

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A. NO. 677/90

Date of decision: 20-9-1990

SURINDER

.....APPLICANT

VERSUS

THE SR. SUPERINTENDENT OF POST OFFICES

...RESPONDENTS

Shri Sant Lal, ...counsel for the applicant.

Shri M.L. Verma, ...counsel for the respondents.

CORAM:

HON'BLE SHRI T.S. OBEROI, JUDICIAL MEMBER.

HON'BLE SHRI I.K. RASGOTRA, ADMINISTRATIVE MEMBER.

J U D G E M E N T

( DELIVERED BY SHRI I.K.RASGOTRA, ADMINISTRATIVE MEMBER )

Shri Surinder, the applicant who is an Extra Departmental Employee in the office of the Senior Superintendent of Post Office, has filed this application under Section 19 of the Administrative Tribunals, Act, 1985, challenging his termination of service without any notice on 4-4-1990 and denying him the opportunity for appearing in the departmental examination held for appointment to the post of Postman and in other Group 'D' cadres.

The facts of the case in brief are that the applicant was appointed as Extra Departmental Chowkidar w.e.f. 9-8-1985 vide letter dated 4-9-1985 (page 13 of the paper book) on temporary basis till such time as regular arrangement is made vide Shri Ram Niwas, Chowkidar, Patel Nagar Post Office, who was unauthorisedly absent from duty from 29-6-1985. The services of the applicant were terminated w.e.f. 4-4-1990 after he had

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rendered over four years service. Since he fulfils the conditions of eligibility for the departmental examination for appointment to the post of Postman/Group 'D' post, he was allowed to appear in the examination held on 4-12-1988. He, however, failed in the said examination. In the subsequent examinations held on 16-7-1989 and 23-7-1989, he was not permitted to appear in the respective examination despite his representations. Since he was not likely to be issued roll number for the examination scheduled to be held on 22-4-1990, he approached the Tribunal, who directed the respondents to allow him to appear provisionally in the said departmental examination scheduled for 22-4-1990.

By way of relief, the applicant has prayed that order dated 4-4-1990 terminating his services (page 12 of the paper book) may be set aside with consequential benefits and that respondents be directed to hold supplementary test of 1989 examination for the recruitment to the cadre of Postman and other Group 'D' cadres, with consequential benefits.

2. The respondents in their written statement have accepted the fact regarding appointment w.e.f. 19-8-85 and termination of service of the applicant on 4-4-1990 but have brought out that his services were terminated in accordance with the recommendations of the report of the Savoor Committee. The post of EXtra Department Chowkidar was abolished vide Department of Posts letter dated 14-12-1987 (page 34 of the paper book). It has also been submitted that the applicant has given an undertaking at the time of joining that he would not claim for regular/parmanent appointment. With the abolition of the post, there was no alternative but to terminate the services of the applicant. It has

however been averred that being an Extra Departmental chowkidar the applicant does not come within the purview of the Industrial Disputes Act. The respondents have also contended that the applicant was not a regular Extra Departmental Agent and therefore he does not fulfil the eligibility conditions for appearing in the departmental examination to fill up the posts for promotion/appointment as Postman/Group 'D'. The fact that the applicant was allowed to appear in the departmental examination held on 4-12-1988 on completion of three years service as Extra Departmental Chowkidar, however, has not been disputed by the respondents.

3. We have heard the learned counsel of both parties and considered the material before us carefully. According to the D.G.'s P&T letters No.47-5/79/SPB-1 dated 20th March, 1979 and 7th April, 1989 "the Extra Departmental Agents who have put in three years of service as E.D. Agents and are below 42 years of age (47 years for SC/ST) are also allowed to appear in the literacy test." In the succeeding paragraph in the same letter relating to "Promotion to the cadre of Postman", it has been stated that "at present ED Agents with more than three years of ED service and who are below 42 years of age (47 years for SC/ST) are eligible to appear in the examination for appointment to the cadre of Postman and village Postman." In accordance with DG's & P&T instructions the applicant is eligible for appearing in the departmental examination for promotion to the post of postman and for appointment to Group 'D' cadre. There was no reason to deny him the opportunity to appear in the 1989 departmental examination when he was eligible for the same. Since the examination for 1989 and follow

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up action is already over, we do not intend to unsettle the settled matter.

The next contention of the respondents is that the applicant had given an undertaking at the time of joining as ED Chowkidar that he would not claim regular/ permanent appointment. We cannot agree with this position, as the respondents cannot take advantage of their dominant position in dictating such terms to the candidates who are seeking an opening in the field of employment. It is however noted that the post of ED Chowkidar was abolished in accordance with the recommendation of the Savoor Committee. In this situation, the applicant should have been put in the surplus list and all efforts made to put him <sup>in</sup> an alternative employment in the Department as he had rendered over 4½ years service.

4. In view of the above facts and circumstances, we order and direct that if the applicant has passed the examination held on 22-4-1990 or held at a later date if the same was postponed, he should be promoted postman or appointed to Group 'D' post as the case may be. In case he has failed in the examination he should be placed on the surplus list in accordance with the extent instructions and found an alternative employment, within the Department.

The OA is disposed of with the above directions. There will be no orders as to the costs.

  
(I.K.RASGOTRA)  
MEMBER (A) 20/9/1990

  
20/9/1990  
(T.S.OBEROI)  
MEMBER (J)