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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 19.03.2008

O.A. No. 61 of 2002

K.C.Sahoo Applicants

Vs.

Union of India & Ors. Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *no*
2. Whether it be circulated to all the Benches of the CAT or not? *Yes*

[Signature]
(C.R. MOHAPATRA)
MEMBER (A)

[Signature]
(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

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PRESENT:

THE HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN
AND
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)
.....

O.A. No. 61 of 2002

K.C.Sahoo Applicants

Vs.

Union of India & Ors. Respondents

(Particulars of parties are attached in separate sheet)

For the Applicants :M/s.B.K.Mohanty,
R.Mohanty,P.K.Bhuyan,S.K.Patnaik,
S.K.Ahmad, Counsel

For the Respondents. :Mr.S.B.Jena, Counsel

ORDER

Per-MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN:

Applicant has applied for the post of EDDA, Ambasal Branch Post Office in response to an advertisement. He claims that he is a graduate in arts having all necessary qualification to be selected and appointed to the post. According to him, he belongs to OBC community and gathered working experience by virtue of his work in different capacity for some time. In the meantime, the post of EDBPM/GDSBPM, Anantapur BO was to be filled in on regular basis. In pursuance of the said notification, the

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Applicant applied for the said post and he was provisionally selected and appointed as BPM, Anantapur Branch Post Office with condition that the provisional appointment can be terminated by the Appointing Authority without any notice or assigning any reason thereof. In the meantime, the post of EDDA of Panchapalli Branch Post Office fell vacant and considering the application submitted by applicant for adjustment as against the post of EDDA, Panchapalli BO, he was relieved vide order dated 10.06.2006 by the competent authority to join in his new place of posting i.e. in the post of EDDA, Panchapalli BO. According to applicant while he was on duty without any order of termination and allowances being paid for the period he worked, another person was posted in his place at Panchapalli; BO. While the matter stood thus, a notification was issued inviting application for the post of EDDA, Ambasal on 17.1.2001 but without giving due weightage to his experience when Respondent No.4 was selected and appointed to the said post, being aggrieved by the said action of the Respondents he approached this Tribunal in the present Original Application filed U/s. 19 of the Administrative Tribunals Act, 1985 with the following prayers:

“To quash the selection and appointment of Respondent No.4 in Annexure-6;

To direct the Opposite Parties to appoint the petitioner to the post of EDDA, Ambasala forthwith;



And in alternatively to direct the Ops to consider the case of the petitioner for any ED post lying vacant or would be vacant in future taking into consideration his experience."

2. Respondents have filed detailed counter by contending that the post of EDDA (now GDSMD) of Ambasal Branch Post Office became vacant w.e.f. 10.3.2001 due to the retirement of the regular incumbent. In order to fill up the said post, request was made to the concerned Employment Exchange to sponsor names of candidates having qualification of Class-VIII standard. It was also mentioned in the requisition that preference may be given to the candidates with matriculation qualification and the post was unreserved fixing last date to 15.2.2001 (Annexure-R/1). Simultaneously public notification was issued inviting applications from the intending general community candidates for the post in question (Annexure-R/2). As many as fifty one (51) candidates from different communities including the Applicant applied by the stipulated date/15.02.2001 and nine (09) candidates applied after the last date of receipt of application. Cases of all the 51 candidates were enlisted in the check-sheet (Annexure-R/3). Selection was made from amongst the candidates whose names were enlisted in the check sheet. One Shri Suryakanta Moharana who has secured highest percentage of marks at Sl. No. 25 of the check-sheet was selected on open competition for the post of EDDA, Ambasal Branch Post Office on

merit on 28.03.2001 (Annexure-R/4). The Applicant cannot claim for regular absorption as his provisional appointment was conditional. It has been pointed out that as the applicant was provisionally appointed to the post of EDDA Panchapalli BO, as per the condition laid down in the order of appointment he was relieved from the post and therefore, he cannot claim for any regular absorption as a matter of right when he is not regularly selected for the said post. It has further been pointed out that it is not possible to adjust the applicant in any vacant post because he has secured less percentage of marks than the selected candidate. By filing additional counter statement, the Respondents have contended that experience gained by the applicant as substitute on provisional basis in the ED post will not be taken into consideration to a particular ED post. Accordingly, they have prayed for dismissal of this Original Application.

3. Heard Mr. Bijay Kumar Mohanty, Learned Counsel for the Applicant and Mr. S.B.Jena, Learned Additional Standing Counsel for the Respondents and perused the materials placed on record.

4. Learned Counsel for the Applicant argued with vehemence that selection could not have been made on the basis of the marks obtained in the matriculation examination when the minimum educational qualification is class VIII pass. He has also argued that taking into consideration the experience gained by the applicant, he should have been selected and

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appointed to the post in question in place of Respondent No. 4. On the other hand Mr. Jena, Learned Additional Standing Counsel persuasively argued that Rules governing the field for selection to a ED post do not envisage any weightage to be given to the experience gained by an employee. Marks obtained in the matriculation examination have been given only weightage but that is not the sole criteria for selection.

5. For better elucidation the method of recruitment as envisaged in Swamy's Compilation of Service Rules for Postal ED Staff is produced below:

"Method of Recruitment

(1) Instructions regarding selection-The question of consolidating various instructions issued from time to time governing the appointment and other service conditions of ED Agents has been engaging the attention of this Directorate. After careful examination of all aspects of employment of ED Staff, it has been decided to observe the following instructions scrupulously while making selection of ED Agents.

1.Age.

The minimum age-limit for employment as ED Agent will be 18 years and maximum age up to which an ED Agent can be retained in service will be 65 years. The Director-General, Posts and Telegraphs, may consider relaxation of this age-limit in exceptional case.

2. Educational Qualifications:

ED Sub-Postmasters and ED Branch Postmasters:

Matriculation, [The selection should be based on the marks secured in the Matriculation or equivalent examinations. No weightage need be given for any qualification(s) higher than Matriculation].

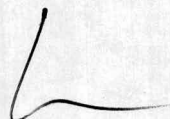
ED Delivery Agents ED Stamp Vendors and All other Categories of EDAs


VIII Standard. Preference may be given to the candidates with Matriculation qualifications. No weightage should be given for any qualification higher than Matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English."

6. From the above, it is crystal clear that qualification that has been prescribed for such selection is standard VIII and preference should be given to the candidates with matriculation qualifications. It is made clear that no weightage should be given to any qualification higher than matriculation. But sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily has been stipulated. In order to show that there was no violation of the Rules; Learned Additional Standing Counsel for the Respondents has enclosed copy of the requisition sent to the employment exchange requesting names of candidates at Annexure-R/1 which reads as under:

".....


A post of Extra Departmental Delivery Agent at Ambasal Branch Post Office is required to be filled up in Jagatsinghpur Postal Sub Division. I would request you kindly to sponsor candidates having following qualifications within 30 days from the date of issue of this requisition i.e. by 15.2.01. The proforma report is enclosed. Post of eligibility:-





EDDA:(1)Age	-Must have within 18 to 65 years.
(2)Qualification	-Must have VIII standard. Preference may be given to the candidates with matriculation qualification.
(3)Residence	-If not a permanent resident of the post village must take up his residence in the post village before appointment;
(4) Security	-Must furnish security of Rs. 4000/- in shape of security bond.
(5)	-Candidates belonging to reserved communities as mentioned in para 9 of enclosed notification may be sponsored.
(6)	-If minimum 3 (three) eligible candidates belonging to reserve community are not sponsored a certificate in this regard as mentioned I note 3 of para 9 of enclosed notification may be furnished."

7. Respondents have also produced the check list prepared by them wherein candidature of 60 candidates have been evaluated out of which Sl. No. 25 secured the highest marks i.e. 70.40% (528 out of 750) in matriculation examination. Applicant who is at Sl. No. 44 has only secured 45.86% marks (344 out of 750 marks) in matriculation. On perusal of the documents we find that that there is transparency in the evaluation of marks and assessment of the criteria and the private respondent stood first in the selection which cannot be faulted.



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8. Next question that arises for our consideration as whether the marks secured in the HSC should ^{be} the criteria. Rules envisage giving preference to the marks obtained in the matriculation examination. Therefore, giving preference to the candidate who has secured highest marks in the matriculation examination cannot be faulted.

9. Last question that arises for consideration as to whether the experience gained by the applicant should be given weightage in the matter of selection. No where in the method of recruitment we find any provision for giving weightage to the experience gained in ED employment by a candidate. On the other hand, Respondents have produced a copy of the order dated 18.08.2001 of the Hon'ble High Court of Karnataka rendered in Writ Petition Nos. 21331-333/2000 in which the Full Bench judgment of this Tribunal dated 19/20th April, 2000 passed in OA Nos. 100/99, 112/1999 and 101/1999 holding that experience gained by a candidate working as substitute or on provisional basis on various ED posts should be given due weightage in the matter of selection was under challenge. The Hon'ble High Court of Karnataka finally came to the conclusion that experience gained by a candidate working as substitute or on provisional basis on various ED posts shall not be taken into account for selection to particular ED Post. For clarity, relevant portion of the orders of the Hon'ble High Court of Karnataka is quoted herein below:-

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Point (a) Re: Weightage

The Recruitment of E.D. Agents is governed by the PTEDA Rules. In Kameshwar Prasad's case (supra), the supreme Court held that the said Rules are a complete code governing the service, conduct and disciplinary proceedings against ED Agents. It is common ground that the said Rules governing the recruitment of ED Agents do not provide for any weightage for the previous service either provisional stop gap service.

In V.K. Sood Vs. Secretary Civil Aviation (AIR 1993 SC 2285), the Appellant requested the Supreme Court to suitably modify the qualification prescribed by the Rules. The Supreme Court refused to do so holding that it is for the rule making authority or for the legislature to regulate the method of recruitment and prescribe qualifications etc. In GOVERNMENT OF ANDHRA PRADESH /VS/ P. RAVINDER (1991 (5) SLR 90), the Supreme Court considered the validity of the order of the Tribunal extending the benefit of weightage to selection to all categories while the State had granted the benefit of weightage by Notification to only one specific category was considered. The Supreme Court held that the Tribunal had acted illegally and exceeded its jurisdiction by extending the benefit beyond what was specified in the Notification. In J. RANGASWAMY /VS/ GOVERNMENT OF ANDHRA PRADESH (air 1990 sc 535) The Supreme Court held that prescription of qualifications and eligibility criteria for filling any post, are not matters for courts to consider and assess; and if the appropriate authority empowered to prescribe the

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qualifications and eligibility criteria has done it in accordance with law, courts will not interfere with the same. It was also observed that if any one has any grievance in regard to prescription of qualifications/eligibility criteria, the remedy is give a representation for review of the Rules and not to approach the courts. In B.N. SINHA Vs. Union of India, (AIR 1998 SC 2600) the Supreme Court observed that the Courts and Tribunals should not attempt to legislate on a subject which was not its business; and neither the Rule of statutory interpretation nor rules relating to interpretation of Sub-ordinate legislation, empower any judicial or quasi judicial body to apply the law to situation or object which was not completed by the legislature while making a law, or by the Government while making the Rule.

In State of M.P. Vs. DHARAM BIR (AIR 1998(6) SCC 165), the Supreme Court observed thus:

“31. The plea that the court should have a “human approach” and should ;not disturb a person who has already been working on this post for more than a decade also cannot be accepted as the courts are hardly swayed by emotional appeals. In dispensing justice to the litigating parties, the courts not only go into the merits of the respective cases, they also try to balance the equities so as to do complete justice between them. Thus the courts always maintain a human approach. In the instant case also, this approach has not been departed from. We are fully conscious that the respondent had worked on the post in question for quite a long time but it was only in ad-hoc capacity.

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We are equally conscious that a selected candidate who also possesses necessary educational qualification is available. In this situation, if the respondent is allowed to continue on this post merely on the basis of his concept of "human approach". It would be at the cost of a duly selected candidate who would be deprived of employment for which he had striven and had ultimately cleared the selection. In fact, it is the "human approach" which requires us to prefer the selected candidate over a person who does not possess even the requisite qualification. The Courts as also the Tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.

32. "Experience" gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. If the Government in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or

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the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government."

It is thus clear that where the rules do not provide for weightage, Court or Tribunals should not direct weightage to be given at the time of regular recruitment. That can be done only by amendment to the Rules by the Rule Making Authority and not by the direction of the Courts.

We will now refer to the two decisions relied on by the petitioners to contend that they are entitled to weightage.

In ASHWINI KUMAR V. STATE OF BIHAR (AIR 1997 S.C. 1628), as against the sanctioned posts of 2250 of class III and IV posts under Tuberculosis Eradication Programme, as many as 6000 persons were recruited and illegally appointed, without authority. It was not clear as to who among the 6000 appointees were the senior most 2250 persons, and who were appointed against the sanctioned posts and who were not appointed against sanctioned posts, so as to enable the termination of the services of only those who were appointed in excess of the sanctioned posts. Therefore, the Director-in-Chief, Health services terminated all the appointees. When that was challenged the Supreme Court upheld termination of all such appointees. However, since the Tuberculosis Eradication Programme was still to continue, the Supreme Court on humanitarian grounds directed that fresh recruitment to the sanctioned posts to be made at the earliest and all the affected persons whether or not parties to the case, be given opportunity to compete for the said posts and be

given due weightage for their past experience. But as noted above, the facts in this case are completely different. There the petitioners were regularly appointed but in excess of the sanctioned posts and they worked for a considerable period. On the peculiar circumstances, the Supreme Court directed weightage to be given on humanitarian grounds. That is not a precedent to hold that the P & T Department should give weightage to the petitioner in violation of the PTEDA Rules.

The second decision of the Supreme Court relied on by the petitioners, is Arun Kumar Rout and others Vs. State of Bihar AIR 1998 SCC 1477 which related to some Daily Wagers whose services had been regularized. Subsequently their services were terminated on the ground that their initial appointment was irregular. The employee concerned were not guilty of any fraud or sharp practice, nor did they lack the requisite qualification. They were already in service for more than 5 years. In those peculiar circumstances, the Supreme Court held that such employees deserves sympathetic consideration even if they could not claim regularization and directed that while assessing their merit, they should be given credit of 25% marks for the experience they have gained for services rendered by them for a long period of 5 years of service. This decision again is inapplicable as the judgment itself makes it clear as follows:

“These directions are given on consideration of the special facts of this case and this order being confined to the special facts of this case is not to be treated as a precedent.”



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Neither of the two cases relate to recruitments made in accordance with the Recruitment Rules.

The difference between applications for regularization and applications challenging the recruitment made in accordance with the recruitment Rules should be kept in mind. When a person who has worked temporarily for considerable period approaches the Court or Tribunal for regularization and for some reason the Court finds that the person though qualified and eligible, is not entitled to the claim of regularization, but deserves some benefit, in view of the experience gained by him on account of long service, the Courts have some times directed the authorities to keep in view the experience so gained by the temporary employee, by converting such experience into certain weightage. But such directions have been issued only in cases where the Court considered specific cases for regularization, with reference to the special facts and circumstances of the case. On the other hand where the Recruitment rules do not provide for weightage and where the appointing authority resorts to recruitment in terms of the Recruitment Rules, neither the Supreme Court nor this Court has interfered in any completed recruitment made in terms of the Rules, by directing the appointing authority to reconsider the selection by providing weightage to any temporary employee, contrary to the rules. The Full Bench of the Tribunal has rightly kept this aspect in view, while deciding the two questions by order dated 19/20.4.2000. The earlier Full Bench of CAT, in Parvathi's case lost sight of this aspect. We therefore answer the first point in the negative.

Point(b) Re:Regularisation.

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The petitioners next submitted that they should be extended the benefit of the following instructions contained in the letter dated 6.6.1988 issued by the DGP:

“Preference to Casual labourers in the matter appointment as ED Agents:- According to the prevalent Recruitment Rules governing the cadre of Group ‘D’ the order of preference among various segments of eligible employees is as under-

- (a) Non-test category
- (b) ED employees.
- (c) Casual labourers
- (d) Part-time casual labourers.

Since the number of vacancies of Group-D is limited and the number of ED employees eligible for recruitment as Group ‘D’ is comparatively large, the casual labourers and part-time casual labourers hardly get any chance of their being absorbed as Group ‘D’. Thus majority of casual labourers with long service are let out without any prospect of their getting absorbed in Group ‘D’ cadre.

Keeping the above in view, a suggestion has been put forth that casual labourers, both full and part time should be given preference for recruitment as Extra Departmental Agents, in case they are willing, with a view to afford the casual labourers a chance of ultimate absorption as Group ‘D’

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The suggestion has been examined in detail and it has been decided that casual labourers, whether full-time or part-time, who are willing to be appointed as ED vacancies may be given preference in the matter of recruitment of ED posts, provided they fulfil all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange."

As rightly held by the Tribunal, the said circular applied only to persons employed as casual laborers and not to the persons who were appointed on substitute basis or on provisional basis (whose position is explained in Para-3 above).

The fact that the said instruction cannot apply in the case of provisional appointees and substitutes, is also evident from the decision in STATE OF HARYANA /VS/ PIARA SINGH (AIR 1992 SC 2130). The Supreme Court held that Courts should act with care and caution in issuing directions for regularization and must be cognizant of the several situations and eventualities that may arise on account of such directions; that courts should take a practical and pragmatic view, in as much as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. The Supreme court gave several instances where regularizations should not be

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directed by Courts, two of which being relevant for own purpose are extracted below:

- (a) "Take a case where certain vacancies are existing or expected and steps are taken for regular recruitment either through Public Service Commission or other such body, as the case may be. A large number of persons apply. Inevitably there is bound to be some delay in finalizing the selections and making the appointments. Very often the process of selection is stayed or has to be re-done for one or the other reason. Meanwhile the exigencies of administration may require appointment of temporary hands. It may happen that these temporary hands are continued for more than one year because the regular selection has not yet been finalized."
- (b) In some situations, the permanent incumbent of a post may be absent for more than a year. Examples of this are not wanting. He may go on deputation, he may go on Faculty Improvement Programme (F.I.P), or he may be suspended pending enquiry into charges against him and so on. There may be any number of such situations. If a person is appointed temporarily in his place and after one year he is made permanent where will the permanent incumbent be placed on his return? Two persons cannot hold the same post on a regular or permanent basis."

It is no doubt true that if the temporary employment is continued for a long time say 10 years, and the employees seek regularization, the continuous service may give rise to other presumptions and conclusions leading to regularization. But we are not concerned with such situation in those cases.


The petitioners are not therefore entitled to regularization on the basis of the guidelines contained in the DGP's letter dated 6.6.1988.

Conclusion

The Applications filed by the petitioners before the Tribunal have been rejected by order dated 27.4.2000 based on the answers of the Full Bench on the above two questions. As we have upheld the answers of the Full Bench on the two referred questions, we find that the dismissal of the original applications does not call for any interference. These petitions are therefore dismissed."

10. We are in respectful agreement with the decisions of the Hon'ble High Court of Karnataka and considering the entire aspects of the matter, we are of the considered view that the applicant has not been able to make out any case and therefore, this OA cannot stand in his legs and the same has to be dismissed. Accordingly, this OA is dismissed. There shall be no order as to costs.


(C.R. MOHAPATRA)
MEMBER (A)


(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

KNM/PS