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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 69/2002

DATE OF DECISION: 31/1/2003

Narendra Singh Kanawat S/o Shri Nand Singh aged about 24 years,
Resident of Nimbhera Kalan Tehsil Banera District Bhilwara
311803.

Official Address: presently serving as EDBPM Nimbhera Kalan.

...APPLICANT.

V E R S U S

1. Union of India through:
The Secretary, Ministry of Communication,
Department of Posts, Dak Bhawan,
New Delhi.
2. The Superintendent of Post Office,
Bhilwara Division, Bhilwara - 311001
3. Inspector Post Office,
Shahpura, Distt. Bhilwara.

...RESPONDENTS.

Present:

Mr. Kamal Dave, for the applicant.
Mr. S.K. Vyas, for the respondents.

CORAM:

HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN.

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

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: O R D E R :

PER MR. A.P. NAGRATH:

The applicant, who is presently working as EDBPM, Nimbahera Kalan, on which post he was appointed provisionally on 25.08.1998, had earlier filed O.A. No. 101/2001, challenging the action of the respondents by which they were proposing to fill up the post of EDBPM, Nimbahera Kalan on regular basis by reserving the post for OBCs. That O.A. was disposed of on 25.1.2002 with a direction to the respondents to pass appropriate speaking orders on the representation of the applicant, taking into consideration the total strength of EDBPMs as well as the number of persons belonging to OBC who are actually working, and the rules and departmental instructions in the matter. In pursuance of these directions, the applicant submitted a representation which was decided by the respondents vide letter dated 27.02.2002 (Annexure A/8). By filing the present O.A. the applicant has again challenged the process of recruitment under which the respondents have reserved the post for OBCs. By way of interim relief, the respondents were directed by this Tribunal vide order dated 14.03.2002 to maintain status quo in respect of the applicant as on the date. As a consequence, the applicant is continuing as EDBPM, Nimbahera Kalan on provisional basis. The relief prayed for by the applicant in this O.A. is stated in the following terms:-

- "8.1 That by an appropriate order or direction the respondents may kindly be restrained to complete the process of selection pending with them without giving effect to the order dated 17.01.2002 for implementation of Judgment dated 4.3.99 in O.A. 1647/98 of the Hon'ble Central Administrative Tribunal Ernakulam Bench & till then respondent may be restrained to terminate applicants service.

8.2 Or in alternate the respondent's may be directed to consider applicant's appointment as regular appointment to the post of EDBPM without undergoing an open selection with outsiders on the basis that applicant has already rendered three years service."

2. The case of the applicant is that the respondents have not given due regard to the directions of the Hon'ble Tribunal in the earlier O.A. filed by him wherein they had been clearly directed to take into account the existing number of OBC employees. They even now intend to reserve the post for OBCs. Another ground taken by the applicant is that he being a provisionally appointee who has put in more than 3 years of continuous service, has acquired a legal right to be appointed as regular EDBPM under the Rules. In support of this contention, he has referred to the decision of Ernakulam Bench of this Tribunal in O.A. No. 1647/98 (Vanaja V.R. vs. The Senior Superintendent of Post Offices & Ors.) decided on 4th March 1999. His plea is that in view of the said decision of Ernakulam Bench the department now cannot proceed with fresh recruitment to the post and only the applicant has a right to be regularised without undergoing any selection.

3. The respondents in the reply have repelled the claim of the applicant on the ground that the Rules do not provide for regularisation of a provisional appointee. The terms of provisional appointment made it clear that such appointment is likely to continue only till regular appointment is made. The terms and conditions of the provisional appointment have been accepted by the applicant, according to the respondents.

4. On the point whether the post should be reserved for OBCs, the explanation of respondents is that reservation in employment in favour of the OBCs came into force only in the year 1994. The existing employees prior to that date are not required to

be taken into account for the purpose of working under the short-fall of OBCs. According to the respondents, presently there are only 4.10% OBCs in the cadre as against the quota of 21%. There are 2.2% of SC candidates against authorised quota of 17% and 1.58% of ST candidates against their quota of 12%. Thus, according to the respondents, there is a short-fall in respect of all three reserved categories which is required to be made good. It has been stated that earlier the post was advertised for ST but no candidates became available from the Employment Exchange. Now the post has been advertised for OBCs against which eight applicants have been received. In this background, the respondents have defended their action of reserving the post for OBCs.

5. The learned counsel for the applicant, Shri Kamal Dave, brought to our notice a judgement of the High Court of Kerala in the Writ Petition filed by the respondents against the orders of Ernakulam Bench of the Tribunal in O.A. No. 1647/98. He submitted that since the orders of the Tribunal have been upheld by the Hon'ble High Court, the legal position is now clear that a provisional appointee having completed more than 3 years of continuous service, is not required to be subject to any selection procedure and acquires an indefeasible right for appointment as a regular EDBPM. He also controverted the stands taken by the respondents in the reply that the existing employees prior to 1994 are not required to be reckoned for the purpose of working on the short-fall of OBCs in the category of EDBPM.

6. The learned counsel for the respondents, Mr. S.K. Vyas, is in arguments reiterated the stand of the respondents as reflected in their written reply.

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7. We have given our careful consideration to the rival contentions and the facts of this case.

8. In our considered view, decision of Ernakulam Bench and further orders of Hon'ble High Court of Kerala in the Writ Petition against that order are of no avail to the applicant, for the reason that the controversy in that case was entirely different. What came before the Tribunal for decision was not whether a provisional appointee had a right to be regularised without selection.

A careful reading of the order of Kerala High Court puts the matter in clear perspective when it is stated that the dispute in that case ~~was~~ whether continuous approved service on provisional basis of not less than 3 years put in by an ED Agent is to be taken into account for determining eligibility for giving alternative employment or broken spells of service aggregating to 3 years or more can also be considered for that said purpose. In that case, the prayer of the applicant was being denied by the department only for the reason that the applicant had not put in more than 3 years of continuous service, while the applicant was claiming to have completed more than 5 years of continuous service. Contention of the applicant had been accepted. The case was discussed under the provisions of instructions no. 15 relating to Method of Recruitment which relates to ^{provisional appointment} 7

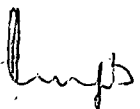
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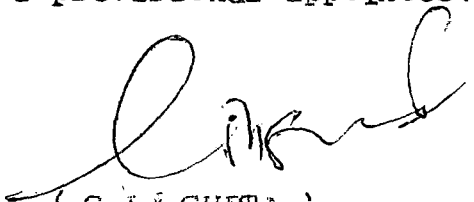
of ED Agents. While making a reference to the same it is obvious that it relates only to provisional appointment and not regular appointment. Para (2) of the instructions relates to alternative employment to the ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons. It was this provision which came to be discussed in the Ernakulam Bench's case. No doubt, the department never raised a plea that this Rule has no relation with the regular appointment. In the backdrop of these circumstances, we are not persuaded by the plea of the applicant that he has a right to be regularised without selection. This plea has no merit at all and is not covered by the instructions regarding Method of Recruitment for regular appointment of ED Agents, called Gramin Sewaks now, and deserves to be rejected.

9. The other ground raised by the applicant that the post could not be reserved for OBCs candidates has great force. Contention of the respondents that the category of existing OBCs employees i.e. of those already in employment prior to 1994 is not to be reckoned for the purpose of working out the representation of OBCs has absolutely no basis. The very principle of reservation has been introduced to ensure at least certain minimum prescribed percentage of representation in employment. If the same has already been achieved in a particular category then there can be no ground for reserving the post further on the plea that reservation for OBCs was introduced only in 1994. No rules have been shown to us

by the respondents which can support their action. The law on reservation in employment is clear that the same has to be determined in respect of number of posts in the cadre. It does not exclude those who are already in employment at the time when the percentage of representation is worked out. The respondents have admitted that presently out of 343 EDBPMs in Bhilwara as many as 110 persons belong to OBCs which means that already their representation is more than 30% against prescribed percentage of 21%. There is no ground at all for the respondents to declare the post of EDBPMs, Nimbhera Kalan, as reserved for OBCs. As a matter of fact, in the earlier O.A. filed by the applicant, the Tribunal's order was very clear that respondents will take into account the fact that presently 110 persons belonging to OBC are actually working. We are constrained to observe that the respondents have totally disregarded this order and have again insisting on reserving the post for OBCs. We are unable to uphold this action.

10. In the conspectus of circumstances, we allow this O.A. in part. While the respondents are free to fill up the post of Gramin Sewak Dakpal, Nimbhera Kalan, on regular basis, they shall not treat the post as reserved for OBCs. We also consider appropriate to direct that till arrangement is made to fill up this vacancy on regular basis, the applicant shall be allowed to continue on provisional basis and shall not be replaced by any other provisional appointee. No order as to costs.


(A.P. NAGRATH)
Adm. Member


(G.L. GUPTA)
Vice Chairman

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Kumawat