

I/b

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

370 Of December, two thousand three.

O.A. No. 1/2003

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Manaram,
S/o Shri Magna Ram,
r/o Village Safada,
Jalore Dist.(Rajasthan) : Applicant.

Mr. Pramendra Bohra : Counsel for the applicant.

Versus

1. Union of India through the Secretary,
Ministry of Communication,
Department of Post.
Dak Bhawan, Sansad Marg,
New Delhi.110 001.

2. Superintendent of Post Offices,
Sirohi Division,
SIROHI.

: Respondents.

Mr. Vinit Mathur: Counsel for the respondents.



ORDER

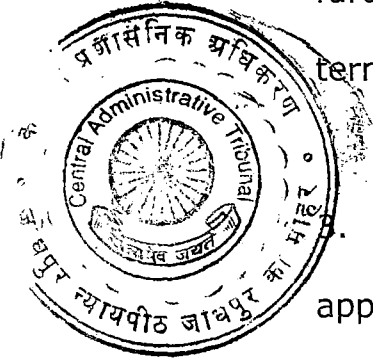
Per Mr. J.K. Kaushik, Judicial Member.

Shri Manaram has assailed the order dated 03.12.2002(Annex. A.1) and has prayed for setting aside of the same with a

2/

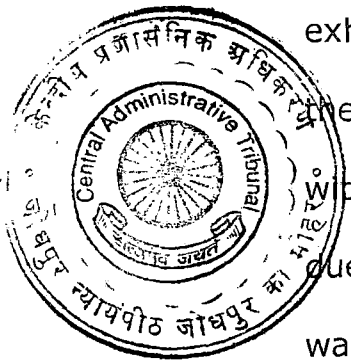
further prayer for a declaration that the applicant be deemed to have been appointed on substantive basis on the post of EDBPM, Safada, Jalore Dist.

2. The material facts necessitating the filing of this O.A are that a notification was issued on 27.12.2001 inviting applications for the post of EDBPM in Village Safada. In the said notification the post of EDBPM has been earmarked for ST category and in case suitable candidate is not available, appointment would be made from other categories. The applicant belongs to SC community and has passed Secondary examination. i.e. fulfilled the eligibility conditions. He had applied for the same and was subjected to interview. Thereafter, he was appointed to the said post with effect from 01.02.2002, with a further condition that it was a provisional appointment and could be terminated when the regular appointment is made.



The further case of the applicant is that in advertisement applications were called for filling up the post on regular basis but while giving him appointment, a condition was added in the letter of appointment that he will continue on the post till a regularly selected candidate joins the post. It has also been averred that the applicant was found suitable and found fit by the competent authority and therefore there can be no question of saying that the applicant was not appointed on substantive basis and his name has also been registered in the employment exchange. It is also averred that when no selected candidate became available the respondents were forcibly trying to oust the applicant from working.

4. The impugned order has been challenged on a number of grounds and the actions of the respondents have been termed to be in violation of Art. 14 of the Constitution of India. The respondents have apparently replaced the applicant by another person on provisional basis which is in contravention to the verdict in **Mrs. Anita Kothari vs. The State of Rajasthan and ors.** [WLR 1991 (S) Raj. 124]. The action of the respondents is violative of Art.14, 16 and 21 of the Constitution of India.



5. The respondents have contested the case and have filed a very exhaustive reply to the O.A. It has been averred that in response to the notification, only 3 candidates had applied and one of whom withdrew his application and therefore the selection could not be held due to non-availability of minimum three candidates. The vacancy was re-notified and in response to that 5 candidates applied out of which two applications were rejected due to incomplete particulars. The remaining three applications were processed and in the case of one of the three candidates, income certificate produced by him was false and therefore again only two candidates remained for consideration and the case was submitted to the competent authority for approval.

6. The further defence as set out in the reply is that the applicant was provisionally appointed and he had completed more than 90 days and as per the instructions in contained in para 10 of the Directorate's

2

letter dated 21.10.2002, provisional appointment was to be discontinued and one Shri Gopa Ram was engaged on a provisional basis. Shri Gopa Ram was also asked to hand-over the charge to the Mail Overseer till a regular selection is made to the post. It is further stated that in the appointment order, there is a clear mention that the competent authority can terminate his appointment at any time without any notice and without assigning any reason. It is also averred that when a person having secured higher marks than the applicant was issued offer he refused and hence no selection on regular basis was made to the said post. It is prayed that the O.A may be dismissed.

7. With the consent of the parties, we have heard the O.A. for final disposal at the admission stage. We have carefully perused the records and pleadings of the case.



The learned counsel for the applicant has reiterated the pleadings made in the O.A and laid emphasis on the words 'selected persons' in para 2 of Annex. A.2 dated 01.02.2002 and contended that this would indicate that the applicant was selected on a regular basis for the post in question. It has also been submitted that the respondents had replaced the applicant by appointing another person on provisional basis and this cannot be done in view of the law position crystallized by a Division Bench of the Rajasthan High Court in the case of **Mrs. Anita Kothari** (supra). He also relied on the case of **Dr. Abhijit Sutradhar and others vs. State of Rajasthan** [D.B. Civil Appeal No. 1091/2000 and others - decided on 18.04.2002.],

2/

which has been affirmed by the Apex Court and the SLP Nos. 15841 to 15851 of 2002 preferred by the State of Rajasthan were dismissed on 23.08.2002. He contended that in the case of **Dr. Abhijit Sutradhar** (supra) it has been held as under:

".. Since regularly selected RPSC candidates are still not available for all the posts which were being hitherto manned by the appellants, the Government is directed not to discontinue the services of the appellants. This will, however, not come in the way of the respondents considering any action against any of the appellants on account of maintaining efficiency and discipline in service. We hope that the Government will explore appropriate steps to be taken to ensure that the appellants are not thrown on road after so many years of service."

He submitted that the above decision squarely covers on all fours the controversy involved in the instant case.

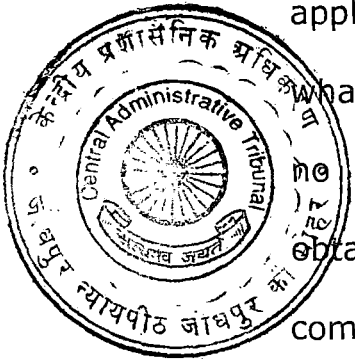


On the contrary, the learned counsel for the respondents has submitted that in the reply clean breast of facts has been made in regard to the procedure adopted by them. Our attention was also invited to the policy decision in para 10 of Annex. 4 (letter dated 21.10.2002) wherein it has been specifically indicated that under no circumstances should such local arrangement exceed 90 days. He has also submitted that the post in question has been presently manned by Mail Overseer and there is no question of replacing the applicant by another provisional appointee and the judgements relied on by the learned counsel for the applicants have no application to the instant case. It is also submitted by him that regular selection to the post is yet to take place. As regards the words used in the appointment order(Annex. A.3) of the applicant i.e. 'selected persons' are concerned, it is submitted that the very subject of the order is " Stop Gap Order" and therefore there is no question of any

[Handwritten signature]

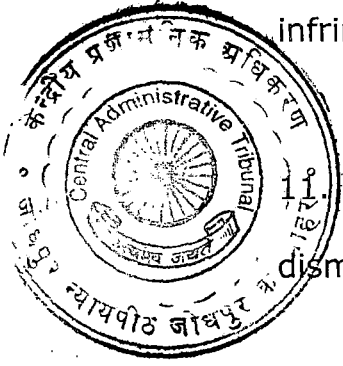
annotation that the appointment of the applicant is being made on regular basis. The applicant was never appointed on regular basis. It is also contended that the services of the applicant have been terminated as per the conditions stipulated in the appointment letter and therefore there has been no infraction of any of the Articles of the Constitution of India. Otherwise also the applicant does not have any indefeasible right to hold the post in question and the policy laid down by the department has not been challenged. Therefore the grounds raised in the O.A are groundless.

10. We have considered the rival contentions raised on behalf of the parties. At the very outset we have perused the appointment order of the applicant at Annex. A.3 and the perusal indicate that the applicant was appointed only on a provisional basis with no right whatsoever. It was only a stop gap arrangement. The applicant has no right for regular appointment which is based on the marks obtained in the matriculation examination. From a perusal of the comparative chart of the candidates, it is clear that the applicant has secured much less mark (except of one) and when the selection is to be made on the basis of marks obtained in the matriculation examination from amongst the candidates applied for the post, the applicant's name stood at Sl. No. 4. The factum regarding marks and other details brought out in the reply have not been controverted by the applicant by filing rejoinder. Thus we have no reason to disbelieve the version of the respondents. If that be so, the inescapable conclusion would be that the action of the respondents



[Signature]

cannot be faulted and none of the right of the applicant has been infringed.



In the premise, the O.A sans merits and the same stands dismissed accordingly. No costs.

(G.R.Patwardhan)
Administrative Member

(J.K. Kaushik)
Judicial Member.

Jsv.

(byog
reproduced)
80/21/11
P/C

5/12/13
L

Part II and III destroyed
in my presence on 17/10/13
under the supervision of
section officer () as per
order dated 03/10/2013

D.K. Sharma
Section officer (Record) 17.10.2013