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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A.No. 69/97

Date OF Order : 19.5.97

Heera Lal Prajapat

... Applicant.

VERSUS

Union of India through the Secretary,
Ministry of Communication, Deptt. of
Posts, Sanchar Bhawan, New Delhi.

2. Post Master General
Western Region, Rajasthan
Jodhpur.
3. Superintendent of Post Offices,
Pali Division, Pali Marwar.
4. Shri Gena Ram Meghwal s/o Sh. Ramu
Ram, r/o Village & PO Varkana, Via-Bijowa,
District Pali

... Respondents.

CORAM :

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER.

PRESENT :

For the Applicant

... Mr. S. K. Mali

For the Respondents

... Ms. Padmini Rathore, Brief holde
for Mr. J.P. Joshi

ORDER

(Per Hon'ble Mr. O.P. Sharma, Adm. Member)



In this application under section 19 of the Administrative Tribunals Act, 1985, Shri Heera Lal has prayed that verbal order of response No.3, the Superintendent of Post Offices, Pali Division, Pali Marwa dispensing with the services of the applicant be declared illegal and quashed and the respondents may be directed to continue the applicant regular basis on the post of EDBPM with all consequential benefits as if such order has been passed against him. The applicant has also sought other relief which may be found to be just and proper in the facts.

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circumstances of the case.

2. The facts of the case as narrated by the applicant are that he belongs to O.B.C. community and has passed Senior Higher Secondary Examination from the Board of Secondary Education, Rajasthan. On account of the fact that one Shri Aogar Ram, EDBPM, was put off duty pending finalisation of the disciplinary proceedings against him, the applicant was given charge as EDBPM, Varkana, by the respondents with an assurance that he would be made permanent on the post of EDBPM. The charge report making over charge to the applicant, dated 29.6.96 (which should be 25.6.96), is at Annexure A/1. The applicant fulfils all the requisite qualifications for appointment to the post of EDBPM on regular basis. The formal order appointing the applicant was issued vide Annex.A/2 dated 19.8.96 by which he was appointed to the said post for two months from 29.6.96 to 29.8.96. The respondents themselves recommended the services of the applicant being made on permanent basis to respondent No.3 vide Annex. A/3 which is the inspection report dated 10.2.97. The respondent No.3 issued an advertisement for filling up this post vide Annexure A/4. In pursuance of the said advertisement, the applicant and one Shri Gena Ram Meghwal, who has been made respondent No.4 in the O.A. applied for the post. According to the applicant, he was better qualified than respondent No.4, inasmuch as he also has side income whereas the property and assets of respondent No.4 are less than that of the applicant. There has been no verification of the antecedents with regard to character, property and income of respondent No.4 and it is also not known whether he is medically fit for the post or not. Instead however, the respondent No.3 is going to hand over charge of the post to respondent No.4. According to the applicant, he is a duly selected person having better qualifications than respondent No.4 and he is therefore, entitled to hold the post of EDBPM, Varkana, on account of the fact that he is already working on the said post and no show cause notice for discharging the applicant from service has been served upon the applicant by the respondents.



3. The respondents in their reply have stated that the applicant was appointed as ED BPM, Varkana, by the Sub Divisional Inspector, Post Office Marwar Junction, with effect from 29th June, 1996 vide Memo No.A/Varkana dated 25.6.96 on a purely temporary basis due to fact that regular incumbent S Aogar Ram had been placed under "put off duty". No assurance was given to applicant that he would be given permanent appointment. The applicant himself stated in his application dated 29.6.96 addressed to the Superintendent of Post Offices, Pali Marwar that he would not claim permanent appointment and he would hand over the charge of the post of ED BPM whenever asked by the appointing officer. Copy of this application is at Annexure R/1. The applicant

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application for regular appointment was duly considered on merits alongwith the case of respondent No.4 Sh. Gana Ram and the latter was selected due to higher percentage of marks secured by him in the Secondary School Examination. Marks sheets of the applicants and of respondent No.4 of Secondary School Examination are at Annexure R/2 and R/3. The Sub Divisional Inspector in his report at Annexure A/3 had merely stated that the applicant is working on a temporary basis and action should be taken to make selection for the post of ED BPM, Varkana. Since the applicant was working on ad hoc basis, there was no provision for issuing show-cause notice while terminating the services of the applicant. The respondents have also averred that the applicant approached this Tribunal without availing himself of the alternative remedy available to him under section 20 of the Administrative Tribunals Act, 1985.

4. During the arguments, the learned counsel for the applicant stated that the respondent No.4 does not even possess property in the village in which the post office to which he is to be appointed is located. Therefore, the respondents have seriously erred in selecting the respondent No.4 for the post of ED BPM, Varkana. He has added that since the applicant was already working as ED BPM, he should have been given preference in the matter of appointment. Further, the applicant's antecedents with regard to qualifications, the fact regarding property and income have all been verified and he is more meritorious than respondent No.4. Therefore, there is no reason why the applicant should not be allowed to continue on the post.



5. The brief holder for the counsel for the respondents on the other hand has urged that although the applicant has claimed relief with regard to his termination, verbal or otherwise, but he has not claimed any relief seeking quashing of the selection of respondent No.4. Therefore, the Tribunal can only adjudicate on the relief claimed by the applicant namely, that the order of his termination be quashed and that he should be allowed to continue on the post of ED BPM.

6. We have heard the learned counsel for the applicant and the Brief holder for the counsel for the respondents and perused the record. So far as the applicant's own appointment is concerned, reference may be made to Annexure R/1 which is the application dated 29.6.96 made by him for appointment to the post of ED BPM, Varkana. In this application, the applicant has sought appointment on temporary basis and has added that he would not stake any claim for regular appointment. He has further stated therein that whenever the respondents propose to remove him from service, he will obey the orders in his


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behalf. Now, we may refer to Annexure A/2 dated 19.8.96 which is the formal order of appointment of the applicant. Para (1) of the said order states that the appointment is for a period of two months from 29.6.96 to 29.8.96 or till regular appointment is made, whichever period is shorter. Para (2) reads as under :-

(2) Shri Heera Lal Prajapat is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post."

Para (5) thereto reads as under :-

"In case the above conditions are acceptable to Shri Heeralal Prajapat, he should sign the duplicate copy of this Memo and return the same to the undersigned immediately."



The applicant's own application seeking appointment and terms and conditions of his appointment as mentioned in Annexure A/2 dated 19.8.96 clearly show that the applicant's appointment was provisional in nature. He himself accepted the conditions laid down as per the two paras quoted above from Annex.A/2 and thereafter he was appointed. The applicant, had, thus, clearly understood that his appointment was purely on a temporary basis and provisional in nature and he had no right whatsoever to claim appointment on regular basis. The applicant cannot now turn around and say that he is entitled to appointment to the post of ED BPM on regular basis. In paragraph 4(8) of the O.A. the applicant had stated that he was duly selected person. From the application Annexure R/1 and the order of appointment Annexure A/2, it is very clear that the applicant is not a duly selected person. There is nothing else in the O.A. either to show that the applicant was a duly selected person. He has not undergone the process of selection as commonly understood. This is, therefore, a wholly incorrect averment, to say the least. Therefore, the applicant is not entitled to continue on the post of ED BPM when the respondents want to replace him with a regularly selected candidate.

7. The learned counsel for the applicant stated during his ^{oral} ~~side~~ argument, that the applicant has raised several grounds in the O.A. to the effect that respondent No.4 is not a person qualified enough to hold the post of ED BPM and in any case he has inferior qualifications to those of the applicant. He added that even though there is no specific prayer seeking quashing of the selection of respondent No.4, from the pleadings in the O.A. it can be inferred that there is a prayer to that effect. We are unable to

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agree. As the O.A. stands, the only relief claimed is against the termination of his services and not against the selection of respondent No.4, who of course has been made a party to the O.A. In these circumstances, we are unable to go into the merits of the question whether the applicant is better qualified person than respondent. We confine our conclusion only with regard to relief claimed specifically by the applicant and hold that in view of the terms and conditions for appointment of the applicant and other circumstances, he is not entitled to claim continuance on the post of ED BPM. We find no merit in other averments of the applicant either.

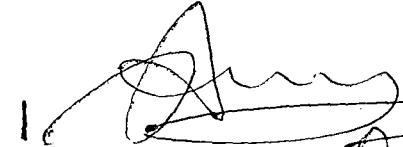


(O.P.Sharma)

Administrative Member

C.Krishna
(Gopal Krishna)
Vice Chairman.

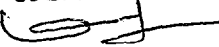
[CPM]

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2. Copy received
Reserve
29/1/97

3. G.B.

Part II and III destroyed
in my presence on 22/5/73
under the supervision of
section officer () as per
order dated 1/3/73


Section officer (Records)

