

(9)

CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXXXXXXXXX  
NEW BOMBAY BENCH

O.A. No.  
~~XXXXXXXX~~

459

1987

DATE OF DECISION 5-8-1988

Shri Maula Abbas Pathan Petitioner

Shri C.Nathan Advocate for the Petitioner(s)

Versus

Union of India & ors. .. Respondents

Shri S.R.Atre for Shri P.M. Pradhan, Adv.for Respondent s

Advocate for the Respondent(s)

CORAM :

THE HON'BLE MR.JUSTICE B.C.GADGIL

.. VICE CHAIRMAN

THE HON'BLE MR. L.H.A. REGO

.. MEMBER(A)

~~The Hon'ble Mr.~~

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

MGIPRRND-12 CAT/86-3-12-86-15,000

*5.888*

10

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH: NEW BOMBAY

ORIGINAL APPLICATION NO.459/87.

Shri Maula Abbas Pathan  
Miraj Road,  
Opp: Market Yard,  
Bidiwale Plot No.3,  
SANGLI-416 416.

.. Applicant.

-vs.-

1. Sr.Superintendent of Post  
Offices, Sangli Division,  
Sangli.

2. The Post Master,  
Miraj Head Office,  
Miraj-416 410.

3. The Post Master General  
Maharashtra Circle,  
Bombay-400 001.

4. The Union of India  
through Secretary,  
Ministry of Communications,  
Dak Bhavan,  
Sansad Marg,  
New Delhi-110 001.

.. Respondents.

CORAM:

THE HON'BLE SHRI B.C. GADGIL .. VICE CHAIRMAN

THE HON'BLE SHRI L.H.A. REGO .. MEMBER(A)

Appearance:

1. Shri C.Nathan, Advocate for the Applicant.
2. Shri S.R.Atre for Shri P.M.Pradhan,  
Advocate for the respondents.

JUDGMENT:

DATED: 5-8-1988.

(Per: SHRI L.H.A. REGO, MEMBER(A).

The applicant has challenged herein, the  
impugned Order dated 29-4-1987 (Ex.H) issued by  
Respondent(R) 1, terminating him from service and

RA

has

(11)

- 2 -

has prayed that the same be quashed, with a direction to R-1, to reinstate him, in the post of Postal Assistant, with retrospective effect, paying him the arrears of salary.

2. Concisely, the facts leading to this application are as follows: The applicant is said to have addressed an application to R-1, for selection to the post of Postal Assistant/Sorting Assistant, earmarked for Ex-Servicemen, in the Indian Post and Telegraphs Department. In response thereto, he was informed by the latter, by his Letter dated 23-4-1983 (Ex.A), that he was selected for appointment, in the clerical cadre in Sangli Postal Division and that he should attend his office, for completion of the pre-appointment formalities, along with the relevant certificates in original. Accordingly, the applicant attended the office of R-1 and is said to have produced the relevant certificates, among which, were copies of the following:

- (i) Certificate dated 23-2-1982 issued by the Officer-in-charge, NERW(WEL), New Delhi.
- (ii) Discharge Certificate issued in I.A.F. Form (P) 53 by the Station Commander, A.T.I. Sambra (Belgaum), and
- (iii) Letter No.3120/3/NERW(WEL), dated - 29-12-1981, from the Officer I/c, Air Force Records, NERW(A), New Delhi, addressed to the Secretary, Zilla - Sainik Board, Sangli, with a copy to the D.E.T. Sangli.

3. In pursuance thereof, the applicant among others, was selected by R-1, by his Memo dated 23-6-1983 (Ex.B), for the cadre of Postal Assistant, and was attached to Sangli Head Post Office, for a fortnight,

  
from

from 1-7-1983 to 15-7-1983 (both days inclusive) for practical training. Thereafter, by Memo dated 21-4-1984(Ex.C), R-2 informed the applicant among others, that he would be deputed for theoretical training, for a period of 2½ months, for the session commencing from 30-4-1984, at the Postal Training Centre at Vadodara(Baroda) and ending on 13-7-1984. Later, by his Memo dated 18-7-1984(Ex.D), the applicant was informed by R-1, that having completed the practical training, he would remain<sup>ing</sup>~~ed~~ attached to Sangli Head Post Office, as Short Duty Clerk.

4. On completion of the prescribed training as above, R-1, by his Memo dated 23-1-1985(Ex.E), appointed the applicant, as officiating Reserve Clerk, at Vite, in Sangli Division, with effect from 28-1-1985, with an understanding, that his appointment in this cadre, was purely on a temporary basis and that he would be governed by the Central Civil Services ('CCS' for short) (Temporary Service) Rules, 1965, as amended from time to time, and that he would have to pass an examination, as prescribed by the Departmental rules and regulations, within a period of 3 years and a maximum of six chances, failing which, he would be liable to be discharged from service.

5. The applicant was informed by R-1, by his Letter dated 4-3-1986(Ex.F), that he had qualified in the said examination, for Postal Assistants/Sorting - Assistants, held on 10-11-1985, for the purpose of confirmation.

VA

6. The

6. The applicant states, that R-1, by his letter dated 20-11-1986(Ex.G), called for certain original certificates from the applicant, for completion of his service record and that he complied with the same.

7. He alleges, that on 30-4-1987, he was confined by the Post Master, Miraj Head Post Office, in his Chamber, in the presence of certain other Postal officials, when Memo dated 29-4-1987(Ex.H) by R-1, was served on him. This memo is the impugned order, passed by R-1, terminating the services of the applicant forthwith, in accordance with Rule 5(1) of the CCS(Temporary Service) Rules, 1965, and reads thus:

"Office of the Sr.Suptd. of Post Offices,  
Sangli Division, Sangli-416416.

Memo No.B/PF/MAP/87-88 Dt.at Sangli, the  
29-4-1987.

In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I Shri S.P. Kate, Senior Superintendent of Post Offices, Sangli Division, Sangli hereby terminate forthwith the services of Shri M.A.Pathan Offg.Postal Assistant, Miraj H.O. and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice short of one month.

Sd. S.P.Kate,  
Sr.Suptd. of Post Offices,  
Sangli Dn., Sangli-416416.

Copy to:

1. Shri M.A.Pathan, Offg.P.A.  
Miraj H.O. 416410.
2. The Postmaster, Miraj H.O.  
416410."

*KA*

8.The

167

- 5 -

8. The applicant further alleges, that the respondents assigned no reason whatsoever, for abrupt termination of his services as above. He states, that there was no cause for his services being terminated in this manner, particularly, when he had served the Department for a fairly long period of 2 years and 3 months, with an impeccable record of service. On termination of his service, as above, the applicant states, that he met R-1 on 4-1-1987, seeking clarification, as to why his services as Postal Assistant were terminated arbitrarily. He avers, that R-1 accused him, for misrepresenting, that he was an ex-airman, with an ulterior motive of securing appointment, in the Posts and Telegraphs Department, which he said, bewrayed, that he was not trustworthy and therefore, not fit to be retained in Government service, on account of which, his services were terminated. Thereafter, the applicant is seen to have sent a written representation, on 6-5-1987 (Ex.I), to the Postmaster General, Maharashtra Circle, Bombay (R-3), who by his Memo dated 8-7-1987 (Ex.J), upheld the order of termination passed by R-1, on the ground, that the termination was simpler in nature and therefore, did not attract the provisions of Article 311(2) of the Constitution. Aggrieved, the applicant has come before us, for redress.

9. The respondents have filed their reply countering the application.

Ld

10. The

137

- 6 -

10. The mainspring of the contention of Shri C.Nathan, learned Counsel for the applicant, was, that his client had faithfully produced, all the relevant certificates before R-1, in compliance with his Letter dated 23-4-1983(Ex.A), after due verification of which, he was selected by R-1, for the cadre of Postal Assistant and deputed both for practical and theoretical training, whereafter, he was appointed as officiating Reserve Clerk, in the ~~the~~ Sangli Division, in the cadre of Postal Assistants. Shri Nathan further stated, that his client had successfully undergone the departmental examination, in the post of Postal Assistant. The applicant, he asserted, had rendered a fairly long period of service of 2 years and 3 months, without blemish and after completing the requisite formalities, had even qualified for confirmation in the above post. Under these circumstances, he argued, that the action of R-1, in terminating the services of his client forthwith, by his Order dated 29-4-1987(Ex.H), was arbitrary and illegal.

11. In order to back his assertion, Shri Nathan relied on the following rulings:

- (i) 1977(1) SLR 567 (DINA NATH SHARMA v. DIRECTOR OF PUBLIC RELATIONS, HIMACHAL PRADESH, SIMLA).
- (ii) 1987/2 ATC, 421 (R. RAJENDRAN v. DIVISIONAL ENGINEER, TELEGRAPHS, KUMBAKONAM), and
- (iii) O.A.NO.96 OF 1988 (SMT. PRATIBHA S.KULKARNI -vs.- UNION OF INDIA & ANR.).

dxl

12. Calling

12. Calling in aid, DINA NATH SHARMA's case, Shri Nathan contended, that his client could not have been divested of his post as Postal Assistant, except for reasons, within the terms of his contract and the rules. The contract of service and the rules envisaged, he said, that if a Government servant was found fit and suitable, within the terms of his contract and the rules, he would ordinarily be confirmed and that if for reasons outside the contract and the rules, a Government servant was divested of the post, the contract and the rules, which conferred certain rights on him in that respect, were violated and in that event, he urged, his client was entitled to an opportunity of being heard, against the order of termination of his appointment, by R-1. He further argued, that once the appointment of his client took place, a contract came into existence ipso facto and his appointment and tenure in that post, were governed by the terms of his contract and the relevant rules applicable to the post.

13. Relying on the ratio of the decision in RAJENDRAN's case, Shri Nathan sought to justify, that even though the Order dated 29-4-1987 by R-1, in regard to the termination of service of his client, appeared to be simpliciter in nature, on the face of it, yet, there was a warrant, to pierce the veil and go behind that order, not merely relying on its form, but by taking into account, the entirety of circumstances, preceding and culminating in that order. Shri Nathan sedulously argued, that the circumstances

*LD*

in



181

- 8 -

in the case of his client, were similar to that in RAJENDRAN's case, as to justify the Tribunal, to probe into the so called order of termination simpliciter and unravel and ascertain, the truth, to give redress to his client.

14. Adverting to SMT. PRATIBHA KULKARNI's case, decided by this very Bench of the Tribunal on 18-4-1988, Shri Nathan contended, that even though the applicant in that case, had not furnished the details of her birth date correctly and was actually more than 18 years of age, at the time of her employment, a sympathetic view was taken by this Tribunal, by not upholding the termination of her service by the respondents, but on the contrary, directed the respondents to give her a fresh appointment, as Postal Assistant, in the Posts and Telegraph Department, on the minimum of the time-scale of pay of that post. His client too, Shri Nathan urged, deserved sympathy likewise.

15. Shri S.R.Atre, learned Counsel, appearing for Shri P.M.Pradhan for the respondents, sought to rebut the various contentions urged by Shri Nathan. He pleaded at the outset, that the Order dated - 29-4-1987(Ex.H) passed by R-1, terminating the services of the applicant, under Rule 5(1) of the CCS(Temporary-Service) Rules, 1965, was termination simpliciter and did not cast any stigma on the applicant and therefore, did not attract the provisions of Article 311(2) of the Constitution, for protecting the applicant.

RL

16.The

(17)

- 9 -

16. The post in question, he said, was earmarked for ex-servicemen and the applicant did not fall within this category, according to the statutory definition of the term "ex-serviceman", in Rule 2(b) of Ex-Servicemen (Reservation of vacancies in the Central Services Posts) (Class III and Class IV) Rules, 1971. According to this definition, Shri Atre pointed out, that an ex-serviceman was a person, who had served in any rank, whether as a combatant or a non-combatant, in the Armed Force, for a continuous period of not less than six months. He invited our attention to the extract of the relevant Rules, in regard to definition of the term "ex-serviceman", at Annexure-R1. He further clarified, that the applicant was discharged from the Indian Air Force, with effect from 12-6-1981 (Annexure R2), while undergoing training at the Administrative Training Institute, Air Force Station, Sambre (Belgaum), which had commenced on 28-6-1980. Scrutiny of the Discharge Certificate revealed, he said, that the applicant was under training as a Catering Assistant, at the time of his discharge on 12-6-1981 and that he was discharged in the course of the training, for the reason, that he was unlikely to make an efficient airman. He further pointed out, that the Letter dated 9-2-1987 (Annexure R-3) addressed by the Secretary, Zilla Sainik Welfare Officer, Sangli to R-1, on an enquiry by the latter, revealed, that according to

LA

the

the existing rules, an ex-serviceman, was required to serve for a period of six months, after attestation and that the copy of the discharge certificate, attached to the letter under reference, revealed, that the applicant was discharged from service, during the period of his training, before attestation, and therefore, he was not eligible for civilian service as an ex-serviceman.

17. The various rulings relied upon by Shri Nathan, to support the case of his client, Shri Atre submitted, were not in point, as the facts and circumstances in all these cases, were not similar to the case before us. He therefore urged, that the application was bereft of merit and therefore deserved to be dismissed.

18. We have given due thought to the rival pleadings and have examined carefully, the relevant record and material placed before us. We have perused Annexures R-1 to R-3 and are satisfied, that the applicant does not fall within the category of ex-servicemen, to qualify him for civilian employment, in the post in question, earmarked for personnel in that category. In fact, Shri Nathan, fairly conceded in the course of the hearing, that his client did not fall within the category of ex-servicemen, but asserted, that he could not have been summarily terminated from service, specially, when the respondents had gone through all the certificates furnished by him, as directed and had satisfied themselves about their relevance and correctness, before deputing



him

(19)

- 11 -

him for training both practical as well as theoretical, for eventual appointment, in the cadre of Postal Assistant, on 23-11-1985 (Ex.E) and when his client had rendered fairly long service of nearly 3 years in the Posts and Telegraph Department, without blemish.

19. We have perused the above three rulings relied on by Shri Nathan, to sustain the case of his client. The dicta in DINA NATH SHARMA's case cited by him, are not on all fours to the case before us, as the post of Assistant Radio Engineer in question, came to be reserved for scheduled caste and scheduled tribe candidates, after the applicant in that case, had held that post for quite some time. Such is not the position in the instant case, as the post in question, in which the applicant was appointed, was clearly earmarked for ex-servicemen, at the very threshold, when the post was to be filled in. DINA NATH SHARMA's case therefore does not bear on the point and therefore does not come to the succour of the applicant.

20. As for RAJENDRAN's case, it is seen that the respondents did not probe into the matter fully, to ascertain, as to whether the applicant therein belonged to scheduled tribe or not, for which, the post of Telephone Operator in question, was earmarked, particularly when there was a palpable error, in ascertaining the caste, owing to the likely confusion, arising from near similarity in caste nomenclature, namely, "mahratta" and "mahratti", even though the District Collector had sent a



copy

207

- 12 -

copy of the list of communities, falling under the various scheduled castes and scheduled tribes, to the concerned authority. The Tribunal held in that case, that it could not close its eyes to this glaring lapse, on the part of the respondents, to ascertain the correctness of the caste, when the applicant was persistently pleading his case for reconsideration. The Tribunal therefore, rightly in this background, quashed the order of termination of the services of the applicant, in that case. These facts are clearly distinguishable from the case before us, specially when the post in question was specifically earmarked for ex-servicemen and the applicant did not fall within that category, according to the statutory definition of the term "ex-servicemen", under the pertinent rules, apart from the fact that Shri Nathan himself conceded this point. The decision in RAJENDRAN's case, does not, therefore, come to the rescue of the applicant.

21. Adverting lastly to our decision in PRATIBHA KULKARNI's case, the facts therein, are not alike to the case before us. The applicant in that case qualified later, by virtue of her age, for employment in the post of Postal Assistant in the Posts and Telegraph Department, though initially owing to the error in her birth date, she was not eligible. The Tribunal took a sympathetic view in that case, by directing the respondents to give the applicant, fresh appointment as Postal Assistant, on the



minimum

21

- 13 -

minimum time-scale of pay, making it clear, that the service rendered by her earlier, would not be reckoned for any purpose whatsoever. In the case before us, the applicant can at no time, claim to be an "ex-serviceman", according to the statutory definition of this term, to qualify for the post in question, so as to merit sympathetic consideration, as in PRATIBHA KULKARNI's case, the decision in which cannot obviously come to his aid. It is apparent that reliance on this case by Shri Nathan, is misplaced.

22. In the light of the facts and circumstances discussed and analysed as above, it is evident, that the applicant did not fall within the category of ex-servicemen, for whom the post in question was reserved and therefore was not eligible for the same. We are satisfied, that the impugned order of termination of the applicant, passed by R-1, on 29-4-1987 (Ex.H), was termination simpliciter, and did not cast any stigma on him and was not by way of penalty, so as to attract the provisions of Article 311(2) of the Constitution. The application is thus devoid of merit, and we dismiss the same accordingly. No order as to costs.

*B.C. Gadgil*  
(B.C. GADGIL)  
VICE CHAIRMAN.

*L.H.A. Rego*  
(L.H.A. REGO) 5-5-1988  
MEMBER (A).