

(S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 144/92
~~T.A. No.~~

DATE OF DECISION 10/11/1993

Shri Himatsinh F. Baria Petitioner

Mr. M.D. Rana Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Jayant Patel Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel

: Vice Chairman

The Hon'ble Mr. V. Radhakrishnan

: 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 ?

No.

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: 2 :

Shri Himatsingh Fatehsinh Bariya,
At village - Chhavad,
Tal. Godhra,
Dist. Panchmahal
Serving as Extra Departmental
Branch Post Master at Chhavad,
Tal. Godhra Dist, Panchmahal
(Advocate: Mr. M.D.Rana)

: Applicant

Versus

1. Union of India,
Through:
The Secretary, Ministry of
Telecommunication, Department
of Posts, New Delhi.
2. Superintendent of Post Offices,
Panchmahal Division,
Godhra.
(Advocate: Mr. Jayant Patel)

: Respondents

ORAL JUDGMENT

IN

O.A./144/92

Date: 10/11/93

Per: Hon'ble Mr. N.B. Patel

: Vice Chairman

The applicant prays that the action/order, if any, passed by the respondents terminating his services as E.D. Branch Postmaster be quashed and set aside. In fact it is clear from the averments made by the applicant in his application that, till the date of the filing of the O.A. i.e. ^{11/3/92} 11/3/92, there was no order of termination served on the applicant but he apprehended that his services may be terminated and it is at that stage ^{that} he has approached the Tribunal for appropriate relief. In other words, the relief claimed by the applicant may be said to be a preventive relief prohibiting the respondents from terminating his service as an Extra Departmental Branch Postmaster.

: 3 :

2. In his application, the applicant has averred that he was appointed as Extra Departmental Branch Postmaster by the appointment order Annexure-A dated 24.9.1991 and, pursuant to that appointment order, he has been working as Extra Departmental Branch Postmaster, Chhavad since then. It is further averred by him that, he was appointed on a provisional and temporary basis as the regular Branch Postmaster at Chhavad, one Mr.N.M.Bariya, was facing disciplinary proceedings and was put off duty. The applicant's own averments are that his appointment was ^{co}terminus with the disposal of the enquiry against Mr.Bariya and till Mr.Bariya was exonerated or till a regularly selected person was appointed to replace Mr.Bariya in case of his being found guilty of the charge faced by him in the enquiry and the need for dismissing or removing him from service arose. It is the case of the applicant that the enquiry against Mr.Bariya was still pending when the present O.A. was filed on 11.3.1992, and, therefore, his services could not have been legally terminated and yet, on 2.3.92, or thereabout, an attempt was made to take away charge from the applicant giving rise to an apprehension in his mind that his services will be terminated even before the conclusion of the enquiry against Mr.Bariya. The applicant contends that the termination of his service before the conclusion of the enquiry against Mr.Bariya, would be in contravention of the appointment order Annexure-A and since his apprehension was that his services may be terminated before the conclusion of the enquiry against Mr.Bariya, he has approached this Tribunal seeking relief as mentioned at the outset.

3. The application is resisted on the following grounds averred in the reply filed by the respondents. It is stated that the appointment of the applicant was purely temporary and on a stop-gap basis as enquiry was required to be held against Mr. Bariya and it was not possible to immediately appoint any regularly selected person in place of Mr. Bariya. The respondents have stated that, under the terms of the appointment order Annexure-A, the services of the applicant were liable to be terminated on the conclusion of the disciplinary proceedings against Mr. Bariya ^{as} ~~also~~ ^{even on} given at ^{an} earlier stage without giving any notice to the applicant or without assigning any reason for termination of his service. The respondents have further averred that the enquiry authority has already submitted its report in the departmental proceedings against Mr. Bariya, though they do not say that the enquiry has so far come to an end. However, it is further stated by the respondents that during the pendency of the enquiry proceedings against Mr. Bariya, the process for ^{regular} selection for the post of E.D. Branch Postmaster was undertaken and names for that purpose were called for from the Employment Exchange and the Employment Exchange, Godhra had, by its letter dated 9.10.1991, sponsored the names of five persons including the name of the applicant and all the five persons were considered for recruitment to the post ~~of~~ and, as it was found that one Mr. H.C. Bariya was ~~found~~ the most suitable of all the five candidates, the said Mr. H.C. Bariya was selected. The respondents contend that, in view of the selection of Mr. H.C. Bariya under the Recruitment Rules, ^{the} ~~the~~ services of the applicant,

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which were purely temporary and on stop-gap basis, are terminated so as to appoint Mr.H.C.Bariya, no fault can be found with the termination of the services of the applicant. It is contended that the termination of the services of the applicant will be quite in conformity with the terms of the appointment of the applicant and would be perfectly legal. On these premisses, the respondents have asked for dismissal of the O.A. with costs.


4. It may be noted that no rejoinder is filed against the aforesaid reply filed by the respondents. It may, therefore, be taken as uncontrovered that, pending enquiry against Mr.N.M.Bariya, regular recruitment process is undertaken and, in the course of the said process, the names of five persons including the applicant and one Mr.H.C.Bariya are considered and Mr.H.C.Bariya is selected for appointment to the post. In other words, it must be taken as an uncontroverted fact that, at present or even at the date of the filing of the O.A., a regularly selected candidate was available for appointment to the post of Extra Departmental Branch Postmaster.

5. The question in the above circumstances is whether the termination of the services of the applicant, if brought about, to replace him by a selected candidate like Mr.H.C.Bariya is vitiated by any illegality. If we turn to the appointment order Annexure A, it clearly provides that the appointment of the applicant was purely provisional and temporary and was normally to enure till the conclusion of the enquiry against or till regular appointment was made. Further-more, clause IV of the appointment order clearly reserves to the Superintendent, Post Office, Panchmahals, the right to terminate the appointment of the applicant at any time even before the aforesaid period without any notice and without assigning

any reason. As already noted above, a regularly selected candidate, namely, Mr.H.C.Parmar, is now available to man the post of E.D.Branch Postmaster, Chhavad and, therefore, it cannot, by any stretch of imagination, be said that the termination of the applicant's service for appointing Mr.H.C.Bariya as E.D.Branch Postmaster, Chhavad is vitiated by any illegality. We find without any hesitation that the termination of the services of the applicant in these circumstances would be perfectly in consonance with the appointment order Annexure-A.

7. In the result, we find that the present application is totally devoid of merit and is liable to be dismissed. Accordingly, the O.A. is dismissed. Interim relief is vacated. No order as to costs.


(V.Radhakrishnan)
Member (A)


(N.B.Patel)
Vice Chairman

a.a.b.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Application No. CA/144/92 of 199

Transfer Application No. _____ Old Writ Pet. NO. _____

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room (Decided).

Dated : 08/12/93

Counter-signed :

28/12/93
Section Officer/Court Officer

Sign. of the Dealing Assistant.