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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

31
Date of Order: 31.8.2001

OA No.241/99

Pukh Raj Tamboli son of Shri Laxman Lal Tamboli, aged about 22 years, resident of Tamboli Bada, Kardhan Bari, Banswara, last employed on the post of Extra-Departmental Mail Carrier in the office Head Post Office, Banswara.

APPLICANT.

VERSUS

1. Union of India through Secretary to Govt. of India, Min. of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer-305001.
3. Senior Superintendent of Post Offices, Dungarpur Postal Division, Dungarpur. Post Master, Head Post Office, Banswara (Raj.).



RESPONDENTS.

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Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Vinit Mather, Counsel for the respondents.

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

Hon'ble Mr. Gopal Singh, Administrative Member.

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ORDER

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

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for a declaration that the Post and Telegraph Extra-Departmental Agents (Conduct and Service) Rules 1964 (the Rules, for short) issued by the P&T Board, as ultra-vires of the Constitution of

India. He also sought for quashing the impugned order at Annexure A/1 dated 02.08.1999, by which the applicant's services have been terminated.

2. The applicant contended that he was offered appointment vide Annexure A/3 dated 18.3.1997 and accordingly, he joined the service as EDMC at Banswara on 16.03.1997 as per charge report vide Annexure A/4. Now by the impugned order vide Annexure A/1, the applicant's services have been terminated and his termination is illegal.

3. By filing reply statement, the respondents have denied the case of the applicant. They contended that the applicant was appointed vide Annexure R/1 dated 18.3.1997 (= Annexure A/3) on provisional basis for a period from 18.3.1997 or till regular appointment is made, whichever is shorter. He stated that the process for regular selection has already been initiated by calling fresh applications. There are some persons who have passed matriculation, whereas the applicant has passed 9th standard. The applicant was appointed without following the procedure ~~xxxxxxxx~~ and he was accordingly terminated. Afterwards he was appointed on irregular/temporary basis, and again his services were terminated vide Annexure A/1 (= Annexure R/2). By relying upon Rule 6 of the Rules, they contended that the services of the applicant are liable to be terminated and the applicant has also not completed three years continuous service from the date of his appointment, and accordingly, he has been terminated by the impugned order at Annexure A/1, by giving him allowance for the notice period required, and as such the impugned order cannot be found fault with.

4. The learned counsel appearing for the applicant con-

contended that in the reply, it is stated that there are some candidates who had passed matriculation and the applicant had passed only 9th standard. From the statement, it further follows that the department has given preferential treatment to the persons who have passed matriculation, and as per the judgment of Central Administrative Tribunal, Chennai Bench reported in 1993 (3) ATJ 576 (A. Sankar v. Union of India & ors.), no preference shall be given to the persons who have passed 10th standard as against the persons who have passed 9th class. Therefore, such preferential treatment given by the department to any person, is liable to be ~~illegal~~ declared illegal. As against this argument, the learned counsel appearing for the respondents contended that the said judgment of the Chennai Bench has already been stayed by Hon'ble the High Court of Tamil Nadu, Chennai. He also stated that in the instant case, the selection process has not yet been completed. Moreover, there were some persons who had also passed 8th standard, but securing more marks than the applicant. Assuming that no preferential treatment could be given to the persons who have passed 10th standard and taking the 8th standard as minimum requirement for the post, the applicant does not merit selection in view of the fact that his marks in 8th standard is lessor than the marks obtained by other candidates. He also invited our attention to the statement prepared by the department regarding comparative merit of the applicant and other candidates, and contended that viewed from the many angles, the application is liable to be dismissed.

5. Heard and perused the records.

6. The fact that the applicant was appointed as EDMC without following the prescribed procedure vide Annexure A/3, is not disputed. His appointment was only on provisional ~~basis~~

basis terminable at any time or till regular appointment is made, whichever is shorter. Thus, a person being appointed not in accordance with law has no right to hold the post, and his services are liable to be terminated at any time. After accepting the amount vide Annexure R/2, the applicant cannot turn around and say that his appointment shall be taken as a regular appointment.

7. Admittedly, the regular selection process have been initiated and the applicant also is one of the candidates. Though an argument is addressed that there are some meritorious candidates than applicant, but the fact also remains that the selection process has not been completed by selecting any person as EDMC. The applicant admittedly had passed 8th standard. Whether the persons who had passed matriculation should be given preference or not is still a matter of guess, since nobody is selected yet. Moreover, as contended by the respondents, even if it is taken 8th standard as minimum requirement, the applicant's marks are lower than the other persons. At any rate, the applicant has not challenged such selection process, therefore, we do not propose to examine the merit of the applicant vis-a-vis other candidates. If the present selection process is completed, the applicant has to take his own chance alongwith others and in case the department calls for fresh selection, then also the applicant can apply for the same. So far as the impugned termination is concerned, it does not call for any interference, since his appointment was purely on temporary basis. In this view of the matter, we do not find any merit in this application. Accordingly, we pass the order as under :-

"Application is dismissed. But in the circumstances, without costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman