

Removed (Jud)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 111 OF 1988 ***
~~To Do Not~~

DATE OF DECISION 18-4-1991

Joshi Dineshkumar Kacharalal, Petitioner

Mr. V.S. Mehta, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. Jayant Patel Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
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*

Joshi Dineshkumar Kacharalal
Village Unchidhanal
Taluka Khedbrahma
Dist: Sabarkantha.

.... Applicant.

(Advocate: Mr.V.S.Mehta)

Versus.

1. Union of India, through
Superintendent of Post Offices,
Sabarkantha,
Himatnagar.
2. Sub Divisional Inspector of
Post Offices,
Sabarkantha Division,
Idar.
3. Mistry Rameshkumar Narayandas,
Village Unchidhanal,
Taluka Khedabrahma,
Dist: Sabarkantha.

..... Respondents.

(Advocate: Mr. Jayant Patel)

J U D G M E N T

O.A.No. 111 OF 1988

Date: 18-4-91.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant, in this original application he filed under section 19 of the Administrative Tribunals Act, 1985, alleges violation by the respondent Postal Department officials of the constitutional and legal protections he, occupying the post of Extra Departmental Branch Post Master (EDBPM for short), enjoyed. The respondents replaced, by an oral order, the applicant with respondent No.3. The gravamen of his proposition is that he joined as EDBPM on 13.4.1987, worked as such upto 23.1.88 when he was orally relieved of the post and replaced by respondent No.3. He was thus deprived of his post without following provisions of Article 311(2) of

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the Constitution and of Section 25(F) of the Industrial Disputes Act, 1947 as he also fell under the definition of "workman" and had completed above of 240 days in the post. Case law has been cited which held that the Postal Department is an industry. He claims the status of a "workman" who had completed 285 days of work between April 1987 and January 1988 and protection of the provisions of the Industrial Disputes Act, 1947.

2. The officials respondents' reply resisting the application is to the effect that the applicant was, to begin with, ^{appointed} as stop gap substitute when regular EDBPM of the branch post office came to be placed under suspension. Then the regular branch post master came to be removed from service. Proper steps to fill the vacancy regularly came to be initiated after that and employment exchange notified. A panel of 13 names was received which included the applicant also. In the particulars the applicant furnished, he disclosed that he had no immovable property in the village and had no source of income other than what he earned as EDBPM. This disqualified the applicant as rules required these as minimum qualification. A qualified candidate was selected and appointed. He has been impleaded as a respondent. No appearance was made on his behalf and no reply was filed.

3. The official respondents allege that the selected candidates was appointed by order dated 21.12.87. When the mail overseer came to the village to supervise implementation of the order, the applicant was found absent and had left the office record with one K.R. Joshi, the father of the applicant who thus became unauthorised occupant

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of the post. The charge report annexed bears the signature of K.R. Joshi. The official respondents' case is that a candidate appointed against a specific contingency, as in the case herein, has to be relieved when the contingency comes to an end and such termination is not retrenchment under the Industrial Disputes Act. They also say that the Postal Department performs sovereign functions and, ⁱⁿ any case, EDBPM is not a workman.

4. An offer of appointment dated 19.6.1987 was made to the applicant. The offer says that because J.K. Thakkar "has been put off duty pending finalisation of the disciplinary proceedings and need had arisen to engage a person to look after the work of EDBPM Unchi-Dhanal", a "provisional appointment" "tenable till the disciplinary proceedings against J.K. Thakkar are finally disposed of and in case it is finally decided not to take Shri J.K. Thakkar back into service till regular appointment is made". The applicant had to sign the duplicate of the offer if he accepted it which he apparently did.

5. Thus the characteristics emerging from a consideration of the rival pleadings are that the applicant was appointed to the post of EDBPM on the happening of an event and only for the period the event was to last. The applicant had unauthorisedly let his father work in the post the duration of which is not clear but his father, Mr.K.R.Joshi, having signed the charge report when he EDBPM charge was handed over to the regular appointee, there are grounds to believe that. The Postal Department is held to be an industry. The question is whether EDBPM is

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a "workman" within the meaning of section 2(3) of the Industrial Disputes Act, 1947 and if the answer is in the affirmative whether the applicant can still validly claim Constitutional protection as a civil employee and as a workman under the Industrial Disputes Act.

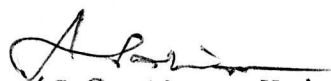
6. Regarding claim of applicant to protection under Article 311 of the Constitution, EDAs in the Posts and Telegraphs Department are, in Superintendent of Post Offices V/s. R.K. Rajamma, (AIR 1977 SC 1677) held to be holding civil posts and their removal from service without complying with Article 311(2) is illegal. But the applicant was appointed as a stop gap arrangement in the contingency above discussed, and, was not removed from service. His service was to come to an end with the end of the contingency for which he was appointed and it so came to an end, in fact brought to an end by the applicant himself shortly earlier by letting another person work in his place, supra. No order of removal of the applicant was passed and the end of his employment was in no manner penal in the circumstances. (see A. Santhakumar V/s. Regional Director of Postal Services, A.P. (1982 (2) SLJ 1973). Again, the official respondents have alleged that the applicant lacked requisite qualification and therefore, on appointment of a regular qualified candidate, the applicant's services became liable to be terminated. The official respondents' contention in this regard is in accordance with the law and rules (see also ^{Dharnidhar} Sahoo V/s. Union of India & Ors., (1987) 2 ATC 16 Cuttack Bench). We thus hold that the applicant appointed as EDBPM in a contingency for the duration of the contingency and lacking the requisite minimum


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qualifications had no legal right to continue in the post of EDBPM. His no constitutional right has been violated in preferring a regularly selected, properly qualified and appointed candidate, namely respondent No.3. It is noted that the pleadings contain no contrary acceptable allegation against respondent no.3 in this regard.

7. Regarding applicability of the provisions of the Industrial Disputes Act, 1947, it is not sufficient to say that the Postal Department is an industry as the industry can also have employees who do not satisfy the ingredients of workman. It is the nature of functions or duties of an employee which help determine whether the employee is a workman. The learned counsel for the respondents did not address us on the detailed nature of the duties of the EDBPM to press the status of 'workman' and no evidence of nature of work came to be produced. The pleadings also throw no light on the subject. No precedents holding that EDBPM is a workman have been placed for our consideration. One who claims to be a workman has to so allege and seek to prove by evidence relating to the nature of his duties and work that he comes within the definition of workman. As said here, no such evidence has been placed before us. In view of this, we have no material before us to hold that the applicant is entitled to any of the protection under the Industrial Disputes Act.

8. In view of the above, the application fails. We hereby dismiss the same. There are no orders as to costs.


(S. Santhana Krishnan)
Judicial Member


(M. M. Singh)
Administrative Member