

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
NEW DELHI.

O.A. 410/89 and 569/89.

Smt. Sharma ... Applicant in O.A. 410/89.

Shri Raghubir Singh... Applicant in O.A. 569/89.

versus

Union of India and others ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri P.C.Jain, Member(Admn).

For the applicants - Shri U.P.Sharma in O.A. 410/89.
Shri B.N.Bhargava in O.A. 569/89.

For the respondents- None appears.

Date of hearing and Order - 23.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

These two applications were heard together and are being disposed of by a common order as the issues involved in both these applications are the same.

2. One Shri Chhotu Ram was working as Extra-Departmental Postmaster, Bawwa. He submitted his resignation on 11.3.1988 when the applicant in O.A. 410/89, a daughter of the aforesaid Chhotu Ram, was provisionally put in-charge of the post. ~~His~~ Regular appointment to the post has been made after inviting nominations from the Employment Exchange. 8(eight) candidates including the applicants in O.A. 410/89 and O.A. 569/89 were called upon to appear in the interview. The former did not appear. Though the latter appeared, the fifth respondent in these applications was selected. Accordingly, he was appointed against the post and the service of the applicant in O.A. 410/89 was terminated by the order dated 30.1.89.

3. In O.A. 410/89, the applicant prays for declaring that the order appointing the 5th respondent against the post and the termination of her service is illegal, unjust and null and void, and she be declared as a regular employee. It is urged that as the fifth respondent is an elected member of Gram Panchayat, he was not eligible to be considered for appointment and, as such, the termination of the service of the applicant in O.A. 410/89, it is stated that since she had worked for almost one year, is bad and that she is entitled to the protection of sections 25F and 25G of the Industrial Disputes Act.

4. In O.A. 569/89, the applicant has prayed for quashing the selection of the 5th respondent and for a direction to the respondents 1 to 3 to consider him for the post. He has also raised the plea of disqualification on the part of the 5th respondent.

5. Respondents 1 to 3 have filed replies in both these applications. In O.A. 410/89 it is contended that the appointment of the applicant therein was on a provisional basis and though the applicant was also called for the interview in connection with the selection for regular appointment, she failed to attend, and the 5th respondent was duly selected and was appointed. In the reply filed in O.A. 569/89, there is the further plea that the applicant therein is not eligible for appointment to the post as he does not possess the requisite qualifications and that he has no adequate means of livelihood.

6. The first question that arises for determination is whether the termination of appointment of the applicant in O.A. 410/89 is bad in law. It is not in dispute that the appointment of that applicant was only on a provisional basis when her father

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who was holding the post on regular basis resigned. Thereafter, the Administration took steps for making regular appointment to the post in accordance with the rules. The applicant in O.A. 410/89 was also called for the interview, but she did not attend. The 5th respondent was selected and pursuant to the selection he was appointed to the post. It was, in these circumstances, that the service of the applicant in O.A. 410/89 was terminated. It cannot be said that the applicant who was put in charge of the post only on a provisional arrangement when her father resigned the post, secured any right to the post so as to challenge the termination of service, and the appointment of the 5th respondent, the regularly selected candidate. We hold that the termination of the service of the applicant in O.A. 410/89 is valid.

Settling the 7th

7. The next question that arises is whether the selection and appointment of the 5th respondent are sustainable. Both the applicants have raised the plea that the 5th respondent was not eligible to be selected and appointed. In the reply filed in O.A. 369/89, the respondents have admitted that the 5th respondent is a member of the Gram Panchayat though they would state that at the time of selection they were not aware of the same. At any rate, the services of the fifth respondent have been terminated subsequent to the filing of these applications by the order dated 20.3.1990. So much so the question of validity of the selection and appointment of the 5th respondent no more survives.

8. The further question that falls for determination is

whether the respondents 1 to 3 have to be directed to appoint either of these applicants against the post. Though the counsel of the applicants urged that the respective applicants for whom they appear is to be appointed against the post, we are unable to agree.

9. As per the service rules relating to the Extra-Departmental ~~employees~~ staff, appointment to the post of Extra-Departmental Postmaster is to be made after calling for nominations from the Employment

Exchange and making a selection. So far as the applicant in O.A. 410/89 is concerned, she did not appear in

the selection that was conducted, though she/duly alerted. Hence the claim of the applicant in O.A.

410/89 cannot be countenanced at all. So far as the applicant in O.A. 569/89 is concerned, it was submitted

by his counsel that as the said applicant appeared at the prior selection, and once the selection

and appointment of the 5th respondent are terminated, the said applicant has to be appointed against the post. There is no merit in this application. In the

first place, there is no case that in the selection that was conducted, the applicant in O.A. 569/89 secured the second rank and was placed at serial

No.2 in the merit list that was prepared. Since the said applicant alongwith others was considered, merely because the appointment of the selected

candidate has been terminated he does not get a right to be inducted in the post. In view of the fact that the selection and appointment of the

5th respondent have been terminated, the proper course would be to hold a fresh selection after

calling for nomination, from the Employment Exchange.

5.

At this point, we are in a position to add a few words

along with the directions left be aforesaid paragraph
we direct the respondents 1 to 3 to do so. However,
we would make it clear that though the Employment
Exchange does not nominate applicants or either of
them, the respondents 1 to 3 shall consider them
also in case they are otherwise eligible as per the
Rules for being considered for appointment to the
post, along with the nominees of the Employment Exchange.

From 10. Subject to the aforesaid directions, we dismiss
both these applications.

10. We may add, however, that the said order did not
mention that the said post would be held
by the respondents 1 to 3 were directed to hand-over charge
of the post to the applicant in that case in preference
to outsiders, and since counsel of the applicant submitted
that having regard to the said order, the said
applicant has been put in charge of the post, that
arrangement will continue until the regular appointment
is made to the post.

Sd/-

Dated 23/4/1990. At the instance of Sd/-
(P.C.Jain)
Member(Admn) 23/4/1990 (G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/ 23/4/1990
23/4/1990.