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CAT/3/12

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

For
Appointments

O.A. No. 387
~~XXXXXX~~

1987

DATE OF DECISION 25.4.1991

Shri Kamalesh Somani Petitioner

Mr. B.P. Tanna Advocate for the Petitioner(s)

Versus

Er. Superintendent of Posts, Respondent
Jamnagar. & Anr.

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? *m*
3. Whether their Lordships wish to see the fair copy of the Judgement? *m*
4. Whether it needs to be circulated to other Benches of the Tribunal? *m*

Shri Kamalesh Somani
at P.O.Movan,
Via Jamkhambhalia
District Jamnagar,
(Advocate: Mr.D.K.Mehta
for Mr.B.P.Tanna)

: Applicant

Versus

1. Sr.Superintendent of
Posts, Jamnagar Division,
Jamnagar.

2. Hadial Madan Jeram
Residing at Movan,
Via Jam Khambhalia
Jamnagar.

: Respondents

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

J U D G M E N T

O.A./387/87

Date 25.4.1991

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

: Judicial Member

This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant working as E.D.A. Branch Post Master at village Movan, challenging the order of Respondent No.1, Sr.Superintendent of Posts, Jamnagar being No.16/193/87-88 dated 1.7.1987 by which order the applicant was informed that the respondent No.2 was appointed as B.P.O. and that the charge be handed over the Respondent No.2. It is the case of the applicant that his father was working as Extra Departmental Agent (EDA) Branch Postmaster at Village Movan, that when his father was sick he handed over the charge to one Shri P.S.Datani and that the said Datani handed over the charge to this applicant on 11.6.1986 vide letter Annexure A/1. According to the applicant, on 1st October, 1986, there was an advertisement on the notice Board of the Gram Panchayat for a Post of Branch Postmaster, that the applicant filled the application produced at Annexure-II, that the applicant also on 4th October, 1986 gave all the details required as per the application and forwarded the application to SSP, Jamnagar produced at Annexure A-III.

The grievance of the applicant is that about 9 months after 4th October, 1986, he received an impugned order dated 1.7.1987 produced at Annexure A-IV directing him to relieve the charge and to hand over the same to Respondent No.2. According to the applicant, this impugned order was stayed for some period by S.S.P., Jamnagar by letter 6.7.1987 produced at Annexure A-V, that thereafter the applicant made an application to SSP, Jamnagar Division, Jamnagar on 21.7.1987 to consider his case a copy of which is produced at Annexure A-VI but the same was rejected by SSP, Jamnagar on 29.7.1987 produced at Annexure A-VII by which the applicant was informed that as there is a regular appointment made for the Branch Postmaster at Movan, no further action can be taken in the matter. The applicant has produced at Annexure-VIII the monthly salary which was received by him during the period he was working E.D.A. Branch Postmaster.

2. In this case, the learned advocates for ^{the} parties have waived the personal hearing and have given the written arguments. We have gone through the written arguments submitted by the learned advocates of the parties. The applicant's main contention as found in the written arguments is that his father while working as E.D.A.B.P.M. expired on 20.7.1986 after putting the work on this post for more than 25 years, that according to the Service rules for post and telegraphs Extra Departmental Staff referred to at page No.96 in the book of P.Muthuswamy, the learned author while referring to Section-VI has mentioned that "a suitable job in E.D. Cadre may be offered to one dependent of an E.D. official who dies while in service leaving the family in indigent circumstances subject to the conditions applicable to regular employees who die while in service or retire on invalid pension. Such employment to the department should however be given only in very hard and

exceptional cases". The grievance of the applicant is that the respondent No.1 has not exercised his power under Section-VI without any reason and that the applicant ought to have been appointed as E.D.B.P.M.

3. The respondent No.1 in the written submissions has contended that when the father of the applicant became sick, he had handed over charge to P.S.Datani who in turn handed over the charge to the applicant on 11.6.1986, that the applicant's father who was Branch Postmaster died on 20.7.1986 and therefore the applications were invited for the appointment. It is not in dispute that the present applicant also had made his application, a copy of which is produced at Annexure A-II. The applicant who was holding charge had applied for the post along with other candidates and ultimately the respondent No.2 was appointed regularly to the said post. The respondent No.1 has contended that the grievance of the applicant ^{is} that he was not given an employment on the compassionate ground after the death of his father and therefore appointment of respondent No.2 was not in consonance with Section-VI of the Service Rules for Post and Telegraphs Extra Departmental Staff but the said grievance cannot be accepted. The respondent No.1 has mentioned in the written submissions that the applicant had made an application in response to the advertisement and it was not his case of giving an employment on compassionate ground. It is stated that the applicant had no right to seek such appointment on compassionate ground because he had applied for the said post along with the other candidates by regular application. Moreover, the applicant himself has mentioned in the application at Annexure A-II that his monthly income was Rs.400 from the grocery business and in Annexure-VI dated 21.7.1987 he has mentioned that his business was going on well and was earning Rs.1200 per month from that business ^{was} and also working as L.I.C. agent from 23rd September, 1986

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and that he has been in good financial position. Therefore looking to his application Annexure-II and his representation Annexure VI, it is clear that his financial position was good and he was earning quite well and therefore there was no question of exercising the powers under "Service Rules for Post and Telegraphs Extra Department Staff" on two grounds namely that the applicant had never applied on compassionate ground and also because he was earning well. Moreover, the Rules referred to by the applicant show that such an employment to the dependent has to be given only in the very hard and exceptional cases, where E.D. official dies while in service leaving the family in indigent circumstances. There is much force in this submission of the respondent No.1 and we see no just and proper ground for the applicant to seek the employment on compassionate ground.

4. The other grievance of the applicant is that he was working as E.D.B.P.M. since 11.6.1986 and his service could not be terminated without following due procedure of law, that he had acquired all the qualification required. According to the applicant, respondent No.2 was also one of the candidates for the same post to which the applicant had made application and the action of the respondent No.1 in appointing the respondent No.2 to that post ignoring the applicant was illegal as the applicant was not heard at all which is violative of principle of natural justice, that subsequently his representations were also not taken into account, and the respondent No.2 was appointed. The respondent No.1's contention is that the respondent No.2 was appointed regularly for the said post. The applicant had applied for the said post as regular incumbent and through the procedure of selection the respondent No.2 was selected. It is, therefore, contended on behalf of the respondent No.1 that the applicant was not entitled to any notice of termination because the applicant

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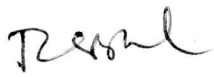
was never given any appointment by respondent No.1 either on adhoc or temporary basis nor was he posted after following any kind of procedure of recruitment but as mentioned by the applicant himself since his father was sick the charge was given to the applicant by his father and the applicant was holding the charge accordingly. Thereafter, the advertisement was given by respondent No.1 for regular appointment for this post, where the applicant was not selected. Annexure A-IV which is an impugned order dated 1.7.1987 shows that in view of the regular appointment of respondent No.2 the applicant was asked to hand over the charge to respondent No.2. The representations thereafter made on 21.7.1987 by the applicant were rejected by respondent No.1 on the ground that there was regular employment made of respondent No.2 and therefore nothing further would be done in the matter.

5. The grievance of the applicant is that the appointment of respondent No.2 in place of the applicant was illegal and violative of article 14 and 16 of Constitution of India that 125 EDBPMs are working on adhoc basis, while the applicant is removed from that post which shows malafide intention on the part of the respondent No.1 authority and therefore also the impugned order should be quashed. According to Respondent No.1, the applicant was only holding a charge of his father who had expired and was not a regular incumbent and he was not entitled to continue to hold charge, as Respondent No.2 was regularly selected and appointed on the part, while the applicant was not selected and there was no question of any malafide on the part of respondent No.1. Merely because some other E.Ds. were working on adhoc basis, there is no justification for the applicant to get appointment on the post where he is not selected. There is much substance in this submissions of the respondents also.

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6. It is important to note that, at the most, the applicant was the substitute and working as E.D.A. The substitute is not even required to furnish security under the rule even with regard to irregularity committed by a substitute who is nominee of EDA. The nominee, while discharging the duties of a public servant, remains a private agent. No employment relationship is set up between postal department and the substitute EDP, and in such case the applicant has no legal claim to the post and he cannot challenge the action of the respondent No.1 when the respondent No.1 regularly selected the respondent No.2 and when the applicant was not selected. In view of this clear position, we see no merit at all in the application of the applicant and there is no reason to cancel the impugned order dated 1.7.1987 produced at Annexure A-IV which respondent No.2 was appointed at the said post by respondent No.1. There is no substance in the allegation of malafides against respondent No.1.

7. In this view of the matter, the application having no merit deserves to be dismissed. The application is dismissed with no orders as to costs.


(R.C.Bhatt)
Judicial Member


(P.H.Trivedi)
Vice Chairman