

Denial of Duty (2)

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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 371 **OF** 1990
~~Ex No.~~

DATE OF DECISION 03-01-1992

Mr. Snehal Kantilal Bhatt Petitioner

Shri K.C. Bhatt Advocate for the Petitioner(s)

Versus

Union of India, and Ors. Respondent

Shri Jayant Patel Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.B.GORTHI : 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 ? *~*
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 ? *~*

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Mr. Snehal Kantilal Bhatt,
Brahman Street,
Mendurda - 362 260.

...Applicant.

(Advocate : Mr.K.C.Bhatt)

Versus

1. Union of India,
through,
The Director General,
Department of Post
Ministry of Communication
Govt. of India,
Parliament Street,
New Delhi. 110 001.
2. The Chief Postmaster-General
Gujarat Circle,
Ahmedabad - 380 009.
3. The Director of Postal Services,
Rajkot ~~Rixx~~ Region, Rajkot.
4. The Supdt. of RMS
Rajkot RMS Dn. Rajkot. ...Respondents.

(Advocate : Mr.Jayant Patel)

O.A./371/90

J U D G M E N T

Date : 03-01-1992

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

Per

This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by the applicant RTP, against the Postal Department, seeking the relief that the respondents be directed to restore his name as RTP and to give him duty as RTP till his name is regularised as a Sorting Asstt, or Postal Asstt. and respondents be also directed to appoint the applicant as a regular Sorting Asstt or Postal Asstt., on a next vacancy as his Junior RTPs are already appointed regularly.

2. The applicant was appointed as Reserve Trained Pool candidate in the Sorting Asstt. Cadre after his completion of prescribed course on training w.e.f. 23rd August, 1983, at Junagadh RMS, by the Office Memo No.B.9/1 RTP, dated 10th August, 1983. Annexure-A/2, dated 5th Jan.1983, produced by the applicant shows that the applicant has been provisionally selected. Annexure-A/2, produced by the applicant shows that he was sent for prescribed course of training for a period of two and half (2½) months, at Postal training Centre, Vadodara, with effect from 23rd May, 1983. Annexure -A/2, shows that all the candidates were given to understand that they would have to wait for appointment, and if there are no vacancy they will be kept on waiting list till they are regularly appointed as Sorting Asstt. on occurrence of clear vacancy. On completion of their training they had to work as Short duty staff as, where and when appointed to do so. Annexure-A/3, produced by the applicant shows that he had joined the Postal Training Centre, Vadodara, and was allotted Roll No.F-31, as per admission card. Annexure-A/4, shows that he was discharged from the Postal training centre, Vadodara, after completing required training satisfactory with effect from 6th August, 1983, and was directed for Practical training for 15 days with effect from 8th August, 1983, to 22nd August, 1983. Annexure/A/5, dated, 20th July, 1983, shows that the applicant was attached for training at Junagadh RMS. Annexure-A/6, produced by the applicant shows that he was appointed as RTP for Sorting Asstt. Cadre on his satisfactory completion of prescribed course of training as short duty Asstt. with effect from 23rd August, 1983, at Junagadh RMS, and then he joined there and worked there for some period.

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3. It is the case of the applicant that he was given the understand that he would have to wait for the appointment if there was no vacancy and the applicant will be kept on waiting list till he is regularly appointed as Sorting Asstt., on occurrence of clear vacancy, ^{is} ~~wide~~ Annexure-A/2. The grievance of the applicant that there excess RTP at Junagadh RMS and as such the Head Sorter Junagadh RMS has not given him the short duty at Junagadh RMS, though he was daily attending Junagadh RMS, for duty, and the ~~applicant~~ was asked not to attend RMS Office daily for want of vacancy and the applicant was given to understand that the applicant will be called on duty whenever necessary. The applicant therefore, represented to the Supdt. RMS, Rajkot Division, Rajkot, many times and as per Annexure-A/7, dated 23rd March, 1987, he stated that for want of vacancy, he was not given any duty for a considerable period though he was regularly attending the Office. This representation was sent to the Supdt. RMS, Rajkot Division, Rajkot, with a copy to the Post Master General, Gujarat Circle, and he had mentioned in his representation that he was willing to work on short duty any where at Junagadh RMS, Rajkot RMS, Bhuj RMS, any where in Gujarat Circle. He has also produced another letter dated 23rd March, 1988, Annexure-A/8, addressed to the Supdt. of RMS, "RJ", Division, Rajkot, that he was willing to work on Short duty any where, with a copy to the Postmaster General, Gujarat Circle. Again he made such representation on 5th September, 1989, produced at Annexure-A/9, to the Postmaster General, Gujarat State, and he requested him to allot any division at an early date. He also stated that, he has learnt that his juniors were given regular appointment while the ~~applicant~~ was not given regular appointment.

He has alleged in the application that the Postmaster General, Ahmedabad had taken a decision dated 28th March, 1989, that one Smt.M.K.Joshi, be listed in the RTP list as a special case and to give her the duty of the RTP till her name is regularised as Postal Asstt. and 10 RTP were transferred to other Division vide Chief Postmaster General, Ahmedabad, Memo No.R&E 2/24/Infr/90, dated 23rd March, 1990, produced at Annexure-A/10, while the applicant was taken up on duty.

Learned advocate Mr.K.C.Bhatt, for the applicant, submitted that no notice was ~~served~~ ^{not} to the applicant nor any explanation was sought from him, as to why his name should not be removed from the waiting list, though the applicant was regularly attending Junagadh RMS, for short duty, and hence action of the respondents was bad, malafide and illegal and against the principles of natural justice and arbitrary.

4. It is also the case of the applicant that RTP Smt.M.K.Joshi, whose name was removed by S.P.Palanpur, was given notices many times and though she was frequently asked to attend the duty as RTP and though the notices were also issued by the S.P.Palanpur by Regd.A.D., to report for duty, she did not report for duty and her name was removed from RTP by letter dated 14th July, 1988, and she was informed accordingly. Mr.K.C.Bhatt, further submitted that though Smt.M.K.Joshi, was given written orders to work as RTP at Palanpur H.Q. at her choice place, she had not resumed for duty at Palanpur and even after removal of her name she was added in the list and she was given the order in writing. Moreover, before removing her name from the waiting list, she was several times given notice by Regd.A.D. and also served ~~no~~ such notices were served to the applicant nor he was informed or asked any explanation for removing his name, which action of the CPMG is discriminatory and violative of principles of equality under article 14 and 16 of the Constitution of India.

The applicant produced at Annexure -A/11, the letter dated 14th July, 1988, from Supdt. of Post Offices, to Smt. Minaxiben K. Joshi, by which her name was removed from waiting list.

5. The case of the respondents as found in the reply is that the applicant attended for work for two days and he abruptly remained absent thereafter, and hence the notice was issued to the applicant by registered A.D. Post at the address supplied by him on 1.8.1986, that he was remaining absent without prior permission and his name was removed from the waiting list. It is not indisputable that this Regd. letter ^{returned} undelivered by remarks by the Postman that the addressee had "left". Learned advocate for the respondents submitted that therefore, the applicant can have no grievance for removal of his name from the waiting list as he had not responded to the letter received from the respondents. The applicant in rejoinder has controverted this allegation, and stated that no Registered letter or show cause notice was received by the applicant or no such information was given by the Head Sorter, Junagadh, RMS. It is now well settled that if the Registered letter sent to the addressee returns ^{with the endorsement} unserved with 'not found or left', it cannot be held that the said letter was received by addressee. In this case, the applicant had not refused to receive this letter but as admitted by the respondents, in the reply the letter had received back undelivered with a endorsement "LEFT". Therefore, such letter cannot be said to have been received by the applicant and the respondents cannot find fault with the applicant and the action of the respondents in striking of the name of the applicant, was illegal. The case of the respondents is that again another letter dated 15th October, 1986, sent to the applicant by Registered post was received back undelivered with the remarks by Postman

"person has left the place and no information about the new address". This endorsement can not be construed as valid service on the applicant. The respondents have not produced this original letter with the endorsement but if their ~~Contentions re~~ ~~contentments~~ taken in the reply are taken as correct, these letters when returned unserved with such endorsements cannot be said or cannot be held to be served on the applicant. We therefore, hold that the respondents had acted illegally in removing the name of the applicant from the waiting list. The Principle of natural justice requires that the party should be given an opportunity of meeting with the allegations before the authority takes any action against him. This ~~lacking in~~ fundamental requirement is ~~lacking in~~ in this case, and therefore, the action of the respondents in removing the name of the applicant is held illegal and in violation of the principles of natural justice.

6. The other allegations of the applicant that the respondents have acted in violation of the Article 14 and 16 of the Constitution of India by giving different treatment to lady RTP Smt. M.K. Joshi has much substance. Because the Annexure-Z/1, produced on record by the applicant shows that she was addressed lastly on 24th June, 1988, by Registered post at Ahmedabad that if she was not willing to serve the Department her name will be struck off from the list of RTP, ~~and~~ and she has shown her circumstances ~~as~~ ^{not} attending as RTP. ~~Thereafter~~ When she was ordered to attend to P.O. and to work as R.T.P., but she did not join the place as directed as R.T.P. She ~~was~~ given one more chance and informed ^{to} attend duty as RTP at Palanpur, but she failed to attend, though, she was served with the registered notices. Thus, even though she was informed many times to attend the duty, and though her name

was removed, there was a recommendation of Supdt. Post Office, Palanpur, that the Office had no harm to take her at RTP of 1983, as the waiting list of RTP of 1983, of this division is exhausted and she was due for appointment. Ultimately, as per order, Annexure-Z/2, dated 28th March, 1989, the Postmaster General, Ahmedabad, was placed the name of Smt. M.K. Joshi, for restoration in the RTP list, as a special case and she was given her duty till her name was regularised as a Postal Assistant. It is important to note that the requirement of Article-14 and 15 of the Constitution of India is the duty of the Government, to act fairly, justly and reasonably and not discriminatory. In the instant case, inspite of the representation by the applicant, he was not included in the list, though as observed above, he was not served with the show cause notice, before his name was removed and though the name of Smt. M.K. Joshi, was removed from the waiting list, was ordered to join, and ultimately she was taken on duty as appears from the order at Annexure-Z/2, dated 28th March, 1989. The explanation given by the respondents in the reply was that the facts of Smt. M.K. Joshi, referred to by the applicant ^{was on} different footing. We are not prepared to accept this explanation as correct. The respondents cannot discriminate one individual from another on the same post. Everything being equal there was no reason to discriminate the applicant from Smt. M.K. Joshi. The applicant's case was much better than the case of Smt. M.K. Joshi, because the applicant had not ~~received~~ ^{any} letter or show cause notice that his name would be removed from the waiting list.

7. The learned advocate for the applicant has relied on the decision in Shri Chandrashekhar Rangunath Nazare Vs. Superintendent of Post Office and another, 1988(1) Central Administrative Tribunal Judgment, page no. 149, in which it is held that as long as the RTP scheme was in force, a candidate selected

from the RTP pool and appointed on a stipend or Training Allowance as it was called, has every right to be treated as a Civil Servant and considered for regularisation as postal Assistant. It is also held that as soon as the training period prescribed in the appointment letter is over the candidate should be entitled to wages which ~~should be~~ ^{re would} ~~higher~~ ^{higher} applicable. Then the training allowances ⁱⁿ the instant ~~contention re~~ case, taken by the respondents, that there is undue delay on the part of the applicant in making this application is also not accepted, because the fault does not lie on the part of the applicant. It was the duty of the respondents to intimate properly to applicant before removing his name from the ~~not~~ waiting list which was done and secondly when they considered and took on duty Smt. M.K.Joshi, there was no reasons for the respondents not to consider the case of the applicant also on the same footing. There was clear violation of the Article-14 of the Constitution of India.

8. We do not accept the contentions of the respondents that the conditions and circumstances pertaining to Smt.M.K.Joshi having arisen in different division, it is not comparable to the present applicant. The question to be considered is whether the respondents have given equal treatment to the ^{it} applicant and to Smt.M.K.Joshi, or whether on the face of the respondents decision ~~their~~ ^{their} ~~action~~ ^{action} was discriminatory.

9. Having heard the learned advocates at length and having considered the pleading and the documents on record we agree with the ^{in m} submission ^{of} the learned advocate of the applicant that the action on the part of the respondents in removing the name of the applicant from the waiting list of the RTP was unjust, and bad in law, and the respondents' action

in not considering the applicant's inclusion in the list, while taking Smt. M.K. Joshi, and restoring her name in RTP list, was discriminatory. If the respondents restored the name of Smt. M.K. Joshi, in the RTP list and direction was given to take her on duty till her name was regularised as a Postal Assistant. There was no reason not to give the same treatment to the applicant.

10. The learned advocate for the applicant does not press any back wages at all till today. He has submitted that the respondents should be directed to regularise the appointment of the applicant. In our opinion the question of regularisation had to be considered by the respondents on the vacancy arising and also when the junior to the applicant in RTP is regularised. Hence we pass the following order :

"The application is partly allowed.

The respondents are directed to restore the name of the applicant as RTP and to give him duty as RTP in any division, according to Rules. The respondents may also consider the question of regularisation of the applicant as Sorting Assistant or Postal Assistant as and when the vacancy arises and when applicant's junior is regularised. We leave this question to the respondents, about regularisation as per the Rules applicable to the applicant. We pass no order as to costs. Application is disposed of.

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(R.C.BHATT)
JUDICIAL MEMBER

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(A.B.GORTHI)
ADMINISTRATIVE MEMBER

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

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

15.3.1991

Heard Mr. K.C. Bhatt, learned advocate for the applicant. We have read the application in which the applicant has prayed for early hearing. We find no merit in this prayer at all. So far as the second prayer is concerned, it is not pressed. In view of the fact that we find no substance in the Misc^l application, the same is liable to be dismissed and it is rejected.

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(R C Bhatt)
Judicial Member

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(P H Trivedi)
Vice Chairman

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