January, 1997 and till the date of termination order dated 18.11.1997, he did not render more than three years continuous service. Order dated 18.11.1997 is substantially in the same language as prescribed under the Proforma in Form-II issued by the Director General Instructions dated 7.9.1993 at page 35 of the Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department, Sixth Edition, 1995. As per the existing provision under Rule 6(b) of the E.D.A. Rules, 1964; there is now no requirement of affording any opportunity to an appointee whose service is continuous and less than three years. We, therefore, do not find any illegality or irregularity in the impugned order dated 18.11.1997 (Annx.A-1).

7. The argument of the learned counsel for the applicant that these Rules are ultravires of the Constitution or that they are not statutory rules; does not carry any weight.

In a recent decision, Hon'ble the Supreme Court in the case of Sub Divisional Inspector of Post, Vaikam & Ors. etc. V. Theyvam Joseph etc., JT 1996 (2) S.C. 457 after scanning the E.D.A. Rules, 1964 has held that:-

"It would thus be seen that the method of recruitment, the conditions of service, the scale of pay and the conduct Rules regulating the service conditions of ED Agents are governed by the statutory regulation. It is now settled law of this Court that these employees are civil servants regulated by these conduct rules."

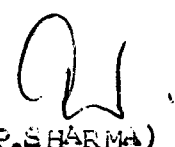
The reliance, therefore, placed by the learned counsel for the applicant on the Full Bench decision of the Hyderabad Bench of the Tribunal in the case of S. Rangana-yakulu and Dharam Pal (supra) is of no consequence; more so when in Dharam Pal's case also Rule 6 (unamended) of the E.D.A. Rules, 1964 was challenged before the amendment incorporated in the year 1993 as it exists now. The position of law, therefore, now is settled that the method of recruitment, the conditions of service, the scale of pay and the Conduct Rules regulating the service conditions of E.D.As are governed by the statutory regulations i.e. the E.D.A. Rules, 1964. The other authority relied upon by the learned counsel for the applicant of D.T.C. V. D.T.C. Mazdoor Congress & Ors. (S.C.) 1991 (1) ABLJ, 57 (SC) is also of no assistance to the applicants as the controversy in that case was with regard to the implementation of Regulation 9(a) & (b) in respect of the employment of the employees of DTC governed by the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1954. The facts therein were entirely different. There is, however, no dispute about the law propounded by the Hon'ble Supreme Court in that case. In the instant case the appointment of the applicant was governed by the E.D.A. Rules, 1964 and he having rendered less than three years of service with the respondents department; his termination has been in strict compliance of the statutory provision laid down under Rule 6(b) of the E.D.A. Rules, 1964. It cannot, therefore, be said

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that E.D.A. Rules, 1964 or for that matter Rule 6(b) of the said Rules is ultravires the Constitution.

8. For all the aforesaid reasons, we are of the considered opinion that this OA has neither any merit, nor is fit for admission and is, hereby, rejected at this stage itself.


(RATAN PRAKASH)
JUDICIAL MEMBER


(O.P. SHARMA)
ADMINISTRATIVE MEMBER