

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 144 of 1993

T.A. NO.

DATE OF DECISION 31.3.1995

Mr. P.H. Joshi

Petitioner

Mr. K.C. Bhatt

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

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

The Hon'ble Mr. K. Ramamoorthy, Administrative 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 ?

NO

Pradipbhai Harishanker Joshi
Mahta street,
Chude 363 410

.. 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 110 001.
2. The Postmaster General,
Rajkot Region,
Rajkot - 360 001.
3. The Supdt. of Post offices,
Surendranagar Dn.,
Surendranagar - 363 001.
4. The Sub-Divisional Inspector
(Postal),
Limbdī Sub Division,
Limbdī - 363 421.
5. Shri B.M. Kureshi,
Adhoc Extra Department,
Agent Chuda Chokdi,
Post office,
Chuda - 363 410.
6. Shri Sikandar Kureshi,
the then Sub Postmaster,
Chude - 363 410
now S.P.M. Sayla.

.. Respondents

(Advocate : Mr. Akil Kureshi)

Date : 31.3.1995

O.A. No.144/93

J U D G M E N T

Per : Hon'ble Mr. K. Ramamoorthy, Member (A).

The present application is against the
termination of services of the applicant which

came about by virtue of order dated 27.3.1992.

2. The short facts of the case are as under. The applicant was originally appointed as EDA on 17.9.1989. Admittedly, this was against the leave vacancy and its tenure was originally fixed for a period upto 4.11.1989. This appointment as shown at Annexure-A1 was against the leave vacancy of the then incumbent, Jayantilal Bhikhabhai Prajapati. It is also seen that thereafter, on the continuation of the leave by the regular incumbent, the applicant was given further orders to continue the charge vide Annexures-A2 and A3 which took his period of officiation upto 4.11.1989 without any break in between. He was told on 23.3.1990 that he is allowed to continue as temporary EDA Chuda (Chokadi line) (Annexure-A4) since the regular incumbent was continued to be absent without permission. In this letter, he was specifically told that it is purely a temporary arrangement and no notice will be given before his discharge. On 1.12.1990, he was issued a further letter (Annexure-A5) giving him provisional appointment for the said post for the period from 1.12.1990 to 28.2.1991. Thereafter, however, his services were terminated on 30.3.1992 on the appointment of one Shri B.M. Kureshi vide letter dated 27.3.1992 (Annexure-A16).

3. In reply, the respondents have stated that appointment of the present applicant admittedly was only against the leave vacancy. The original incumbent of the post had proceeded on leave with permission but later he remained absent on leave without permission which resulted in starting of disciplinary proceedings against the regular incumbent. These disciplinary proceedings resulted in dismissal of the said incumbent with effect from 4.6.92. Meanwhile, once it became evident to the department that a regular incumbent would have to be appointed, it had started the recruitment proceedings for the regular post of EDA. In this selection process of regular appointment, one Shri B.M. Kureshi found favour with the department and he was regularly appointed with effect from 10.9.1992. However, because of the fact that he had been selected for regular appointment, he was given provisional appointment from 30.3.92 since the formal proceedings to terminate the services of the regular incumbent was yet to be completed. This explains the issue of the letter at A-16 giving Shri Kureshi (respondent No.5) provisional appointment for the period from 27.3.92 to 27.6.92.

4. The applicant has challenged the order on the following grounds:

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- (i) Having officiated for a long period from 17.9.89 to 30.3.92, i.e. for a period of two years and six months without break, the order of termination of his services with effect from 30.3.1992 was illegal and void.
- (ii) As he has already served as EDA for more than 240 days he was entitled to safeguards under Section 25 F of the I.D. Act.
- (iii) In the regular selection process which was undertaken, he had higher claim both by virtue of the period that he had already gained experience on the job and also because of his better academic qualifications.
- (iv) The termination of his employment on 30.3.92 meant replacement of one ad-hoc employee by another ad-hoc employee since the regular appointment to this post could admittedly be made only after June, 1992.

5. We have gone through the pleadings of the applicant and the respondents as also considered the oral pleadings made before the Court by the Counsel for both the applicant and respondents. We have also called for the file regarding action ^{IR} ~~to~~ ^R ~~be~~ taken for the regular appointment against the post of EDA.

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6. There is some merit in the contention of the respondents that the appointment letters have all along specifically made out the fact that the appointment was a substitute appointment. In fact, the Original Application was purely on a leave vacancy. According to the procedure prevalent in the department, the leave vacancy incumbent can be suggested by the employee proceeding on leave himself. In that sense, it is clear that the original appointment of the present applicant has been purely on an ad-hoc and on temporary basis and that fact by itself cannot create any right for regular appointment as he cannot avoid the regular process of selection as and when such a regular process is undertaken. The length of period of such officiation cannot by itself create a right for regular appointment.

7. As stated in para 6, the original appointment was purely against a leave vacancy which, according to the procedure prevalent in the Department, can be filled in by a nominee of the Postal servant in whose leave vacancy one is appointed. This more than establishes the purely substitute character of the appointment and till a formal recruitment procedure is adopted giving opportunities for persons with similar qualifications to apply for the job, the applicant cannot be stated to have acquired a right over the job merely because of the initial appointment.

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Keeping in view more particularly the nature of the appointment in this case, we are not able to accept the second argument that the applicant acquired any right under the I.D. Act.

8. As regards the procedure adopted for regular recruitment, it is admitted by the respondents themselves that even before the post became regularly vacant which happened sometime in June, 1992, the respondents had started the recruitment process and the applicant's case was also considered when the regular appointment was undertaken. There were in all 16 applications. Though there is no specific averment as to why the applicant who had admittedly higher academic qualifications and longer experience was not selected, it was stated by the counsel for the respondents that from the application of respondent No.5 it was seen that he was the son of a Postal employee who had retired after 21 years due to paralysis and the respondent No.5 had also worked for two years on a similar post and this fact might have weighed with the Selection Committee in preferring respondent No.5 over the applicant. We had asked for the records regarding the actual selection but the minutes of the actual selection or the reasoning for the particular selection are not available. In the absence of such a record, the Tribunal cannot but treat the action taken as still ad-hoc in nature and the respondents will have to

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formally convene a meeting of the Selection Committee to record a formal finding for selection of the right candidate for the post and the appointment of respondent No.5 will have necessarily to be treated as purely an ad-hoc appointment.


9. In view of the above reasoning, though there is some merit in the contention of the applicant that the appointment of respondent No.5 would in effect mean replacement of one ad-hoc employee by another. ~~In~~ view of the written statement of the respondents that the selection of respondent No.5 was made through a regular process of selection as against the continuance of the applicant which was made only against a leave vacancy as per the nomination of the then Postal employee and in view of the fact that the Department was waiting for only the formality of the departmental proceedings against the earlier incumbent to be completed to enable a regular vacancy to arise, this Tribunal does not think it necessary to quash the appointment of respondent No.5 on this technical ground.


10. In conclusion, as stated in para 9 above, in view of the fact that there are no records regarding the formal selection procedure, we direct the respondents to convene a meeting of the Selection Committee to consider the applications which had been

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received against their notice of vacancy issued on 17.7.1990 in response to which the applications of the present applicant and respondent No.5 were considered. The Selection Committee may conclude their selection proceedings within a period of three weeks with reasons for its choice and thereafter issue a letter for regular appointment against this vacancy. We also hold that the appointment of respondent No.5, Shri B.M. Kureshi on a regular basis is void though we do not set-aside the provisional appointment given to him vide Annexure-A16. This provisional appointment will continue till the period a regular incumbent is selected as per directions above.

11. No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

kvr /sr.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

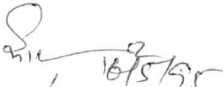
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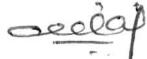
CERTIFICATE

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

Dated : 06.04.95

Countersign :


Section Officer


Signature of the Dealing
Assistant

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NAME OF THE PARTIES MD P.H. Joshi

U.O.I. & O.O.

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