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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Termination

O.A. No. 138 OF 1993.

~~Ex No.~~

DATE OF DECISION 12-4-1993.

Bhikhalal Harajimal Soni, Petitioner

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

Versus

Union of India & Ors. Respondent s

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

CORAM :

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

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 ?

Bhikhalal Hajarimal Soni,
Ex. E.D.B.R.M.,
Dhakha (Dhanera) 385310.

.... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus.

1. Union of India through
The Director General
Department of Posts,
Ministry of Communication
Parliament Street, New Delhi.
2. The Chief Postmaster General
Gujarat Circle,
Ahmedabad.
3. The Supdt. of Post Offices,
Banaskantha Division,
Palanpur.
4. Shri B.U. Rana,
Supdt. of Post Offices,
Banaskantha Division,
Palanpur.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A. 138 OF 1993

Date: 12-4-1993.

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

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

2. The applicant appointed as Extra Depart-
mental Branch Post master Dhakha, B.O. vide order
Annexure A-1 dated 14th March, 1986, has filed this
application under section 19 of the Administrative
Tribunals Act, 1985. The case of the applicant is that
though he has worked continuously on this post from
3rd September, 1985 to 11th March, 1992 for about six
years, he is orally terminated through Mail Overseer

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Disa, without giving any written orders or without giving any notice or without giving any reason for termination of services or without taking any action as per provisions of Section 25 F of I.D. Act and hence the oral order is illegal and ~~is~~ bad in law. It is also alleged by the applicant that the applicant filed appeal against the oral order vide Annexure A-6, but the appellate authority has passed an order dated 22nd May, 1992, Annexure A-7, without application of mind and it is bad in law. It is alleged by the applicant that the instructions regarding the relaxation of educational qualification is also not considered by the authority concerned. It is alleged that the applicant was regularised. It is alleged that the Superintendent of Post Offices had inspected his office from 1986 to 1991 and has scrutinised all appointments and found the appointment of the applicant regular as found in a remarks in his inspection report. The applicant has therefore, prayed that the impugned oral order dated 11th March, 1992 be declared illegal and be quashed and set aside, that the impugned order dated 11th April, 1992 Annexure A-5 also be quashed and set aside and the appellate order dated 22nd May, 1992, Annexure A-7 be quashed and set aside and the respondents be directed to reinstate the applicant in service with all consequential benefits. Mr. Kureshi appears for the respondents and waives notice.

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3. This application can be disposed of at the stage of admission. The applicant has not produced any order to show that he was regularised, but he depends on some inspection report of the Divisional Office about the appointment of all the E.D.B.P.M. The main question which is required to be considered is what was the nature of the appointment of the applicant Annexure A-1. Reading this appointment order, it is clear that his appointment was provisional till disciplinary proceedings against one Shri S.R. Avasti were finally disposed of and it was ^{made} clearly understood to the applicant that his appointment was provisional which could be terminated without any notice and also that his appointment was to be governed by the Extra Departmental Agents (Conduct & Service) Rules, 1964. The learned advocate for the applicant had first tried to submit that the provisions of I.D. Act would be applicable in this case, but a provisional such as found in appointment of the applicant/Annexure A-1 does not attract the provision of I.D. Act because of valid stipulation regarding this termination incorporated in order of appointment, ^{hence} and the termination will not amount to retrenchment as decided by the Full Bench of the Central Administrative Tribunal in G.S. Parvathi V/s. Sub Divisional Inspector (Postal) and Ors. ATR 1992(1) CAT page 361. The next question is whether the appointment of the applicant was according to rules or not. It is important to note that in reply to the

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applicant's letter dated 30th March, 1992, Ann. A-2 in which he had questioned his oral termination, the reply given by the Superintendent of Post Offices Palanpur vide Annexure A-5 dated 10th April, 1992 / reveals that the services of the applicant were terminated as he did not possess educational qualification as per departmental rules. The learned advocate for the applicant had to concede that as per the statutory rule of Extra Departmental Staff Rules in Postal Department, the educational qualification of E.D. Branch Postmaster must be minimum 8th standard and it is not in dispute that the applicant has not passed 8th standard as appears from his application Ann.A-2 dated 30th March, 1992 in which he has specifically mentioned that he has passed standard 7, therefore, the appointment was also not according to statutory rules. The learned advocate for the applicant submits that after putting seven years' service, the respondents should not have terminated the applicant's service but should have relaxed the rule and according to him such relaxation is given to others also. The applicant made an appeal against the oral order of termination on 21st April, 1992 vide Ann.A-6 to the Director of Postal Services in which several grounds are mentioned. The decision given by the Chief Postmaster General, Gujarat Circle, Ahmedabad, i.e., respondent No.2, reads as under:

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"In connection with the above representation, the case has been thoroughly examined. It is intimated that the contention of Shri B.H.Soni found not in order. The official may please be intimated suitably."

This order Annexure A-7 dated 22nd May, 1992 is challenged by the applicant in this application. It is important to note at this stage that even an administrative order or a quasi judicial results in civil consequences which must a reasoned order. Reading the order Ann.A-7 of the Chief Postmaster General, it is difficult to know on what ground this representation or appeal dated 24th April, 1992 of the applicant, Annexure A-6 was rejected. The authority concerned should have passed a reasoned order to demonstrate that he has applied his mind to the question at issue. Reading the entire order, it is difficult to know on what basis the this application and order is passed. We admit / hold that there is non-application of mind of the authorities concerned which / has passed the order. It is necessary to mention at this stage that the applicant has served for seven years after his appointment which may be considered by the authority concerned. The learned advocate for the applicant submitted that the relaxation in the rule also be considered as some other appointment of the type of the present one meaning thereby that a person having lesser qualification is also appointed. In any case, the authority concerned ought to have passed ~~an~~ a reasoned order after considering the ground

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taken by the applicant in Annexure A-6. We therefore, quash the order of the appellate authority at Ann.A-7 and we remit back this matter to the Chief Postmaster General, Gujarat Circle, Ahmedabad, respondent No.2, to decide the representation/appeal filed by the applicant against his oral order of termination of service vide Annexure A-6 / ^{keeping in mind} the observations made above and then to dispose of the matter within three months from the receipt of this order according to rules. The applicant, in case receives any adverse order, then if the rule permits ^{him} to further appeal or revision to any competent authority, he may make representation to that authority and if there is no such provision for making further appeal or revision, then the applicant would be at liberty to approach this Tribunal according to rules. The application is disposed of according to the above directions. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member(A)

R.C. Bhatt

(R.C. Bhatt)
Member(J)

vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench

Application No. 138 of 19 93
Transfer Application No. _____ Old W. Pett No. _____

CERTIFICATE

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

Dated : 21/5/93

Countersigned :

Bhagwati 26/5/93
Section Officer/Court officer

10/8/93
Signature of the Dealing Assistant

INDEX SHEET

Q. A/138793

OF 19

Mr. B. H. Sand

VERSUS

U.O.I. & 929

PART A B & C

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