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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1649/89
T.A. No.

198

DATE OF DECISION 30.3.1990

Shri Hari Raj Tyagi Applicant (s)

Shri Sant Lal Advocate for the Applicant (s)

Sr. Supdt. of Post Offices, Respondent (s)
West Division & Another

Shri M.L. Verma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who has worked as Extra Departmental Branch Postmaster, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a declaration to the effect that he is in continuous service as Extra Departmental employee, and that the respondents be directed to consider him for promotion to the Cadre of Postmen/Group 'D' by holding a supplementary test/examination.

2. The case of the applicant in brief is that he was appointed as Extra Departmental Branch Postmaster, Shikarpur, Jhatikara, New Delhi, w.e.f. 10.3.1983. The Post Office there was, however, ordered to be closed

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down w.e.f. 30.9.1986. He was not provided with any alternative employment. He was verbally advised to submit application for appointment on daily-wages as Casual Labourer and to the effect that he did not want to serve as Extra Departmental employee. As he was already out of job for more than six months, he gave the application on 18.3.1987 as per the verbal advice to him. He, however, had second thoughts and submitted another application on 23.3.1987 withdrawing his earlier application dated 18.3.1987. He wanted to continue as Extra Departmental employee with consequential benefits.

3. Respondent No.2 (Assistant Supdt. of Post Offices, New Delhi West I, Sub Division) vide his letter dated 7.5.1987, directed him to report for duty to S.P.M., Janakpuri, to work as a daily-wage Peon. In the said letter, it was mentioned that "If you still want to continue as E.D.A., you are requested to report S.P.M., J. Puri P.O. for the post of E.D. Chowkidar". (Vide Annexure A-6, p.18 of the paper-book).

4. The applicant reported for duty to the S.P.M., Janakpuri, to work as E.D. Chowkidar as ordered by the Assistant Supdt. of Post Offices. He was, however, informed that the post of E.D. Chowkidar was not vacant. Instead of giving him the post, respondent No.2 appointed one, Shri Nand Kishore, on provisional basis as E.D. Chowkidar, Janakpuri w.e.f. 14.4.1987 (vide Annexure A-8, p.20 of the paper-book).

5. The applicant was taken on daily wages w.e.f. 18.5.1987. Thereafter, he submitted representations to the Senior Supdt. of Post Offices for appointing him

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as Extra Departmental employee. These representations did not receive any favourable response.

6. In the meanwhile, the respondents held a departmental examination for promotion to the Postmen Cadre on 4.12.1988. He applied for the said examination and was allowed to appear. His result was not, however, declared.

7. Again in June, 1989, the respondents issued circular letters for holding departmental examination/test for recruitment in the cadre of Postmen and Group 'D' Cadre on 16.7.1989 and 23.7.1989, respectively. Though he fulfilled the prescribed conditions as E.D. employee with three years' continuous service, he was not allowed to take the said examination/test.

8. The respondents have contended in their counter-affidavit that with the closing of the Post Office at Shikarpur Jhatikara, the applicant became surplus. His name was kept in the Waiting List for a period of one year and thereafter, as no post was available, his name was removed from the said List.

9. The respondents have admitted that the applicant was engaged on daily-wage basis w.e.f. 18.5.1987. They have, however, contended that he ceased to be E.D. Agent due to his non-absorption within one year from the date of his being rendered surplus. He was not allowed to appear in the examinations held in July, 1989 as he did not fulfil the eligibility conditions. According to them, candidates to the extent of five times of the number of vacancies could be permitted to appear in the examination. The applicant being a junior daily-wager, did not come within the zone of candidates to be allowed to appear in the examination. *an*

10. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The admitted factual position is that the Post Office in which the applicant originally worked, was closed down, thereby rendering the applicant surplus. The respondents were under an obligation to provide to the applicant who had been rendered surplus, an alternative job in terms of the various instructions issued by the DGP&T. According to the DGP&T letter No.295-4/53 dated 8th August, 1953, "E.D. Agents, whose services are to be dispensed with on departmentalisation of their offices, may be provided for any other available Extra Departmental posts if they are suitable and willing." DGP&T letter No.43-24/64-PEN dated 12th April, 1965 provides, inter alia, that "If, at the time of departmentalisation of a particular office, it is not possible to provide the discharged E.D. Agent any vacancies in the vicinity/ neighbourhood of his residence, his name may be kept on the Waiting List and he be offered the vacancy that may arise subsequently in the vicinity/neighbourhood of the place of his residence."

11. By DGP&T letter No.27-3/77(Pt.) dated 19th August, 1978, the aforesaid instructions issued in 1953 and 1965, have been made applicable to cases where E.D. Agents were deprived of their employment because a Post Office has to be closed down.

12. As regards the absorption of surplus E.D. Agents whose names are borne on the Waiting List, DGP&T letter No.43-4/77-PEN dated 23.2.1979, provides that recruitment of outsiders to the post of E.D. Agents other than E.D.B.P. Ms./E.D.S.P.Ms should not be made until all the surplus/

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displaced E.D. Agents are re-employed or they refuse the offer of re-employment.

13. In the instant case, the Post Office at Shikarpur was closed down w.e.f. 30.9.1986. In view of the aforesaid instructions issued by the D.G.P. & T., the applicant's name should have been kept on the Waiting List upto 30.9.1987. It was during this period that respondent No.2 informed him to report for duty to S.P.M., Janakpuri vide his order dated 7.5.1987. However, the respondents had already appointed another person (Shri Nand Kishore) w.e.f. 14.4.1987, which was contrary to the instructions issued by the DGP&T mentioned above.

14. Shri Nand Kishore has not been impleaded as a respondent in the present proceedings. No relief has been sought against him. Therefore, we do not wish to make any directions as regards the retention of Shri Nand Kishore in service as Extra Departmental Chowkidar at Janakpuri Post Office.

15. In the interest of justice and fairplay, we direct that the applicant shall be deemed to have continued in service as Extra Departmental employee w.e.f. 14.4.1987, when Shri Nand Kishore was appointed as Extra Departmental Chowkidar. The respondents shall issue an order to that effect forthwith. In the facts and circumstances of the case, we do not direct the respondents to pay to the applicant any arrears by way of difference of wages by virtue of his deemed continuance

as Extra Departmental employee from 14.4.1987². We further direct that the respondents shall consider the applicant for promotion to the Cadre of Postmen and Group 'D' Cadre including seniority.

but he will be entitled to count the period of deemed service for all purposes,

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- 6 -

by holding a supplementary test/examination as expeditiously as possible, but in no event later than three months from the date of communication of this order.

The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member
30/3/890

P. K. Kartha
30/3/90
(P. K. Kartha)
Vice-Chairman (Judl.)