

Re-organisation 4
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. /261/89

~~EX-NO. 2~~

DATE OF DECISION 22.09.1992

Shri Punabhai Panchhodhai Patel Petitioner

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

Versus

The Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N. V. Krishnan : Vice Chairman

The Hon'ble Mr. R. C. Bhatt : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Punabhai Ranchhodhbhai Patel,

Applicant.

Vs.

1. Union of India,
Through:
The Secretary,
Ministry of Communication,
New Delhi.
2. Superintendent of Post Offices,
Panchmahals Division,
Godhra- 389 001.
3. Shri Ranchodhbhai L. Vankar,
Village Madhvas,
Taluka - Lunavada,
Dist. Panchmahal.

Respondents

J U D G M E N T

O.A./261/89

Date: 22.09.1992

Per: Hon'ble Mr. R.C. Bhatt, Member (J)

1. Mr. D.V. Mehta for Mr. B.P. Tanna,
learned advocate for the applicant and Mr. Akil
Kureshi, learned advocate for the respondents.
2. This application under Section 19 of
the Administrative Tribunals Act, 1985, is filed
by the E.D. Branch Post Master seeking the relief
of declaration that he is entitled to continue on
the post, as E.D. Branch Post Master at village
Madhva and that the appointment of respondent no. 3
is bad in law, discriminatory and also for the

declaration that the respondents have not followed the procedure under Section 25 F of the Industrial Disputes Act.

3. The case of the applicant as pleaded in the application is that he was working as E.D. Branch Post Master at village Madhvas, Taluka-Lunavada, District Panchmahals, since 29th June, 1987, and that he was appointed on this post by the Superintendent of Post Office, Panchmahals i.e. respondent no. 2 vide appointment order dated 7th July, 1987, produced at Annexure A/1. It is the case of the applicant that he was performing his duties very well, but he received a copy of the letter dated 14th June, 1989, vide Annexure A/2 addressed to the respondent no. 3 by which the respondent no. 3 was appointed on his place on his post and the respondent no. 3 was directed to take over charge from the applicant. It is the case of the applicant that respondent no. 3 has no experience, while applicant has an experience in this post and there was no reason to change to applicant from his place. It is alleged that the respondent no. 3's appointment is also temporary and not of a permanent nature and applicant's appointment was provisional which was to be terminated when the regular appointment was made

It is alleged by the applicant that there was no reason to terminate the service of the applicant.

The applicant further alleges that the impugned order passed by the respondent no. 2 was only to favour the respondent no. 3. It is alleged that the respondent no. 2 has continued one lady in the same taluka at village Nanidenavad who was similarly appointed as applicant on temporary basis.

4. The respondent no. 1 and 2 have filed reply contending that one E.D. B.P.M. Mr. M.S. Patel was involved in a fraud case and he was therefore, put off duty pending finalisation of polica and departmental cases against him and the applicant was engaged on provisional basis with a view to meet with the said exigency and at that time the department had not given any advertisement, nor the names from the Employment Exchange were called for. It is contended that the applicant's provisional appointment was by way of stop gap arrangment and hence, he has ^{no} right to continue in the post. It is contended by respondent no. 1 and 2 that on finalisation of the aforesaid cases, the department called for the names from the employment exchange and after considering the names of the persons, their qualification and other requirements, the respondent no. 3 who has passed std. XI and who also belongs to SC community was selected and appointed. It is contended that the

applicant had also sent his application and his case was also considered. It is contended that Mr. N.S. Patel who was earlier suspended was removed from service by the order dated 27th Feb. 1989, and then the regular appointment of respondent no. 3 was made on 14th June, 1989, after considering the names sent by the employment exchange. It is contended that respondent no. 3 has been appointed in a clear vacancy on a permanent basis. The respondents have contended that an allegation of the applicant regarding continuation of services of one lady has no relevance in the present case. The respondents have denied other averments made in the application.

5. The applicant has filed rejoinder controverting the averments made by the respondent no. 1 and 2 in the reply.

6. The applicant has submitted written submissions and has waived the oral hearing. The applicant in his written submission has stated that he has worked for more than two years in his service and he cannot be terminated without following the procedure of Section 25 of I.D. Act, or without giving any notice or order of termination. The applicant has in his written submission relied on the decisions in Shri Gulabsing Jalamsing Vs. Union of India, reported in

1988 (2) ATJ 440, Dr. A.K. Jain Vs. Union of India, reported in 1988 (2) ATJ page, 491, The Textile Committee Vs. K.A. Malani, reported in S.L.R. 1983 (1) page 416, Daily rated casual labourer Vs. Union of India, reported in Judgment Today, 1987 (4) S.C. Page, 164. According to the applicant, as per the these decisions, the casual labourer who has worked for more than one year cannot be terminated without following procedure of Section 25 F of I.D. the Act, and it is also laid down in these decisions that persons who are appointed on Ad-hoc basis should be regularised on evaluation of their work and conduct on the basis of their confidential report.

Learned advocate for the respondents submitted that memo of appointment Annexure A/1 dated 7th July, 1987, makes it clear that the appointment of the applicant was provisional till regular appointment was made and the said appointment can be terminated when regular appointment is made and that the termination can be made at any time without notice and without assigning any reason and that the applicant would be governed by the Extra Departmental Agent (Conduct and Service) Rules, 1964. This appointment letter also made it clear that on accepting conditions of the said letter, the applicant should sign the duplicate of the memo and return the same to the respondent no. 2.

The learned advocate for the respondents submitted that

the applicant accepted this contract. He submitted that the applicant was appointed in place of one Mr. M.S. Patel who was placed under suspension as he was involved in the frued case and with a view to meet with the said exigency, appointment of the applicant was made, till the regular appointment was made on the conditions mentioned in the appointment letter. He submitted that after Mr. M.S. Patel, was dismissed on 27.2.1989 the department called for names from the employment exchange and after considering the names of the persons sent by the employment exchange and also considering the applicants' application in this case also, the respondent no. 3 was found more meritorious and therefore, he was selected and appointed by the order dated 14th June, 1989, a copy of which also sent to the applicant. He submitted that Annexure A/2 produced by the applicant shows the appointment of respondent no. 3 and it also shows that the applicant was directed to give his charge to the respondent no. 3.

7. Learned advocate for the respondents submitted that the appointment of respondent no. 3 as per the Annexure A/2 and asking the applicant to hand over charge to respondent no. 3 as per the said order dated 14th June, 1989, does not amount to retrenchment of the applicant as defined in I.D.Act and

hence, there is no question of applicability of Section 25 F of the Industrial Disputes Act, in this case on which the applicant relies heavily clause (bb) of Section 2 (oo) of the Industrial Disputes Act, is quite relevant in respect of provisional E.D. Branch Post Master. Reading the conditions in the provisional appointment order dated 7th July, 1987, Annexure A/1, which included the stipulations that the provisional appointment will be terminated when regular appointment is made and the applicant shall have not claim for appointment to any post and having accepted this contract, it cannot be said that the termination of service of applicant amounts to retrenchment as it falls within the exception of clause (bb) of Section 2 (oo) of the I.D. Act. In the instant case having regard to the stipulations in-corporated in Annexure A/1, we hold that the termination of the provisional appointment of the applicant and appointment of respondent no. 3 vide order Annexure A/2 does not amount to retrenchment of the applicant and hence, provision of Section 25 F of the I.D. Act will not apply. Moreover, having regard to the facts of the present case, the decisions relied by the applicant in his written submission will not help him.

The applicant has further mentioned in his written submission that though he had an experience of about two years, the respondent no. 2 selected respondent no. 3 instead of him and hence such appointment is in arbitrary, as respondent no. 3 had not experience. It may be mentioned at this stage that the respondents have considered the names of the persons sent by the employment exchange and also considered the application of the applicant and his case was also considered and ultimately the respondent no. 3 was selected and appointed as he was found better meritorious. The submission of the applicant that he had more experienced and the respondent no. 3 has no experience that by itself would not entitle him to the preference even under Section 25 H of I.D. Act for appointment of a regular incumbent. The application of Section 25 H implies two operations namely retrenchment and re-employment against the vacancy arising subsequently. The applicant cannot be considered as having been retrenched and therefore, cannot claim the benefit of or 25 H Section 25 F of the I.D. Act. Regarding question of experience, if experience is considered only as a qualification among others the candidate with previous experience would be selected only all other things

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being equal which will not occur always. It is for the selecting authority to assign its due place to each factor and to determine their relative importance while making selection. Therefore, though weightage has to be given to previous experience but that cannot operate as a decisive factor in the process of selection. The respondents in the reply have contended that even the applicant's case was considered along with others and ultimately the respondent no. 3 was found more meritorious and was selected. Therefore, we find no substance in the submission of the applicant that he having worked for two years and having experience should have been preferred to respondent no. 3 who had no experience, nor in there any substance in the submission that the appointment of respondent no. 3 is arbitrary. The applicant has also submitted that he has two grievances against his termination and against the appointment of respondent no. 3 in his place. According to the applicant, he is replaced by another temporary appointee. The respondents have specifically denied that the appointment of respondent no. 3 is temporary. The respondents have contended that the respondent no. 3 has been appointed in a clear vacancy on permanent basis and denied that the respondent no. 3 is temporary. The order Annexure A/2 shows the appointment of respondent no. 3 on temporary basis but in view of this reply of respondents that

the respondent no. 3 is appointed in a clear vacancy on a permanent basis, it can be said that the appointment of respondent no. 3 is not a temporary one as alleged by the applicant. Appointment of respondent no. 3 is also not on ad-hoc basis and therefore, the submission of the applicant cannot be accepted.

9. The submission of the applicant is that one lady was similarly appointed as temporary and she is continued on account of having experience but it has no relevance to the facts of the present case and has no bearing to the point at issue. The submission of the applicant is that the appointment of respondent no. 3 is made by way of favouritism but there is not an iota of evidence produced in support of this allegation and hence it deserves to be rejected.

10. Having considered all the points taken in the written submissions by the applicant, we hold that there is no merit in this application at all, and the same deserves to be dismissed. In the result, we pass the following order:

O R D E R

The application is dismissed with no order as to costs.

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

Ch
(N.V. Krishnan)
Vice Chairman