

Central Administrative Tribunal
Principal Bench

O.A. No. 631/2001

New Delhi, dated this the 3rd JANUARY 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Tole Ram
S/o Shri Jai Dev,
employed as Extra Departmental Branch Postmaster of
Bas Padamka Branch Post Office in account with
Pataudi Sub Post Office under Gurgaon Postal
Division,
R/o Vill. & Post Office Bas Padamka Distt. Gurgaon

...Applicant.
(By Advocate: Shri Sant Lal)

Versus

1. Union of India,
through
the Secretary,
Ministry of Communications,
Dept. of Posts,
Dak Bhawan,
New Delhi.
2. The Senior Supdt. of Post Offices,
Gurgaon Dn.
Gurgaon.
3. Shri Ram Avtar S/o Sh. Tara Chand,
Candidate E.D.Branch Postmaster of
Bas Padamka E.D.Branch Post Office,
C/o Sr. Supdt. of Post Offices,
Gurgaon Dn.
Gurgaon.

...Respondents.
(By Advocate: Shri K.R. Bachdeva)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the selection of Respondent
No.3 and the termination of his own services as EDBPM
Bas Padamka P.O. and seeks a declaration that his
appointment as such with effect from the date the
post became vacant on account of the dismissal of
Shri Satish Kumar, was in accordance with rules.
Consequential benefits have also been prayed for.

2. Admittedly, the regular incumbent Shri Satish

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(11)

Kumar EDBPM Bas Padamka PO was put off duty w.e.f. 1.5.98 due to his involvement in a misappropriation case. ASPO(W) Gurgaon made a public announcement for obtaining applications of willing candidates for provisional appointment of EDBPM. 17 applications were put up for making Iprovisional arragement, and out of the 17 candidates, applicant was ~~approved~~ ^{approved} for provisional appointment. The fact that applicant's appointment was purely provisional and would continue only until a final decision was taken not to take Shri Satish Kumar back in service, or till a regular appointment was made, is amply clear from applicant's provisional appointment's order dated 23.6.98 (Annexure A.3), which applicant agreed to abide by.

3. After the dismissal of the regular incumbent Shri Satish Kumar, vide Memo dated 3.4.2000, ^{the} ~~the~~ process for regular selection was initiated by way of addressing employment exchange to sponsor candidates, as well as inviting applications from open market. Applicant also applied and while selecting the regular incumbent, applicant's case was also considered. Respondnts states that Respondent No.3 Ram Avtar Sharma also fulfilled all requisite qualification, and as he had secured more marks in Matric exam. than applicant, he was selected and not applicant.

4. In this connection we note that applicant had earlier filed OA No.193/2000 in CAT, Chandigarh Bench against the termination of his provisional

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appointment. By interim order dated 6.3.2000 (Annexure A-5) the status quo was ordered to be maintained and subsequently upon respondents issuing orders on 11.4.2000 (Annexure A-6) withdrawing the orders of termination of the aforesaid provisional arrangement, the O.A. was disposed of as having become infructuous, vide order dated 28.7.2000 (Annexure A-7).

5. However, this by itself gives no advantage to applicant. It is clear that applicant's appointment by order dated 23.6.98 was purely provisional, pending regular appointment, and if after regular selections, in which applicant's case was also considered, Respondent No. 3 who also fulfilled all the requisite eligibility qualifications was preferred, for having secured more marks on Matric Exam. applicant cannot legitimately complain.

6. In this connection the relevant recruitment rules (copy taken on record) make it clear that in the case of appointment of EDBPM, passing of Matric Exam. is an essential qualification, and the selection should be based on the marks secured in Matric or equivalent examination.

7. During the course of hearing, it was contended on behalf of applicant that Respondent No.3 was not a permanent resident of the village where the Post Office was to be located, and thus he did not fulfil all essential qualifications for appointment in terms of Para 4 of the Recruitment Rules.

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However, in para 3(ii) of Postal Department circular dated 6.12.93 (copy taken on record), it has been clarified that having regard to the certain judgments of CAT, while making selections for appointment to ED posts, permanent residence in the village/delivery jurisdiction of the ED Post Office need not be insisted upon as a precondition for appointment. However, it should be laid down as a condition of appointment that any candidate who is selected, must before appointment to the post take up his residence in the village/delivery jurisdiction of the ED Post Office as the case may be.

8. In this connection it was sought to be argued that the aforementioned contents of Para 3 (ii) of Postal Department Circular dated 6.12.93 is at variance with the Recruitment Rules, which would have to prevail over the circular. We are unable to accept this argument. Aforementioned Para 3(ii) of circular dated 6.12.93 itself makes clear that having regard to CAT orders, which are judicial rulings and which have not been shown by applicant's counsel to have been stayed, quashed or modified, permanent residence in the village cannot be insisted upon as a precondition for appointment. Aforesaid circular dated 6.12.93 has itself not been challenged by applicant and hence it must be deemed to hold the field. Hence even if applicant's counsel's contention were to be accepted that Respondent No.3 was not a permanent resident of the village in which

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the Post Office was to be located at the time the regular selections were made, that could not have been made a precondition for appointment.

9. In the result the O.A. warrants no interference, and the CAT, Ernakulam Bench's decision dated 17.7.2001 in O.A. No. 367/99 E.S. Suresh Babu Vs. Superintendent of Post Office, Innjalakuda 2001 93) ATJ 445, as well as Hari Prasad Vs. Union of India 2000 (3) ATJ 518 which is clearly distinguishable on facts does not assist applicant.

10. The O.A. is, therefore, dismissed. Interim orders, if any are vacated. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

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