

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 502/1988

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DATE OF DECISION 28.10.1991

Shri Navalsinh Andarsinh Chauhan Petitioner

Mr. J.J. Yajnik

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. P.M. Raval

Advocate for the Respondent(s)

CORAM :

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

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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

Shri Navalsinh Andarsinh Chauhan,
E.D.Rakhial B.O. at Rakhial Village
Taluka-Dehgam, District Ahmedabad.
(Advocate: Mr.J.J.Yajnik)

: Petitioner

Versus

1. Union of India
Through:
The Secretary,
Ministry of Communication,
Dak Bhavan, New Delhi.
2. The Post Master General,
Gujarat Circle, Ashram Road,
Ahmedabad.
3. The Superintendent of Post
Offices, Gandhinagar. : Respondents
(Advocate: Mr.P.M.Raval)

Mr. J.J.Yajnik, learned advocate for the
applicant.

Mr. E.A.Samuel for Mr.P.M.Raval, learned
advocate for the respondents.

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JUDGMENT

Date: 28-10-1991

O.A./502/1988

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

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant for setting aside the impugned termination order dated 9.7.1988 produced at Annexure A/3 on the ground that it is illegal, unjust, null and void and has prayed that he should be treated in the continuous service of the respondents and has also prayed that his services be regularised.

2. It is alleged by the applicant that he is an employee of the respondents' department which is a Postal Department and he was working as an Extra Departmental Agent, continuously to the utmost satisfaction of the authorities since 28.12.1986 as E.D.A., Rakhial B.O., Ahmedabad. It is alleged by him

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that since 28.12.1986, he has been continuously discharging the said duties with the authorities, and has completed more than 240 days in a year i.e. in the last preceding 12 months and hence the impugned order dated 9.7.1988 terminating his service is in violation of Section 25 F of the I.D.Act. It is alleged by him that he is also registered with the Employment Exchange and the xerox copy of the employment card of the applicant is produced at Annexure A. It is alleged that he had applied for the post of E.D.A. and he was called for interview of the said post by letter dated 21.6.1988 produced at Annexure A/2. It is alleged by the applicant that he was interviewed on 4.7.1988 but the result of the said interview has not been communicated to him but he received the impugned order whereby one another employee has been ordered to be appointed on the permanent post on the same EDA terms by stating that the local arrangement be discontinued. It is alleged that another EDA is being appointed by substituting the applicant. who is also an E.D.A. According to the applicant, as per the instruction issued by the Postmaster General, Gujarat State vide instruction dated 7.11.1978, the experienced E.D.A. should be given priority in the Employment but the respondents instead of regularising the services of the applicant terminated his services appointing another employee which action of the respondents is illegal, arbitrary, discriminatory, violative of Articles 14 and 16 of the Constitution of India. It is alleged by him that as per the Extra Departmental Agents Rules particularly instruction dated 18.5.1979 as far as possible, provisional appointments should be avoided. The applicant has referred to some of the decisions of the Hon'ble Supreme Court

with regard to the applicability of the provisions of I.D. Act to the Postal and Telegraph Department and other point also regarding Article 14 and 16 of the Constitution of India. It is alleged by him that he made representation to the authorities, the copy of which is produced at Annexure A/4 dated 12.7.1988.

3. The respondents have filed reply contending that this application is premature, that the applicant's father who was working as Extra Departmental Delivery Agent attained the age of superannuation, i.e. 65 years and, therefore, he was superannuated on 28.2.1987. It is contended that the said arrangement of the applicant was by way of stop gap arrangement because the post was to be filled in after following proper procedure. It is contended that on 15.4.1987, Sub-Divisional Inspector (Postal), Gandhinagar wrote a letter regarding Pay and Allowance; wherein it was stated that Mr. A.A.Thakore Extra E.D.A, Rakhial has been relieved from service on attaining the age of 65 years and Shri N.A.Thakore is at present working as Extra Departmental Delivery Agent, Rakhial Branch Post Office till the regular arrangement is made. It is contended that with a view to fill up the post on regular basis, Sub-Regional Employment Exchange was requested to send the names for filling up the post in question and only one name was received from the Sub-Regional Employment Exchange and thereafter advertisement was given inviting applications from EDA and a letter was written to the Sarpanch and Branch Postmaster, Rakhial village with a request to affix the same on a conspicuous place and thereafter names of four candidates were sent for the post in question including the name of the applicant. The respondents have given the details of the four candidates including applicant with their date of birth, caste, educational qualification, livelihood etc. It is contended ^{that} after considering the merits and all necessary details, the competent authority appointed one Shri Dalpatsinh Gandaji Makwana

has E.D.A. vide order dated 9.7.88 and he has taken over the charge also. It is contended that the applicant's case was also considered by the competent authority, but he was not selected and one Shri Makwana was appointed as he was found better meritorious. It is contended that the applicant has passed only Gujarati VIth Standard whereas the minimum qualification must be standard VIII pass according to rules, and hence there is no merit in the application.

4. The respondents have contended that the applicant is not a workman and respondents is not an industry and it is denied that the provisions of I.D. Act applied to the applicant. The respondents have denied that the applicant has been continuously working since 12.2.1986. It is contended that the applicant's father retired on 28.2.1987 and thereafter the applicant was given charge by way of stop gap arrangement. It is contended that the contentions of the applicant that he has completed 240 days in the preceding 12 months has no relevance and is not disputed. It is contended that due procedure was followed in accordance with the rules and it is denied that the respondents, for extraneous considerations, did not regularise the services of the applicant as alleged.

5. The respondents have also contended that though the applicant knew that another person has been appointed, the said person has not joined as a party. The respondents denied that the action of the respondents is illegal, unjust, arbitrary and violative of Articles 14 and 16 of the Constitution of India as alleged. The respondents, therefore, prayed that the application be dismissed.

6. No rejoinder is filed by the applicant controverting the contentions of the respondents.

7. In the instant case, the respondents' first contention is that this application is premature in view of

Section 20 of the Central Administrative Tribunals Act. The learned advocate for the respondents submitted that the applicant had filed appeal/ petition to the impugned order of termination on 12.7.1988 to the Superintendent of Post Office, Gandhinagar Division but immediately after five days from this representation/ appeal the applicant has filed this Original Application which is premature. The applicant in para 14 of the application has averred that the representation of the applicant for the regularisation of his services have been made to the authorities, a copy of which is produced at Annexure A/4 but inspite of the above referred representation, his services have not been regularised and by interpreting the order Annexure A/3, it is clear that they have terminated the services of applicant.

8. In view of the averments made in the application in para 14 of the application that he has made representation appeal to the authorities concerned, the copy of which is produced at Annexure A/4 dated 12.7.1988, the question arises whether this application under Section 19 of the Administrative Tribunals Act, 1985 is premature. The applicant has to exhaust the remedies available to him under the relevant service rules for the redressal of his grievance. The applicant has filed this application even before the expiry of six months from the date on which the appeal or representation Annexure A/4 was made has expired as provided in Section 20 (2) (b) of the Act. Hence, in our opinion this application is premature.

9. In view of our finding that the application is premature it would not be necessary to decide the other points/raised in this application as the decision may perhaps prejudice one of the parties. As the applicant's representation or appeal Annexure A/4 was sent to the

Superintendent of Post Office, Gandhinagar as back as on 12.7.1988, the same in ordinary course should have been disposed of by this time and if it is disposed of and if the applicant is aggrieved with the same, he would be entitled to make an application under Section 19 of the Administrative Tribunals Act and even if the same are not disposed of till today he can also approach this Tribunal under Section 19 of the Administrative Tribunals Act. However, on the date of this application under Section 19 of the Act six months period was not over from the date of representation or appeal dated 12.7.1988, the application was certainly premature one under Section 20 of the Act.

10. The result is that the application is disposed of as premature with a liberty to the applicant to approach this Tribunal after the disposal of his representation or appeal Annexure A/4 if he is aggrieved by the said order or he can also approach on the expiry of that period under Section 20 of the Act if the authorities concerned have not disposed of the appeal or representation at Annexure A/4. No orders as to costs.

R.C. Bhatt
(R.C. Bhatt)
Member (J)

M.M. Singh
28.10.91
(M.M. Singh)
Member (A)