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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.NO. 1903/90

DATE OF DECISION: 31.12.1990.

MISS. CHANCHAL DEVI

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS.

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

FOR THE APPLICANT

SHRI V.P. SHARMA, COUNSEL

FOR THE RESPONDENTS

SHRI N.S. MEHTA, SENIOR

STANDING COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. T.S. OBEROI, MEMBER(J)

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- (a) that the application of the applicant be allowed with costs of the application.
 - (b) that the Hon'ble Tribunal may be pleased to pass an order declaring the impugned order of selection dated 16.8.90 (Annexure-A/1) as illegal and same is null and void. The applicant be deemed a regular employee of P & T department as EDA-BPM at Cheelerh and the selection of the Respondent No.4 be declared as illegal. The applicant further prays that the Hon'ble Tribunal may be pleased to pass an order directing the Respondents No.1 to 3 to allow the applicant to continue his service as EDA-EPM and termination of applicant from service is illegal, unjust, against the mandatory
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provisions of I.D. Act, 1947. Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant.

2. It may, at the very outset, be mentioned that after the presentation of the OA, on 21.9.1990, when the application came to be heard before a Bench of this Tribunal, for the first time, a notice for admission and interim relief, returnable on 4.10.90, was ordered to be issued, and simultaneously, till 4.10.90, the respondents were restrained to implement the result of the selection said to have been made against the post, which the applicant was holding. The interim order passed on 21.9.90 was extended from time to time, till final disposal of the OA, as both the parties, vide order dated 28.11.1990, had agreed for final disposal of the same, at the stage of admission itself, as the interim relief sought for, was more or less the same, as prayed for, by way of the final relief. It is in these circumstances that the O.A. is being disposed of, without formal admission of the same.

3. The other factual details, necessary for disposal of the case, may be briefly mentioned here. On a surprise check of Extra Departmental Branch Post Office of Cheelerh, certain defalcation to the tune of Rs.1000/- was detected by Shri M.C.Batra, Inspector of Post Office, Gurgaon Division, and accordingly, some alternative arrangement by putting said Shri Nanhar Ram "off duty", became necessary. Vide note dated 3.8.89 (Annexure A-8), the applicant, Ms. Chanchal Devi, was given temporary charge, subject to its approval by the competent officer, namely, S.S.P., Gurgaon Division. The said authority, vide

his order dated 22.12.1989 (Annexure A-2), approved the appointment, as proposed by the Inspector of Post Office, vide Annexure-8, in place of said Sh. Nanhar Ram, till the finalisation of the disciplinary case against him, or till some regular appointment is made. However, vide impugned order dated 16.8.90 (Annexure A-1), the applicant, Ms. Chanchal Devi, besides certain others, were called for interview, for the said post of EDABPM, Cheelerh, and eventually, Respondent No.4 was found suitable for the said post, to the exclusion of the applicant. Being aggrieved of the same, she has come by way of the present O.A. before us. Though the applicant resided at a place away from the jurisdiction of the Principal Bench, on an Application under Section 25 of the Administrative Tribunals Act, 1985, the present application ^{was} ordered by the Hon'ble Chairman, to be retained and dealt with in the Principal Bench.

4. The applicant has based her claim for the post, mainly, on the ground that having served on the said post, for over a year, she ought to have been considered on a preferential basis. She also sought refuge under the provisions of Industrial Dispute Act, 1947, pleading that the Postal Department being an Industry, she was entitled to the protection under the relevant provisions of the Industrial Disputes Act. She has cited certain case law, in support of her case.

5. In the counter filed on behalf of Respondents No. 1 to 3, applicant's claim has been resisted/opposed. It was contended, that it was merely by way of an interim or provisional arrangement, in the interest and exigency of work, that the applicant was temporarily appointed as EDBPM, and it was made clear, in the letter Annexure A-2 issued by the SSP, Gurgaon Division,

listing out the terms and conditions for the appointment of applicant, which she has also accepted, by sending back a copy of the same to the issuing authority. She was thus bound by the terms and conditions and cannot agitate the same now by way of putting up the claim for her retention on the said job. It was also contended on behalf of Respondents No.1 to 3 that the applicant was also given a chance for appearing for her selection for the said post, and therefore, it does not lie in her mouth to show that her due claim for the said post was ignored. By referring to the relevant provisions of EDA, Conduct and Service Rules, 1964, it was averred that though the applicant was educationally qualified, for the post in question, matriculates or equivalent are to be preferred for the said post.

6. In the counter filed by Respondent No.4, who had been selected in place of the applicant, for the post in question, more or less similar averments, as put forth by Respondents No.1 to 3, have been made, adding that he conforms to all the requirements, such as regarding residence, holding of property, etc. as per the above rules.

7. We have also heard the learned counsel for the applicant, as well as the learned counsel, representing Respondents No. 1 to 3 and Respondent

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No.4. A perusal of the material on record shows that it was only because of the special circumstances involved, that the Inspector of Post Offices, Shri Batra, who was on a surprise check of the Branch Post Office in question, that he had to make provisional arrangement, by appointing the applicant temporarily. Further, the letter of appointment issued by the SSP, Gurgaon Division, clearly stipulated that the applicant's appointment was purely provisional till the finalisation of the case against Shri Narhar Ram. A further perusal of the record shows that names of the incumbents were duly called for, from the Employment Exchange concerned, and also, wide publicity inviting the names of the prospective candidates, was carried out in the concerned area. The selected candidate, Respondent No.4, as per copies of the certificates furnished by him, is a matriculate, and has also studied upto 11th class (Annexure R-9 and R-10). He has also cited that he owns six acres of agriculture land. Though the applicant has disputed his claim for being resident of village in question or having property therein, no worthwhile evidence in support has been adduced by her. Besides, selection of Respondent No.4 has been carried out by the Competent Authority, who must have varified all

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these aspects, as per requirement of the relevant rules.

8. As regards the applicant's plea that she is entitled to protection under the provisions of Industrial Dispute Act, suffice it to say that she ought to have sought for the relief under the said enactment, before the appropriate forum, as recently held in judgement dated 30.10.1990, by a Larger Bench of CAT (Hyderabad Bench), wherein it was inter-alia held that those seeking the relief under the provisions of the Industrial Disputes Act, must exhaust the remedies under that Act. As regards her plea for a preferential claim for being considered for the present post, in support of which she had also enclosed a copy of judgement in AIR 1987 SCC P.1163 Smt. Mary Oommen Vs. Manager. M.G.M. High School, Kureppamapaddy Kerala and others, it may be said that the facts and circumstances of that case are quite different from those involved in the present case. The applicant's appointment, as earlier mentioned, was purely provisional, till certain exigencies, which she had very much accepted, by signing and sending back, a copy of the terms of the appointment, and therefore, she cannot now be permitted to resile or extricate herself from

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the same. Besides, the applicant's claim is governed by specific rules, as contained in EDA, Conduct and Service Rules, 1964, and after having been given an equal opportunity of being considered, the present appointment was given to a better qualified candidate.

9. , As a result of the foregoing, we do not find merit in the present OA which, accordingly, is dismissed, without any orders as to costs.

Dec 31/12/90
(P.C. JAIN)
MEMBER(A)

Dec 31/12/90
(T.S. OBEROI)
MEMBER(J)