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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No.
~~XXXXXX~~

385 OF 1990.

DATE OF DECISION 03.09.1993.

Shri Suresh Mohanbhai Mali Petitioner

Shri J.G.Chauhan Advocate for the Petitioner(s)

Versus

India Union of India and ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

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 ?

1. Suresh Mohanbai Mali,
Residing at : Postal Training Centre
Quarters, Type-I-9,
Vadodara - 390 006.

...Applicant.

(Advocate : Mr.J.G.Chauhan)

Versus

1. Union of India,
D.G.Department of Post
Sanchar Bhavan,
Parliament Street,
New Delhi.

2. The Principal
Postal Training Centre,
Vadodara - 390 006.

...Respondents.

(Advocate : Mr.Akil Kureshi)

O R A L J U D G M E N T
O.A. NO. 385 OF 1990.

Dated: 03.09.1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

Heard Mr.J.G.Chauhan learned advocate for the
applicant and Mr.Variava for Mr.Akil Kureshi, for the
respondents.

2. This is a application under Section 19 of the
Administrative Tribunals Act, 1985. The facts in this
case which are not disputed are as below :

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The applicant is the son² of late Shri Mohan Kilabhai Mali who was working as ^adepartmental mali from 21.2.1963 at Postal Training Centre, Vadodara and expired on 03.4.1988. On expiry of his father, the applicant, then aged 24 years, had on 3.6.1988 applied for appointment as Mali in relaxation of recruitment rules on compassionate grounds. It appears that the Director General Posts directed that the applicant should be given a part time appointment for six months only and all formalities in getting the names sponsored by the Employment Exchange should be completed. The letter of the Director General is not on record. This reported communication however, shows the department's intention to appoint the applicant as a full time mali as a special case, after first appointing him as a part time mali and thereafter regularisation of the appointment after having the name sponsored by the Employment Exchange. The direction of the Director General to have his name sponsored through Employment Exchange was clearly infeasible as a different Department with a different set of Rules was involved. When therefore, the applicant's name was not sponsored by the Employment Exchange, under the orders of the Director General, the applicant was appointed to work as a Mali on part time casual basis vide order dated 10.1.1989, Annexure-A/2, and accordingly the applicant joined duty. It appears that the case was finally

decided by the Director General on 24.1.1990 and on the failure of the applicant to have his name sponsored through employment exchange his services were terminated by the letter dated 25.7.1990, (Annexure - A/4).

3. The applicant in his application has impugned the order of termination on several grounds including that he had completed 240 days and that the Department did not comply with the procedure of retrenchment under the Industrial Disputes Act, 1947 and therefore, the termination ~~was~~ is illegal. The applicant has also argued that the termination was in the nature of punishment and therefore, in violation of Articles 14 and 311 of the Constitution of India. However, so far as the reliefs prayed are concerned, apart from reinstatement with full back wages, the applicant has claimed an alternative relief that the Department may be directed to appoint the applicant on compassionate grounds as a ward of the deceased employee.

4. The respondent has stated that ~~as~~ the applicant was appointed as a daily wager on a casual basis, that as required by rules he had not completed 240 days in each of previous ^{years} four calendar and that in any case the department had a right to terminate his services as he was not sponsored by the Employment Exchange.

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5. So far as the question of compassionate appointment is concerned the Department has taken the stand that this was not possible as the mother of the applicant is in the receipt of family pension of Rs.456/- + Dearness relief in addition to lump sum DCRG -Rs.21,432/- + GPF Balance of Rs.3,546/- + CGIS amount Rs.10,750/-, that she has no major liability, that one son Shri Sukhram M. Mali, is working in the Heavy Water Project (a Government undertaking) and another son Shri Nagin N. Mali, has his own flower shop, where the present applicant is also employed. The applicant in his counter affidavit has stated that so far as the financial condition of his family is concerned, the lumpsum amount which was received by his mother was spent in repaying debts amounting to Rs.30,000/- and that she has to maintain a large family consisting of 10 members.

6. On the consideration of pleadings and documents on record and the arguments advanced by the advocates for the parties, we hold that the applicant who was appointed as a casual Mali only on a part time basis and whose appointment was subject to termination at any time if the work was not found satisfactory and whose name was not sponsored by the employment exchange did not have a right to the post. At the stage of arguments, the applicant did not press and

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we have not gone in to the question of the applicability of Industrial Disputes Act, 1947. We have decided the case on merits so far as the compassionate appointment is concerned. So far as the two brothers of the applicant stated to have been employed/self employed are concerned, there is nothing on record to show that they do not have their own families to sustain. The question therefore, has to be considered from the point of view of the need of the applicant, his mother and other dependents. The application of the applicant for compassionate appointment dated 30.12.1988, at Annexure- A/3 makes the statement that the applicant is ~~as~~ married with two children and there is also a younger brother with two small children. Thus, the family consists of nine people in all. In the present financial situation of the family it is difficult to imagine that a family pension of Rs.456/- + Dearness Relief which according to the applicant amounted ^{to} Rs.560/- p.m. at that time is adequate to ~~xxx~~ maintain nine persons.

7. That the Department itself was inclined to consider the application favourably is evident from the fact that the Director General Posts had approved the appointment of the applicant initially ~~as~~ as a part time mali only with an understanding that his name will be sponsored through employment exchange and therefore, the matter would be regularised. In our view, it was against the rules

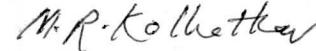
for the departmental authority not to have considered the case of the applicant for compassionate appointment in relaxations of normal recruitment rules in the facts of the case. We hold that the "distress test" which is the main test for compassionate appointment as per the standing instructions of the Ministry of Personnel, Pensions and Public Grievances is satisfied in this case. We therefore, make the following order :

O R D E R

Respondent No.1 is directed to appoint the applicant in relaxation of recruitment rules as a full time Mali or other Group-D employee on compassionate grounds in the Postal Training Centre, Vadodara, within one month of the receipt of this order. The appointment will be treated as a fresh appointment and the question of counting the previous service as a part time mali for seniority or the question of back wages would not arise at all. The application is disposed of accordingly.

No order as to costs.


(R.C.Bhatt)
Member (J)


(M.R.Kolhatkar)
Member (A)