

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : 25.04.2000

O.A. No. 223/97

Heera Lal Prajapat son of Shri Lal Ramji aged about 22 years resident of village and post Varkana, Via Bijowa, District Pali (Rajasthan), Ex-EDBPM in the office of Varkana, District Pali.

... Applicant.

v e r s u s

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Sanchar Bhawan, New Delhi.
2. The Post Master General, Western Region, Jodhpur.
3. Superintendent of Post Offices, Pali Division, Pali Marwar.
4. Gena Ram Meghwal son of Shri Raju Ramji resident of village and post Varkana, Via Bijowa, District Pali.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for a direction to declare the applicant as selected on the post of EDBPM (Extra-Departmental Branch Post Master) and continue his services from the date of taking over the charge as EDPBM, with all consequential benefits.



2. It is the case of the applicant that earlier he was appointed vide Annexure A/2 dated 19.8.96 provisionally subject to regular appointment as EDBPM. Thereafter, the selection was held and respondent No. 4 was selected, but he was not selected for that post. The applicant should have been selected and in these circumstances, there should be a direction to continue him in service as EDBPM.

3. By filing counter, these allegations have been denied by the official respondents. The official respondents submitted that in view of the order Annexure A/6 dated 19.5.97 passed in O.A. No. 69/97, the present application cannot be accepted. It is contended that in the earlier application same relief was sought by the applicant and after dismissal of the said O.A., he cannot file another application for the same relief. Therefore, the present O.A. is liable to be dismissed. Even otherwise, the selection of the respondent No. 4 was proper and he was eligible to be appointed.

4. It was further stated that in the selection conducted, the applicant failed and the respondent No. 4 being selected, was given appointment as EDBPM. The order of appointment has not been challenged by the applicant.

5. We have given anxious consideration to the pleadings and the advanced arguments by the learned counsel for the parties. The fact that the applicant has not challenged the appointment order of the respondent No.4, is not in dispute. Even in the order dated 19.5.97, this Tribunal pointed out that without seeking quashing of the appointment order of respondent No. 4, the applicant cannot be allowed to question the same even though the respondent No.4 was a party in the said O.A, as there was no specific prayer for the same. For the reasons best known to the applicant, he has not sought for quashing of the said appointment order of the respondent No. 4 and in this application, therefore, it is difficult for us to go into the merits of question whether the applicant is better qualified person than the respondent No. 4.



6. Further, the learned counsel for the applicant submitted that the respondent No. 4 was not eligible in the sense he did not have the building of his own for functioning of the post. It is further contended that there has been no verification of the antecedents of the respondent No. 4.

7. From the facts narrated above, one thing is clear that the applicant has not sought for quashing of the appointment order of the respondent No. 4, even though there is a relief clause that the selection of respondent No. 4 may be declared illegal and be quashed. In the earlier order passed in OA No. 69/97, this aspect was specifically brought to the notice of the applicant that he had not sought for quashing of the appointment order of the respondent No. 4 and hence, this time, the applicant should have filed the appointment order of the respondent No. 4 and sought quashing of the same. Without filing the appointment order of the respondent No. 4, it is difficult for us to examine the legality or otherwise of the said order. The learned counsel for the applicant submits that the appointment order of the respondent No. 4 was not furnished to him. But no material is available on record to show that an application was filed to that effect. Learned counsel for the applicant further submits that the selection list was not published. On the other hand, the learned counsel for the official respondents submits that there is no question of publishing the result as the person who is selected has been issued with the appointment order. But in our opinion, this argument has no leg to stand, since no rule requiring such publication was brought to our notice. Moreover, it is an admitted fact that as per the result declared by the Selection Committee, the applicant has failed. It is an established principle of law that we cannot sit over the judgement of the Selection Committee. The Selection Committee having considered all the necessary requirements for the post, had recommended the case of the respondent No. 4 and accordingly, he has rightly been appointed on the post of EDBPM.

AN

8. The applicant was earlier appointed vide Annexure A/2 dated 19.8.96, clearly stating as under:-

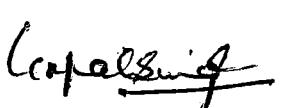
"Whereas Shri Aogar Ram ED BPM Varkana who has been put off duty and pending finalisation of disciplinary proceedings against him and the need has arisen to engage a person to look after the work of ED BPM Varkana, the undersigned has decided to make provisional appointment to the said post for a period of 2 months from 29.6.96 to 29.8.96 or till regular appointment is made, whichever period is shorter.

(2) Shri Heeralal 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."

  
From this, it follows that there can be no direction to continue him on the basis of the said order, when he has failed in the selection. The earlier order automatically came to an end after regular appointment being made after due selection process. Therefore, no writ of mandamus / direction can be issued as the applicant was earlier appointed on provisional basis vide Annexure A/2 dated 19.8.96.

9. For the above reasons, there is no merit in this application and accordingly, we pass the order as under:-

"The O.A. is dismissed. But in the circumstances, without costs."

  
(GOPAL SINGH)  
Adm. Member

  
(B.S. RAIKOTE)  
Vice Chairman

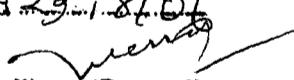
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W  
4/5  
(Vijay Malhotra  
Adv)

  
S. K. Malhotra  
Adv

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Part II and III destroyed  
in my presence on 19.10.06  
under the supervision of  
section officer (J) as per  
order dated 29.1.06

  
Section officer (Record)