

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 418 OF 1992.

~~O.A. NO.~~

DATE OF DECISION 31/8/94

Shri C.R. Vankar, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner (x)

Versus

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

JUDGMENT

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

Mr. C.R. Vankar,
Ex. E.D.B.P.M.,
Bhilod.B.O. (Adadra)

..... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus.

1. Union of India, through
The Director General
Department of Post
Ministry of Communication
Dak Bhavan, Sansad Marg,
New Delhi.
2. The Postmaster General,
Vadodara Region,
Vadodara.
3. The Supdt. of Post Offices,
Panchmahal Dn.,
Godhra.
4. Shri Bhairavsingh Laxmansingh
Rathod,
Adhoc Branch Post Master,
Bhilod B.O.
Via. Adadra, Panchmahal.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A. No. 418 OF 1992

Date: 31/10/94

Per: Hon'ble Mr.V.Radhakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt and Mr. Akil Kureshi, learned advocate for the applicant and the respondents respectively.

2. The applicant was appointed as Extra Departmental Branch Postmaster at Bhiloda on 18.2.91, Annexure A/4. He worked there on the post upto 19.11.1991, when his services were terminated. The applicant challenges the

termination as violative of provisions of Industrial Disputes Act as he had worked for more than 240 days prior to termination. He has also alleged nepotism and unfair practice, corruption in the selection of person other than the applicant. He has also claimed that as he was Scheduled Caste candidate, he should have been given preference in selection. He states that he had fulfilled all qualifications of the post of EDBPM. He had passed standard 12. He had income amounting to Rs.12,000/- per year (Annexure A/7). He had property of agricultural land (Annexure A/8, A/9 and A/10) and he was a local resident. One of his contentions is that he should have been selected keeping in view the fact that he had worked in the post more than 9 months. He has alleged that Shri Rathod who was selected for the post did not have any income from any source. He states that Shri Rathod was employed under "Sixit Berojgar Scheme", which is given to a person with no other income. Secondly the applicant had passed 12th standard and got more marks in SSC than Shri Rathod. The applicant had also worked for 9 months on the post. He has further stated that the applicant was employed against a regular vacancy and hence he could not have been terminated. He has also alleged corruption in the selection of Shri Rathod and he has claimed following reliefs:

"9.(i) The impugned oral order through mail overseer to take over the charge of the Branch Post Office Bhilod from the applicant and to handover to Shri Bairavsingh Laxmansingh Rathod, be quashed and set aside (Ann.A-1) page-14.

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- (ii) The order No.B2/PF/BPM/Bhilod/92 dated 17.2.92 from the Supdt. of Post Offices Godhra be quashed and set aside.(Ann.A-2) Page-15.
- (iii) The appellate order No.STAFF-A/2-33/MS dated 16.6.92 from Asstt. Director Postal Services O/O P.M.G. Vadodara be quashed and set aside. (Ann.A/3) page-17.
- (iv) The respondent authority be directed to reinstate the applicant immediately with full back wages and treated as continued in job with effect from 19.11.1991 with all service benefits.
- (v) The respondents authority be directed to regularise the service of the applicant as he has completed more than 240 days in service.
- (vi) The respondent authority be directed to pay the cost of this application as the applicant is SC and very poorly paid applicant.
- (vii) Any other suitable relief may please be granted."

2. The respondents have filed reply. They have stated that the applicant was appointed on temporary basis on 18.2.1991 as EDBPM pending appointment of regular person after completion of recruitment formalities. They have produced copy of the letter given by the applicant dated 18.2.91 (Ann. R/1) wherein he has stated that he was being appointed as BPM on purely adhoc basis and the appointing authority may relieve him at any time without assigning any reason. In view of this, there was no illegality in terminating the service of the applicant and Section 25F is not attracted in this case. The respondents have stated that for regular appointment of the post a requisition

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was sent to the Employment Exchange for sponsoring candidates and as the Employment Exchange did not send any nomination, a local notification was issued on 10.5.91 and in response to that four applications including that of applicant were received. The applications were scrutinised and selection made and suitable candidate was selected. They have denied the contention of the applicant that he being Scheduled Caste candidate, he should have been appointed in the post. They have pointed out that as SC/ST candidate is to be given preference over others provided he is eligible for the post and fully satisfies all other criteria for such appointment. They have also stated that Shri Rathod was employed in Madhyan Bhojan Yojna, which was closed with effect from 19.4.90 and hence when he was appointed as EDBPM, he was not working there. As the selection of Shri Rathod was done as per relevant rules, they have prayed for rejection of the application.

3. Shri K.C. Bhatt during his arguments stated that the oral termination of the applicant without following the procedure under section 25 F of the Industrial Disputes Act is illegal, void and bad in law. He alleged favouritism, Nepotism, unfair practice adopted and corruption by the recruiting authorities in the selection of ineligible official. He argued that the applicant was a scheduled caste candidate and he should be given preference over others in the appointment. In this connection he quoted DG P&T letter No. 43-246/77 PEN dated 8.3.78 and also letters of the DG P&T issued from time to time. He also stated

that the applicant's father had applied to the Gram Panchayat to transfer his immovable property worth Rs.50,000/- in the name of the applicant. He also stated that the applicant has passed Standard 12 and had got more marks in SSC than Shri Rathod. He also argued that as the applicant had worked in the post for about 9 months, his experience in the post should have been taken into account and preference given to him. He has quoted the case of P.R.Surendran V/s. Sr. Supdt. of Post Office, ATR 1992(1)CAT 624, CAT Ernakulam and G.S. Parvathy V/s. Sub Divisional Inspector (Postal) and Ors. ATR 1992(1)CAT 395, CAT Ernakulam to support his view that preference should be given to person who had worked in the post. Mr. Akil Kureshi, learned advocate for the respondents, pointed out that there was no irregularity in termination of the service of the applicant as he had himself given undertaking showing his knowledge that his appointment was on adhoc and liable to be terminated without notice. Hence section 25F of the Industrial Disputes Act is not attracted and being adhoc appointment is covered under Sub Clause 2^(bb)(oo) of the said Act.

4. He also stated that the process of selection was fair and no irregularity was committed. The applicant was also considered along with others. The selection was finalised on 19.11.1991. The applicant had filed his application after nearly 10 months i.e., on 16.9.1992, hence the application suffered from laches and should be dismissed on this count only. In his application, the applicant had shown his income as Rs.125/- per month. He had enclosed certificate from local authority showing

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his income as Rs. 1400/- per annum. In the column regarding immovable property, he had not indicated any property. Along with O.A the applicant has produced Annexure A-8, A-9 & A-10 showing details of HUF property of his father himself and three brothers. This appears to be only an afterthought. On the other hand, Shri Rathod had shown income of Rs. 250/- per month supported by the certificate from the local authority regarding immovable property, he had shown house in his own name and agricultural land duly supported by certificate from Talati. Hence he had more income and property in his name compared to the applicant.

5. Regarding preference to be shown to Scheduled Caste candidate, Mr. Akil Kureshi pointed out that as per latest orders contained in page-58 of 'Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department' it has been clarified that "Preference should be subject to first and foremost condition that the candidate selected should have an adequate means of livelihood, which though already prescribed, seems to have been ignored for some time past especially in view of these preferential categories being introduced in the above orders.

"The criterion to judge "adequate means of livelihood" should be that in case he loses his main source of income, he should be adjudged as incurring a disqualification to continue as ED SPM/ED BPM. In other words, there must be absolute insistence on the adequate source of income of ED SPM/BPM and

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the allowances for his work as ~~EM~~ SPM/BPM must be just supplementary to his income. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such, business premises, such as shops, etc., must be preferred regardless of the various categories of preferences mentioned above."

He stated that candidate should have minimum amount of property income so that he has adequate means of livelihood apart from ~~EM~~ allowance. As per the statement made by the applicant as well as the respondent No.4, it was seen that the respondent No.4 had Rs. 250/- per month as income compared to Rs. 125/- in the case of applicant and he also possessed house and land while applicant did not possess any. In the circumstances selection of the respondent No.4 was in order. Accordingly he prayed for rejection of the application.

6. After going through the various arguments of Shri K.C. Bhatt, learned counsel for the applicant, we find that he has not been able to establish any malafide in the selection of the respondent No.4 for the post. He has made only vague allegations which are not supported by any proof and so far as the violation of Section 25F of Industrial Disputes Act is concerned, he has argued that because the applicant had completed more than 240 days he is protected under section 25F of the Act. Merely because he had completed more than 240 days, he can not claim the protection of the Act. He had himself given an undertaking at the time of appointment (Ann.R/1) that he was aware of the appointment being on

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ad hoc basis and liable for termination at any time. As pointed out by Mr. Akil Kureshi, learned advocate for the respondents that his termination was covered under section 2(oo)(bb) of Industrial Disputes Act. In so far as his income and property were concerned, the applicant had shown less income and no property in his name in his application which would have given him as regular income. Hence he was not selected and in so far as his argument that Scheduled Caste candidate, he should have been given preference, it is seen that a Scheduled Caste candidate should have basically adequate means of livelihood and own office space for postal operation. The applicant obviously did not satisfy the condition. In so far as his argument that he should have been given preference over other because he has worked for about nine months in the past, it is to be mentioned that subject to other things being equal preference should be given to persons with experience and the cases quoted by Shri K.C. Bhatt do not lay down the proposition that the other conditions prescribed should be ignored and only experience should be counted. It is admitted that the applicant was considered for the post along with others and the competent authority had made the selection after taking into account various criteria laid down for the purpose. Shri K.C. Bhatt, learned advocate for the applicant had not challenged the vires of any of them. In view of the foregoing, we find no reason to

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interfere with the selection made. Accordingly we pass the following order:

ORDER

Application is dismissed. No order as to costs.



(V. Radhakrishnan)
Member (A)



(N.B. Patel)
Vice Chairman

vtc.