

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. No. 157 of 1993

Date of decision 26.09.2000

Mr. Makwana B. Tejabhai : Petitioner [s]

Mr. B. B. Gogia : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondent [s]

Mr. B. N. Doctor : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. A.S. SANGHAVI : MEMBER (J)

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? *No*
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? *✓*

Makwana Bavji Tejabhai,
Adult, Occ : Unemployed,
Add : Village Sindhavadar,
Tal : Wankaner,
Dist : Rajkot.

= Applicant =

Advocate : Mr. B.B. Gogia

Versus

1. Union of India
Though : Secretary,
Department of Posts,
Government of India,
New Delhi.
2. Superintendent of Post Offices,
Rajkot Division,
Rajkot.
3. Parsara Mohamed Vali Mohamed,
Adult. Occ : Service,
PO & Vill : Sindhavadar,
Tal : Wankaner,
Dist : Rajkot.
4. Employment Exchange Officer,
Employment Exchange Office,
1/3, Multistory Building,
Race Course Road,
Rajkot.

= Respondents =

Advocate : Mr. B.N. Doctor

JUDGMENT
O.A 157 of 1993

Date : 26/09/2000

Per Hon'ble Shri. A.S. Sanghavi : Member (J).

Heard Mr. B.B. Gogia for the applicant and Mr. B. N. Doctor for the respondents. The applicant who was working as EDDA on

ad hoc basis at Village Sindhavadar Wakaner Taluka has challenged his termination of service by the respondents and has also prayed for regularisation in the service. According to the applicant the post of EDDA has fallen vacant on account of the then incumbent of the post having been promoted as Postman. He was appointed provisionally on ad hoc basis to work as EDDA w.e.f. 1.3.91. The respondents had thereafter called for the names from the employment exchange to fill up this post on regular basis and even though the applicant had registered his name in the employment exchange and had submitted a representation to the employment exchange office, Rajkot, the employment exchange had informed him that his name would be recommended as and when vacancy of his qualification would be available. He had again sent a representation to the employment exchange office but he was told that since he was SSC passed and requirement of the post was 8th Std., his name was not recommended. The applicant had however requested the department to consider his case for regularisation as he had been working for more than one year on this post. The department had however, not agreed to his request and he was also not given any form to fill up. The applicant had thereafter filed a Civil Suit in the Court of Civil Judge, Senior Division, Morbi praying for interim injunction restraining the postal department from terminating his service. The application has therefore come to be rejected on the ground of the jurisdiction of the Civil Court and thereafter on dated 15.1.93 his services were terminated by an order from the Sub-divisional Inspector of the post office Wankaner sub-division and the respondent no.3 is appointed in

his place w.e.f. 16.1.96. The applicant has contended that even though he was eligible and had even put up more than one year of service as EDDA, his case was not considered by the respondents and his services were illegally terminated. According to him, his service could have been terminated without complying with the provisions of Section 25 (F) of the I.D. Act and hence also the order terminating his services requires to be quashed. He has also contended that the order does not comply with the provision of the Section 25 (N) of the I.D. Act and therefore also the order requires to be quashed. He has therefore prayed that the order dated 15.1.93 of Sub-divisional Inspector of Post Offices Wankaner sub division terminating his services as EDDA Sindhavadar be quashed and set aside and he be regularised in the service.

2. The respondents in their reply have contended inter alia that the appointment of the applicant as EDDA was purely on ad hoc and temporary basis and it was made clear to him that his services would be liable to be terminated as soon as regular appointee to the post is available. They have also contended that after his appointment process for the regular selection of EDDA was undertaken and the names were invited from the employment exchange. The employment exchange had forwarded some names but the name of the applicant did not figure in those names forwarded by the employment exchange. Since he was not sponsored by the employment exchange, his name was not considered for the appointment to the post of EDDA Sindhavadar. They have also contended that though respondent no.3 was duly

selected, he could not be appointed as the applicant had moved the Civil Court by filing a Civil Suit No. 117 of 91 before the Civil Judge, Morbi and only after the prayer of interim injunction was rejected by the Civil Court on the ground of Court having no jurisdiction and the plaint was returned to the plaintiff, the service of the applicant was terminated w.e.f. 16.1.93 and the respondent no.3 was appointed on regular basis from 16.1.93. They have denied that the termination order is illegal or that it does not comply with the provisions of the I.D. Act. They have justified the termination order and selection and appointment of respondent no.3 as EDDA Sindhavadar. They have prayed for rejection of this O.A.

3. We have heard the learned advocate of both the parties and have also gone through the written submissions given by learned advocate of both the parties. Apart from the question of merit, the O.A deserves to be rejected on the ground of this Tribunal having no jurisdiction to entertain the question pertaining to the provisions of I.D. Act. It is now settled position in view of the pronouncement of the Supreme Court in the case of Krishna Prasad Gupta V/s. Comptroller of Printing and Stationary reported in 1996 (1) SCC 69 as well as the case of Directorate Government of India V/s. Chief Secretary Central Government Small Scale Industries reported in 1999 (1) LLC 227 and also the case of Ajay Depanalkar V/s. Manager of Pune Telephone Company reported in 1999 L.L.C. 221 that Administrative Tribunal has no jurisdiction for entertain and decide the questions pertaining to the provisions of I.D. Act. Since the

applicant has assailed the order of his termination contending that the order does not comply with the requirement of Section 25 (F) of the I.D. Act as well as 25 (N) of the I.D. Act and hence, the same is bad in law, this Tribunal cannot go into the question of non compliance of Rule-25 (F) or 25 (N) of the I.D. Act and cannot give any finding so far these provisions are concerned. Hence, on this ground., the O.A deserves to be rejected.

4. However, Mr. Gogia learned advocate for the applicant has also submitted that termination order is challenged on the ground of applicant having not been given opportunity of being regularised in the services. According to Mr. Gogia, the name of the applicant was not considered for regular appointment by the respondents only because his name was not forwarded by the employment exchange and the candidature of only those persons whose names were sponsored by employment exchange were considered. Relying on a decision of this Tribunal in O.A No.396 of 95 decided on dated 2.12.97, he has submitted that the department had not invited the names from general public also and therefore, the whole selection process was vitiated. Now regular selection to the post of EDDA and termination of the provisional service of the applicant are quite distinct issues. So far the termination of the services of the applicant is concerned, it cannot be gain said that his services being provisional and ad hoc was liable to be terminated by respondents at any time, all the more when regularly selected candidate was available. Hence, this challenge to the termination of his service on any other ground except the grounds available in the provisions of the I.D.

Act is not tenable and we see no merit in the submissions of Mr. Gogia that his services were illegally terminated.

5. So far the regular selection of the applicant to the post of EDDA, Sindhavadar is concerned it is not the case of the applicant in the O.A that the selection is not properly carried out or that the selection is vitiated by the non consideration of his name. In fact no relief against the regular selection of the respondent no.3 is also prayed for by the applicant in this O.A. The facts of the case suggests that such challenge to the regular selection process was not available to the applicant as applicant was not a candidate to the selection. The applicant has admitted that he knew about the names having been called from employment exchange by the respondents and that pursuant to that knowledge he had even represented to the employment exchange for sending his name to the respondents for the selection to the aforementioned post, the employment exchange had however not sent his name. It is the grievance of Mr. Gogia that though the applicant was eligible to take part in the selection, since his name was not forwarded by the employment exchange, his candidature was not considered by the respondents and as such he was not given appointment. This would suggest that if any grievance can be made by the applicant, it would be against the employment exchange and not against the respondents. The applicant after learning that his name was not forwarded by the employment exchange to the respondents, could have sent his application with necessary annexures showing his eligibility for the same post. Instead of adopting this procedure

the applicant had moved the Civil Court and filed a Civil Suit seeking stay against the selection process. The suit had come to be rejected by the Civil Court on the ground of jurisdiction and even after rejection of that suit the applicant had not thought it fit to apply for the said post in the individual capacity. When there was no application before the authorities they could not have selected the applicant and for that the respondents cannot be blamed. It cannot be said that the selection process was vitiated as the name of the applicant was not considered. No question of consideration of the name of the applicant for the said selection arose as there was no application by the applicant. Under the circumstances, the challenge to the regular selection of the EDDA and subsequent appointment of the respondent no.3 thereto is also clearly misconceived and the O.A deserves to be rejected on both the grounds. The decision in O.A No. 396 of 95 is of no help to the case of the applicant as in that case the applicant had applied for the selection while in the instant case, the applicant had not made any application for the regular selection to the post of EDDA. Since he was not a candidate no question arose of considering him for the said post and therefore he is not entitled to challenge the selection also. The O.A is clearly misconceived and the same is rejected with no order as to costs.

G.C. Srivastava
(G.C. Srivastava)
Member (A)

A. S. Sanghavi
(A.S. Sanghavi)
Member (J)

FORM NO - 21

(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

CA/TA/PA/CD/ 157/93 of 200

Mr. B. T. Makwana

APPLICANT(s)

VERSUS

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RESPONDENT(s)

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Certified that the file is complete in all respects.

PL 102

Signature of S.O. (J)

PL

Signature of Dealing Hand.