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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEWWDXEMXH~~

O.A. No. 381/86

198

~~ExxNo~~ with

OA/787/88

DATE OF DECISION 2/4/1991

Shri Vanjali Raguram Ramavat, Petitioner
Shri Virjibhai Bachubhai Thumar & Ors.

Mr. R. I. Lalaji Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P. S. Chapaneri for Mr. P. M. Raval Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. R. C. Bhatt : Judicial Member

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

O.A./381/86

(2)

Shri Varjilal Raghuram Ramavat,
 Extra Departmental Delivery Agent,
 Jamnagar Postal Division.
 (Advocate: Mr.R.I.Lalaji)

: Applicant

Versus

Union of India Through:

1. The Sr.Supt. of Post Offices,
 Jamnagar Division, Jamnagar.
2. The Director of Postal Services,
 Rajkot Region,
 Rajkot.
3. The Postmaster General,
 Gujarat Circle, Ahmedabad.

: Respondents

(Advocate: Mr.P.S.Chapaneri for
 Mr.P.M.Raval)

O.A./787/88

1. Shri Virjibhai Bachubhai Thumar,
 EDBPM Jasapur, B.O., Via Nikava,
 Jamnagar Postal Division.
2. Shri Ghoghubha Dispinhji Jadeja,
 EDBPM, Kotha Bhadukiya B.O. Via
 Nikava, Jamnagar Post Division.
3. Shri Narottam Dahyabhai Vadolia,
 EDBPM Vasai- B.O. Via Khodiar
 Colony, P.O. Jamnagar-361006.
 Jamnagar Postal Division.

(Advocate: Mr.R.I.Lalaji)

Versus

Union of India, Through:

1. The Senior Superintendent of
 Post Offices, Jamnagar Division,
 Jamnagar.
2. The Director of Postal Services,
 Rajkot Region, Rajkot-360 001.
3. The Post Master-General,
 Gujarat Circle, Ahmedabad-380 020. : Respondents

(Advocate: Mr.P.S.Chapaneri for
 Mr. R.M.Raval)

JUDGMENT

Date: 02.4.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. These two applications are filed by the applicants working as Extra Departmental Delivery Agent in Jamnagar

Division of the Respondents. As common question of law and facts arising in both these applications filed under 19 of the Administrative Tribunals Act, 1985 they are heard together and are being disposed of by a common judgment.

2. The applicant of OA/381/86 is working as Extra Departmental Delivery Agent in Aliabada Post Office, Jamnagar. The applicants of Application No.787/88 are also working in Jamnagar Division. It is the case of the applicants that they are working as Extra Departmental Delivery Agents since more than three years, that after completing three years of continuous service they appeared in the Departmental Examination of Post Man Cadre on 11.7.1982, that they were declared successful by the result sheet dated 11.10.1982 annexed at 'H' page-8 of O.A./381/86 and page-22 of O.A./787/88. It is the case of the applicants that as they completed three years service, they were entitled to appear in the Departmental Examination and as they were declared successful in the examination they had right to get appointments in the postman cadres against the available vacancies and future vacancies. The grievances of the applicants of these applications are that the Senior Superintendent of Post Office, Jamnagar Division i.e. Respondent No.2 issued a Memo scrapping the result sheet by passing an impugned order dated 3rd October, 1983 annexed at page 10 of OA/381/86 and page 25 of OA/787/88. According to the applicants, the respondent No.2 was not justified in scrapping result sheet. It is further mentioned in the application that thirty candidates were declared successful in the said examination, out of which, seven candidates who were not promoted and posted, filed Regular Civil Suit No.949/83 in the Court of Civil Judge, Senior Division at Jamnagar against the present respondents. The said seven candidates are shown at Sr.No.14, 21,19,23,

15, 20 and 18 in the result sheet. The said seven candidates had in the said suit challenged the impugned order dated 3rd October, 1983 of the Respondent No.2 on the ground that it was illegal, unconstitutional, against the principles of natural justice and therefore it was void, that they were entitled to be appointed on the post of Postman. The learned Civil Judge, Senior Division at Jamnagar decreed the suit and declared that the impugned order dated 3rd October, 1983 passed by the Respondent No.2 was illegal, unconstitutional against the principles of natural justice and hence void and the present respondents who were defendants in that suit, were directed to appoint the said seven candidates who were plaintiffs in that suit, on the vacant post of Postman at first instance without any prejudice. The copy of the said judgment is produced in both these applications. It is alleged in the applications that the respondents have not filed any appeal against the decree in the said suit and the said seven candidates were promoted and posted in the postman cadre but the respondents did not promote and post the present applicants to the said post on the ground that the present applicants had not filed a suit similar to the one which was filed by the seven candidates mentioned above. Thus, the main grievance of the applicant is that merely because they did not file a separate suit or did not join with the plaintiffs of Suit No.949/83 and remained loyal and faithful to the department, it has not given the benefit of the judgment of that suit. The applicant of OA/381/86 Shri Varjilal Raghuram Ramavat is at Sr.No.25 of the result sheet of the successful candidates and three applicants S/Shri Virjibhai Bachubhai Vadolia of O.A.787/88 are shown at Sr.Nos. 16,18 and 27 in the result sheet of successful candidates. It is alleged in the application that the respondents appointed the candidates from Sr.No.1 to 12 out of the thirty candidates against the available

vacancies after completing their pre appointment formalities including that of training for the Postman's cadre but did not appoint the present applicants to that post. According to the applicants, the respondents held another examination for the same cadre on 20th November, 1983 for which the applicants applied but the applicants were not permitted to appear. It is the case of the applicants that the respondents had deleted the names of the present applicants and others from Sr.No.13 onward under the alleged ground that these numbers exceeded the number of vacancies available to be filled in against the quota for 1982, which action according to the applicants is absolutely illegal. Moreover, according to the applicants the action of the respondents in not allowing the applicants to appear again in the examination for the same cadre on 20th November, 1983 was also illegal. According to the applicants, when the respondents appointed the seven candidates from Sr.No.13 to 30 who were declared successful among the list of 1982 and who had succeeded in the suit, there was no reason for the respondents not to consider to appoint the applicants to the post of Postman when the action of the respondents in deleting the name of the persons from Sr.No.13 to 30 was held illegal and void and when the respondents had not preferred an appeal against the judgment. It is alleged that no opportunity of being heard in person was given before cancelling the results of the applicants, that the department has not declared applicants otherwise unfit in any way, that the action of the respondents in denying justice to the applicant offends Article 16 and 31 of the Constitution of India. The applicants have prayed that their rights to treat them as the approved candidates be ordered to be restored on the same analogy as ordered in Civil Suit No.949/83.

3. During the pendency of these two applications, the applicants have amended the application alleging that there was settlement between the respondents and several unions representing postal employees, on 11.7.1987 and as per the settlement, the E.D. employees, who were selected for promotion in the test held in 1981-82 were to be absorbed in the promotion post within a year and the candidates of 1983 within two years, and, therefore, also the applicants should have been promoted within one year from 11.7.1987. The applicants have added the relief in the amended application praying that the respondents may be ordered and decreed to promote the applicants in view of the settlement dated 11.7.1987.

4. The respondents have filed written statements in each application. They have taken common contentions in both the written statements but there is inconsistent versions in some contentions in the written statements. In the written statement to the application No.381/86, it is contended that the application is not maintainable and no cause of action has arisen to file this application. It is contended that at present 50% of the vacancies in postman cadre are filled up by promotion of grade 'D' officials and the remaining 50% by outsiders, that against the outsiders quota, the first preference is given to Extra Departmental Agent but if they do not qualify in sufficient number, resort is made to recruitment of outsider and through employment exchange. It is contended that on this basis in the year 1982 for the vacancies announced for the year 1982, an examination was held and one departmental candidate was declared successful against the departmental quota leaving rest of the vacancies against the departmental quota as unfilled and in view of this, only 11 extra departmental employees could be taken up as postman

but the respondents had added 12 vacancies reserved for outsiders and declared 23 extra departmental employees as successful to be appointed as a postman. The contention of the respondents in this written statement is that later on the Postmaster General, Gujarat Circle, Ahmedabad pointed out the irregularity on the part of the office and directed the office to struck off the result of the candidates in excess of 11 extra departmental employees and accordingly the result has been scrapped as the applicants and others were not eligible to be appointed against the vacancies meant for outsiders. It is further contended in para-6 of this written statement that there were 24 posts and the applicant's name was standing at Sr.No.25 and therefore his name was deleted from the list. At this stage, it is necessary to mention that the names of the applicant No.1 and applicant No.2 of the other application OA No.787/88 are shown at Sr.No.16 and 22 respectively even then their names were deleted from the list. Therefore, if the version of the respondents as mentioned in para-6 of the written statement that there were only 24 posts has to be taken as correct the names of applicants 1 and 2 of O.A./787/88 at Sr.No.16 and 22 should have been considered by respondents. So far the effect of judgment in Regular Civil Suit No.949/83 is concerned, the version of the respondents as per the written statement is that as their names were within the first 24 candidates they were promoted. If it was so, why applicants 1 and 2 of OA/787/88 were not considered remains unanswered.

5. So far written statement to the application No.787/88 is concerned, the respondents have contended that the application is barred by limitation hence the same be dismissed. In para-6 of written statement of O.A.787/88, the respondents have stated that through oversight and inadvertently, 11 outsiders could not have been included in the departmental quota, were included, that as per the direction by the office of P.M.G., Gujarat Circle to strike

off the result of the candidates in excess of 11 extra departmental employees who were irregularly and illegally included in the quota of departmental candidates that the persons whose names were illegally included in the quota of departmental candidates were stricken off from the select list and 12 persons who were declared successful from outsiders' quota, have been given appointment and those 11 persons who were wrongly included in the list were not entitled to get appointment. The present three applicants of this application whose names are at Sr.No.16, 22 and 27 respectively in the select list and who are not promoted but whose result is stricken off by the respondents, the defence of respondents is that if any relief is granted to the applicants then the persons who have been already appointed would be adversely affected. Moreover, the contention is that these applicants kept quiet and allowed time to pass and therefore it is not open to them to approach this Tribunal. The respondents have denied that the part of the result was illegally cancelled. It is contended that the agreement relied on by the applicants has no application to the facts of the present case and the applicants are not governed by the said agreement of July, 1987.

6. The first contention of the respondents is that O.A./787/88 is barred by limitation. So far O.A./301/86 is concerned, the learned advocate for the respondents rightly did not take any objection about the limitation. Learned advocate for the respondents submitted that O.A./949/83 by which the learned Civil Judge, Senior Division at Jamnagar had declared that the impugned order of 3rd October, 1983 removing the names of certain candidates from the list of successful candidates was illegal, unconstitutional and void. He, therefore,

submitted that considering this settlement and representation the application is within time under Section 21 of the Administrative Tribunals Act. We agree with the submission of the learned advocate for the applicants that considering the settlement and subsequent representation on it, the application is within time and the contention of the learned advocate for the respondents that the application is barred by limitation is rejected. The learned advocate for the applicants had relied on the decision of Collector, Land Acquisition, Ananthal vs. M.S.T. Katiji (AIR 1987 SC 1353) in which it is held that Court should should adopt liberal approach while condoning the delay and therefore he submitted that even if there was any delay in making this application, the same be condoned. As observed above, we hold that the application is in time and therefore it is not necessary to consider the question of condonation of delay.

7. The learned advocate for the applicants submitted that the application of both these applications are working as Extra Departmental Delivery Agent, that the applicants after completing three years of continuous service appeared in the departmental examination of Postman cadre on 11.7.1982 and were declared successful by the result sheet dated 11th October, 1982, and, that fact is not in dispute. But the main bone of contention of the applicants is that subsequently the respondent No.2 issued a Memo scrapping the result sheet by passing an impugned order dated 3.10.1983 which respondent No.2 in law was not entitled to and it is also the grievance of the applicants that the respondents had not heard the applicants before scrapping the result. It is submitted on behalf of the applicants that some of the successful candidates whose names were also removed from the result sheet in view of this impugned order succeeded in the Civil Suit No.949/83 filed in the Court of Civil Judge,

Senior Division. Jamnagar against the respondents by which the impugned order dated 3.10.1983 passed by respondent No.2 was declared illegal, unconstitutional and void. It is also submitted before us by the learned advocate for the applicants that no appeal was preferred against the judgment and decree passed in that suit and as per the direction in the said suit the plaintiffs of that suit were posted as Postman by the respondents. The respondents have also in the written statement asserted that the seven plaintiffs who had succeeded in Civil Suit No.949/83 were posted as Postman as per the decree in that suit. It is also not in dispute before us that no appeal was filed against the judgment and decree passed in that suit by respondents. Therefore, the other contention taken by the respondents in the written statement that they were entitled to remove the name of the applicants from the result declared for the year 1982 on the ground that inadvertently 11 outsiders who could not have been included in the departmental quota were included and that the persons whose names had been shown in the select list had no right to be considered for appointment and that those 12 persons who were declared successful from outsiders' quota have been given appointment and those 11 persons who were wrongly included in the list were not entitled to be considered cannot be sustained. It is true that mere selection does not confer any right of appointment but in the instance case there was no legal justification for the respondents to scrap the names of these applicants from the result sheet once having been declared as successful more so when the Court declared the impugned order illegal and void. The respondents have given benefit to those persons who had challenged the impugned order by filing the suit No.949/83 but have not considered the present applicants. Moreover, these applicants were not allowed to appear in the examination in the following year 1983 though the respondents had given advertisement for the very

same post subsequently. The respondents have contended in the written statement that these applicants kept quiet and allowed the time to pass and therefore it is not open to them to approach the Tribunal after the said order cannot be accepted. The learned advocate for the respondents was unable to state any rule that the candidates who have passed the examination in the year 1982 and were put on the approved list for appointment as Postman cannot be considered for the vacancies of the same cadre for the subsequent year.

8. The subsequent event of the settlement between the unions and the respondents on 9.7.1987 shows that on the detailed discussions held between the postal Services Board and representatives of the National Federation of Postal Employees, Federation of National Postal Organisation, Bharatiya Postal Employees Federation and All India Postal Accounts Employees Associations and the respondents, the final settlement had been reached on the charter of demands presented by the staff side. There is no dispute on this point that this settlement was arrived at but the respondent's learned advocate submitted that these applicants are not entitled to get the benefit of that settlement. The learned advocate for the respondents has put reliance on the decision in B.H.Ravaya and another vs. Superintendent of Post Office, Amreli and Ors. in T.A./1122/86 decided by this Tribunal on 6th April, 1989 wherein it was held that mere existence of vacancies does not create any right to promotion and selection list on the ground of any error can also be corrected by the competent authority. This decision does not help the respondents at all, in view of the term of settlement arrived at on 11.7.1987 in which clause 4 is very clear.

"4 Absorption of RTP staff, promotion of ED and lower grade staff and regularisation of the services of casual labourers.

(22)

(a) xx xx xx

(b) E.D. Employees and Lower Grade Staff who were selected for promotion in the test held in 1981 and 1982 will be absorbed in the promotional post within a year, and the candidates of 1983 within 2 years.

(c) xx xx xx "

9. It is not in dispute that the applicants are E.D. employees. It is not in dispute that they were approved for appointment as a result of the test held in the year 1982. Therefore, there is no justification for the respondents not to absorb them in the promotional post within a year from the date of this settlement. Clause 15 of this settlement in terms says that both the official side and staff side expressed their happiness over the cordial manner in which the discussion took place and were happy to reach the said agreement and it was in view of this agreement that the different federation and association of the postal employees had agreed to withdraw the notice of intention to proceed on strike from 14.7.1987. In our opinion, this settlement is binding to the parties to this settlement including the applicants and the respondents, the applicants have mentioned by way of amendment in the relief clause that in view of this settlement dated 11.7.1987 between several unions representing postal employees and the respondents, the applicants should have been promoted within one year from 11.7.1987 and therefore they have prayed that the respondents be ordered and declared to promote the applicants in view of the settlement dated 11.7.1987. The learned advocate for the applicants submitted that the respondents may be ordered to promote and appoint the applicants for the post of Postman from 11.7.1988.

10. In view of the finding of the court of Civil Judge Senior Division in 949/83 by which the impugned order dated 3rd October, 1983 was declared illegal, unconstitutional,

unjust and void and as observed above in view of the facts there was no appeal preferred by the respondents against the said judgment and decree in the said suit, same has become final. Therefore, the impugned order has no force at all in the eye of law. Moreover, in view of the settlement arrived at between several unions representing postal employees and the respondents, the present applicants were entitled to be promoted as a Postman within one year from 11.7.1987 and the respondents having failed to act and abide by the settlement, the applicants would be entitled to be promoted to that post.

11. The result is that both the applications succeed and the respondents are directed to promote and appoint the applicants of these applications on the vacant post of postman giving the effect from 11.7.1988 with consequential benefits. We pass no orders as to costs. Applications allowed accordingly.

T.Bhatt

(R.C.Bhatt)
Judicial Member

P.H.Trivedi

(P.H.Trivedi)
Vice Chairman