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Central Administrative Tribunal, Principal Bench

O.A. No. 2197 of 1998

MA No. 2316 of 1998

New Delhi this the 28th day of ~~November~~ ^{October}, 1999

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Hon'ble Shri Kuldip Singh, Member (J)

1. Munna Prasad S/o Shri Raghunath Ram
C/o Shri Bachchu Singh Kushwaha
H.No. WZ 62/2 Minakshi Garden
(Near Ashok Nagar)
New Delhi.
2. Sanjay Agrawal S/o Shri Girraj Pd. Singhal
C/o Shri Ram Richhpal
724 Prem Gali No.1,
Gandhi Nagar, Delhi-31.
3. Chandra Bahadur S/o Shri Peewaram
C/o Shri Asharfi Lal
119/4 Minto Bridge Railway Colony,
New Delhi.
4. Suraj Bhan S/o Shri RamanLal
C/o Shri Dharam Singh
D-71B Modipur (Salim Quarter)
New Delhi.
5. Suresh Kumar S/o Shri Ramkabilas Rai
C/o Shri Dharam Dass Sharma
H.No. 4434 Heerawalil Gali Aryapura
Subzi Mandi, Delhi-7.
6. Girish Kumar Dubey S/o Sh. Lakhanlal Dubey
C/o Shri V.P. Singh
Kishan Ganj Bhrahdari Gaushala Puri
Delhi. ...Applicants

By Advocate Shri D.P. Sharma

Versus

1. Union of India through
Secretary,
Ministry of Communication (Department of Posts)
New Delhi.
2. The Postmaster General,
Agra Region,
Pratap Pura Agra.
3. The Superintendent,
Railway Mail Services,
'X' Division- Civil Lines Jhansi.
4. The Sub Record Officer,
Railway Mail Services,
Mathura Junction, Mathura. ...Respondents

By Advocate Shri S.M. Arif.

ORDER

In this O.A. applicants, six in number, had been working as Extra Departmental Mail Man Mathura Junction RMS (hereinafter referred to as EDMM) and are seeking regularisation against the vacant posts of EDMM. Besides this, they have also prayed for consequential benefits of pay and allowances together with condonation of break in service which may kindly be allowed from the date of termination of their service, i.e., 4.9.98.

2. The facts, as alleged in the OA are, that applicants No.1 to 4 were engaged as EDMM from 7.10.96 to 3.9.98 and applicant Nos. 5 and 6 were engaged as EDMM from 19.3.97 to 3.9.98 against the vacant posts of EDMM Mathura Jun. RMS. They claimed to have regularly worked with some artificial breaks. They further allege that six posts had fallen vacant because of promotion of six regular incumbents on their promotion to higher posts.

3. It is further pleaded that the respondents are now intending to recruit other persons on those six posts superseding the bona fide claim of the applicants, who are working on these posts from last 1 year 10 months 27 days and 1 year 5 months 15 days.

4. It is also pleaded that all the applicants fulfil the requisite qualification including age, education etc.

5. It is further pleaded that these applicants had been removed from service with a view to bring fresh persons from outside, of respondents own choice and as such, it is prayed that these persons should be regularised.

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6. The respondents have contested this O.A. and have stated that there are six posts of EDMM at Mathura Junction Railway Mail Service. 4 posts fell vacant in September, 1996 and two posts in March, 1997. Since regular recruitment have taken sometime, so due to certain administrative reasons and in the exigency of work, the applicants were engaged with a clear understanding that they are being engaged on daily wage basis and this appointment is purely temporary and they are liable to be removed at any time and they have given in writing that they would not claim for regularisation against the aforesaid posts. They had also never been allowed to work continuously, so they have no claim to be regularised.

7. It is further stated that the present work of these posts are being managed by departmental Group 'D' staff. It is also stated that the candidature of the applicants can be considered at the time of recruitment of Extra Departmental Mail Men on merit if they apply for the same and otherwise eligible as per the Recruitment Rules.

8. It is also pleaded that the selection for these posts of EDMM is made from the suitable eligible candidates sponsored by the local Employment Exchange but applicants directly applied for but there must be at least three times candidates of the vacancies so that there should be sufficient competition and the department has sufficient choice of candidates. In view of this, it is prayed that the applicants cannot be given any preference.

9. I have heard the learned counsel for the parties and have perused the records.

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10. The learned counsel for the applicants has referred to a judgment reported in Swamy's Case Law Digest 1993 at page 592 - Rishi Pal Singh Vs. Union of India & Others (OA No. 452 of 1992) wherein this very Tribunal has held that the casual worker on completion of 180 days of service has become eligible for induction against regular vacancies.

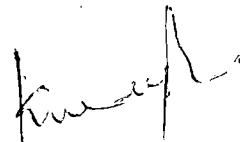
11. The counsel for the applicant has also relied upon the judgment in OA 1875 of 1997 decided on 10.3.98 wherein the applicant was originally appointed against the vacancy of a candidate who was facing departmental proceedings with the clear understanding that on finalisation of the departmental proceedings if the delinquent official is taken back into service, the provisional appointment of the applicant will be terminated. In that case, the delinquent official was exonerated and was taken back in service. But still relying upon a letter of DG Posts dated 6.6.88, the Tribunal directed the respondents that "in the light of the aforesaid letter, this OA is disposed of with a direction that if and when respondents are filling up ED vacancies, they should consider the claim of the applicant in preference to freshers and outsiders and in accordance with rules and instructions subject to his being fully eligible for the same".

12. In this case also since the candidates had worked as EDMM for a period of 1 year 10 months 27 days in respect of applicants No. 1 to 4 and 1 year 5 months 15 days in respect of applicants No. 5 and 6, so they have a right of preference over freshers and outsiders as and when the department desires to fulfil those vacancies.

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13. So in view of the judgments referred to above and the fact that the applicants have already worked for a sufficient long periods and the experience certificates issued by the department has not been denied by the department. I direct the respondents that in case they proceed to fulfill those vacancies of Extra Departmental Mail Men, they will consider the claim of the applicants in preference to freshers and outsiders and in accordance with rules and instructions subject to their being fully eligible for the same.



(Kuldip Singh)
Member (J)

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