

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABADDated : Allahabad this 22nd day of December, 1995.QUORUM : Hon. Mr. T. L. Verma, Member-J
Hon. Mr. D. S. Baweja, Member-AOriginal Application No. 920 of 1993.Jagamath Pati Tripathi, son of late Sri
Shiv Mangal Tripathi, Resident of Village,
Chandrauta, P.O. Chandrauta, Distt. Deoria.... Applicant.

(By Advocate Sri K.K. Dwivedi)

Versus

1. The Senior Superintendent of Post Offices, Deoria Division Deoria.
2. The Inspector of Post Office, Kasia District Deoria.
3. Union of India through its Secretary,
Communication, New Delhi.

..... Respondents.

(By Advocate Km. Sadhna Srivastava)

ORDER (Oral)(By Hon. Mr. T.L. Verma, Member-J)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the selection process initiated by notice dated 7.5.1993 (Annexure-1) and for issuing a direction to the respondents to appoint the applicant on the post of Extra Departmental Branch Post Master (Chandrauta, District Deoria (E. D. B. P. M. in short) and to regularise him on the said post.

2. The facts giving rise to this application briefly stated are that one Sugreev Pati Tripathi was working as E.D.B.P.M. Chandrauta District Deoria. His services were terminated on 5.8.1973 and in his place the applicant was appointed

8

A2
3

-2-

as E.D.B.P.M. by order dated 21.7.1973. The applicant assumed charge of the said post on 8.8.1973. The appeal filed by said Sri Sugreev Pati Tripathi against the termination was allowed and he was reinstated on the post of E.D.B.P.M. Chandrauta, Deoria. The Inspector of Post Offices, therefore, by his memo No. A-653 dated 6th Oct. 1983 asked the applicant to hand over the charge to said Sri Sugreev Pati Tripathi. The applicant filed Civil Misc. Writ Petition No. 12605 of 1983 in the High Court of Judicature at Allahabad for restraining the respondents from taking charge of EDBPM, Post Office Chandrauta, Deoria from the applicant in pursuance of the order dated 6th Oct. 1983. The aforesaid writ petition was transferred to this Tribunal and numbered as T.A.No.18 of 1990. The Tribunal, vide its order dated 12.7.1991, has dismissed the petition on the ground that the appointment of the applicant was provisional and that no right to remain in service on the said post on reinstatement of Sri Sugreevpati Tripathi had accrued in his favour. The Tribunal, however, observed that the respondents should make efforts to give alternative employment to the petitioner in view of his having rendered more than three years continuous service. In compliance ^{with} of the judgment and order dated 12.7.1991, the said Sugreev Pati Tripathi EDBPM Chandrauta, Deoria was ordered to be taken back on duty by order dated 12.8.1991 and the services of the present applicant automatically came to an end. Against the

.....3/---

-3-

order dated 12.8.1991, the applicant filed O.A. No. 820 of 1991 (Jagannath Tripathi Vs. Senior Superintendent of Post Offices, Deoria and others) with a prayer that Sri Sugreev Pati Tripathi may be superannuated as he has already attained the age of 65 years and he may be allowed to continue in service. The aforesaid O.A. was dismissed by order dated 1.11.1991 with the observations that the petitioner may be accommodated in E.D.A. cadre in accordance with Rules as and when the vacancy arises (vide Annexure-CA-2).

3. It appears that the said Sri Sugreev Pati Tripathi, retired on 7.7.1993 on attaining the age of superannuation. The applicant filed representation dated 28.4.1993 and 26.5.1993 to appoint him in place of Sri Sugreev Pati Tripathi as EDBPM, Chandrauta, Deoria as he had ^{put in} 19 years of service. The grievance of the applicant is that the respondents have, by impugned letter No. A-653 dated 7.5.1993 requisitioned the names of suitable persons for appointment to the post of EDBPM without considering the case of the applicant for appointment on the said post in pursuant to the direction given by this Tribunal in T. A. No. 18 of 1990 and O. A. No. 820 of 1993. Hence this application for the reliefs mentioned above.

.....contd. on page 4/---

-4-

4. The respondents have contested the claim of the applicant. In the counter-affidavit, filed on behalf of the respondents, it has been stated that a bench of this Tribunal has already held ~~xxxx~~ that the applicant has not acquired any right to hold the post of EDBPM Chandanauta, Deoria in T.A.No.18 of 1990. The S.L.P. filed by the applicant against the judgment and order of this Tribunal passed in the said T.A. has been dismissed on 13.3.1992. The further case of the respondents is that the applicant does not qualify for appointment on the post of EDBPM for the reasons that a First Information Report has been lodged against him on the allegation of criminal breach of trust and mis-appropriation of Government money.

5. We have heard the learned counsel for the parties and perused the record. Judgment rendered by this Tribunal in T.A. No.18 of 1990 is at Annexure-CA-1 to the counter-affidavit. In para 10 of the judgment it has clearly been held that the appointment of the applicant being provisional, he has acquired no right to remain in service on the aforesaid post on reinstatement of respondent No.4 (Sri Sugreevpati Tripathi) We quoting below the entire para 10 for proper appreciation of the ratio of the judgment of this Tribunal in T.A.No. 18 of 1990 :-

.....contd. on page 5/---

" That from the foregoing discussions and keeping in view the provisions contained in clause III Sub Clause I Rule 11 of the aforesaid Rules as quoted above we find that the petitioner being provisionally appointed has no right to remain in service on the aforesaid post on the reinstatement of the respondent No.4. In the facts of the impugned order dated 6.10.1983 Hence the petition of the petitioner is hereby dismissed by us with the observation that the respondent No.4 shall be entitled to remain in service upto the age of his superannuation and it is further observed that the efforts should be made by the respondent No. 1 to 3 to give alternative employment to the petitioner who has rendered more than three years continuous service as provided in Sub Rule 2 of Rule 11 of Sec. III of the aforesaid Rules. No orders as to costs."

6. On perusal of the ^{Order} ~~relevant~~ portion of the judgment extracted above, we have no manner of doubt that appointment of the applicant on the post of EDBPM Chandranta was provisional and conditional, that he will have to vacate the post on the reinstatement of the incumbent on whose termination he was offered the appointment. It is not in dispute that the appeal preferred by Sri Sugreev Pati Tripathi against his termination was allowed and he was ordered to be reinstated on the said post. The applicant, therefore, had no option but to vacate the post ^{for} ~~after~~ accommodating the permanent incumbent. The officiation of the applicant on the said post was thus, by way of stop gap arrangement only. That being so, no right had accrued in his favour ^{to continue to remain} ~~even after his re-instatement of Sugreev Pati Tripathi~~ on the said post. The above finding of the Tribunal has become final after the S.L.P. filed by the applicant was dismissed.

7. Coming to the arguments of the learned counsel for the applicant that the Tribunal had issued a direction to the respondents to appoint the applicant on the post of EDBPM
.....Contd. on page 6/---

12
22
1
6.

after superannuation of Sri Sugreev Pati Tripathi
is made, we find ~~that there is~~ ^{xxxxx} no substance in
this argument, ~~plus~~. The Tribunal, as is apparent
from the operative portion of the order, extracted
above, did not issue any such direction. The
Tribunal has only made a ~~passing~~ ^{passing} observation that
respondent Nos. 1, 2 and 3 should make efforts to
give alternative employment to the petitioner,
who has rendered more than 3 years continuous
service as provided in Sub Rule (2) of Rule
of the Extra Departmental (Conduct and Service)
Rules. This observation, in our opinion, ~~does not~~ ^{do}
confer any right much less the legally enforceable
right ~~on tender of~~ the applicant so as to give
cause of action to file this application.

8. In addition to the above, for appointment
to the post of EDBPM, the candidates have to fulfil
the eligibility requirement as prescribed by the
departmental instructions issued from time to time.
According to Rule 3 of P & T Manual Vol-IV, character
and antecedents of the Extra Departmental Agents
have to be verified in advance. Satisfactory
character and antecedents for such appointment,
therefore, is one of the pre-condition. The
respondents have alleged in para 21 of the
counter-affidavit that the applicant has committed
misappropriation of Government money for which
First Information Report has been lodged against
him, ~~he is~~ ^{therefore} ineligible for appointment to the
post of EDBPM. Lodging of First Information
.....contd. on page --

-7-

Report on the aforesaid allegation against the applicant has not been denied. The applicant in his rejoinder-affidavit, ^{with} ~~filed~~ reiterating the grounds taken in the O.A, has alleged that First Information Report is mala fide and has been lodged with sole purpose of harassing the applicant so that he is debarred from seeking appointment to the post of EDBPM, Chandarauta, Deoria. The correctness or otherwise of the allegations made in the First Information Report lodged against him can not be examined in these proceedings and as such we are not in a position to make any comment on the allegation made in the F.I.R. The name of the applicant, it is stated in the counter-affidavit, has not been sponsored by the Employment Exchange and as such the same cannot be taken into account. We would have been persuaded to take a sympathetic view and issued a direction to the respondents to consider the case of the applicant also for appointment on the said post ^{in view of} ~~in view of~~ his having rendered service for more than 12 years. ~~but~~, We are, however, not inclined to do so in view of allegations made against the ~~allegations~~ ~~of this~~ applicant while discharging the function of the E.D.B.P.M. Chandrauta, District Deoria.

9. In view of the facts and discussions made above, we find that this application lacks

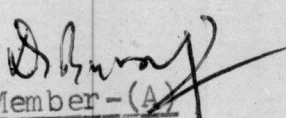
...contd. on page 8....


16

A2
5

-8-

in merit and the same be and is hereby dismissed
leaving the parties to bear their own costs.


Member-(A)


Member-(J)

Pandey/-