

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1145/96

Transfer Application No.

Date of Decision 7.3.97

Sau. Padminibai

Petitioner/s

Shri A.D. Sugdare.

Advocate for
the Petitioners

Versus

Union of India and others.

Respondent/s

Shri S.S.Karkera for Shri P.M.Pradhan. Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

B.S. Hegde
(B.S. Hegde)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PREScot ROAD, BOMBAY:1

Original Application No.1145/96

Presented the 7th day of March 1997.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastava, Member (A)

Sau. Padminibai
W/o Baburao Kure,
R/o Arali, Tal. Biloli
Dist. Nanded.

... Applicant.

By Advocate Shri A.D. Sugdare.

V/s.

Union of India
Secretary
Ministry of Communication
New Delhi.

Post Master General
Marathwada Region,
Chawani
at Aurangabad.

The Superintendent of
Post Office, Nanded
Dist. Nanded.

The sub-Divisional Inspector
Degloor Sub-Division
Degloor, Dist Nanded.

Shri Nagnath Gangaram Korule
R/o Arali, Tal: Biloli
Dist. Nanded.

... Respondents.

By Advocate Shri S.S. Karkera for Shri P.M. Pradhan.

O R D E R

¶ Per Shri B.S. Hegde, Member (J) ¶

In this O.A. the applicant has challenged
the oral termination order made by the respondents
and the order of appointment dated 11.11.96 in
favour of respondent No.5.

B.S.H.

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2. The brief facts are that the post of Extra-Departmental Branch Post Master, Arli fall vacant due to the superannuation of regular incumbent on 19.4.96 and accordingly order were issued by the Respondent No.3 on 12.3.96 terminating the service of the previous regular incumbent. The respondents simultaneously also sent a requisition to the Employment Exchange on 13.3.96 for selection of regular incumbent since the above said post is to be filled only from the candidates sponsored by the Employment Exchange as per Rules. In view of the vacancy of the Branch Post Master and before selection of the regular candidate, the charge of E.D.B.P.M. was handed over to the applicant on 19.4.96 by respondent No.4 as a substitute and on stop gap arrangement till the regular selection is made by the appointing authority in order to extent the postal facility to the villagers. In the meantime, 4 nominations were received from the Employment Exchange on 20.4.96. The name of the applicant was not sponsored by the Employment exchange. The contention of the respondents is that the post of E.D.B.P.M. is to be filled in only through candidates sponsored by the Employment Exchange and since the applicant's name was not sponsored by the Employment Exchange they could not do anything in the matter. On the basis of the requisition made by the respondents, the candidates have been sponsored by the Employment Exchange and the respondents selected respondent No.5 in accordance with recruitment Rules. The applicant has not challenged the selection of respondent No.5 on the ground of malafide or Arbitrariness, but states that since she has been

working on stop gap arrangement and services rendered by her should have been taken into consideration and she should have been called for selection by the Employment Exchange.

3. The learned counsel for the respondents submitted that the applicant has worked purely on stop gap arrangement, therefore she cannot claim for the post which is required to be filled in by candidates sponsored by the Employment Exchange. Since the applicant has not made out any case of malafide or arbitrariness, the question of quashing the appointment order of the respondents^{No.5} does not arise. The appointment of the applicant by respondent No.3 is incorrect, since it is a stop gap arrangement. The respondents directed the applicant to furnish the character certificate and other particulars. Accordingly, she was engaged on stop gap arrangement on 19.4.96 to look after the work. The applicant has not been appointed on regular basis by any competent authority. As a matter of fact, the appointment is to be done in accordance with the Rules by the Competent Authority. Needless to mention that her appointment is for stop gap arrangement therefore she is not having any claim and or right for the said post of E.D.B.P.M.

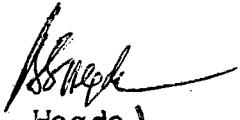
4. The learned counsel for the applicant draws our attention and submitted that the applicant had gained sufficient experience and she ~~ought to have~~ been given a chance for selection and her name should have been sponsored by the Employment Exchange. In support of this contention the learned counsel

for the applicant has relied upon the decision of CAT, Bombay Bench in the case of Digamber Attatraya Dhavale V/s. Union of India and others. 1995(1) ATJ 239 decided on 24.11.94. In that case the applicant's main contention was that he is 10th standard pass and he belongs to a category which is preferential other things being equal and since the department does not have any candidate at all with 10th standard pass, the selection made by the department is bad. It is further stated that efforts should be made to give alternative employment to ED Agent who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years service. In such cases, their names should be included in the waiting list of ED Agents etc. He also relies upon Full Bench decision in G.S. Parvathy Vs. Sub-Divisional Inspector (Postal) 1992(21 ATC 13 as to whether previous experience gained by a candidate due to his/her working as provisional ED Agent should be considered by giving him due weightage in the regular selection. It is seen that previous experience is a useful consideration when two candidates have otherwise equal marks. Whereas in the instant case, it is only for a stop gap arrangement, less than 7 months therefore, the ratio of the aforesaid judgements will not help the applicant, since the appointment is made according to Rules and the name of the applicant has not been sponsored by the Employment Exchange. The Employment Exchange has their own procedure to sponsor candidates.

5. The learned counsel for the respondents, Shri Pradhan draws our attention to the decision of the Full Bench in the case of S.Ranganayakulu Vs/. The Sub-Divisional Inspector (Postal) West Sub-Division, Anantapur and Ors 1995(1) ATJ decided on 24.10.94. This decision has not been brought to the notice of the Bombay Bench while deciding the earlier case. In this case the Full Bench held that employment of ED Agents should be made through Employment Exchange. Since instruction No.12 as aforesaid lay down the term of eligibility and therefore forms part of the Rules of Recruitments. It is not violative of Articles 14 and 16 of the Constitutions. However, on regular basis no statutory rules exist, in the absence of statutory rules, executive instructions will have full play. Therefore, instruction No.12 of D.G., P & T letter dated 4.9.1982 had to be adhered to as an integral part of the rules of Recruitments. In this connection another decision in the case of State of Haryana and others V/s. Piara Singh and Ors. 1992(4) SLR 870, wherein a question arose as to whether there was an infringement of Articles 14 and 16 of the Constitution when a Government servant, not sponsored by an Employment Exchange, was not considered for being regularised in service. Their Lordship held that in such a situation, the question of infringement of Articles 14 and 16 did not arise. Further held that the requirement that a person should be sponsored through the Employment Exchange is in the public interest as such a practice checked back-door entry and also minimised the possibility of favouritism and nepotism. In substance, their Lordships emphasised that such a practice is just

and fair. Therefore, the view taken in Piara Singh is in line with the view taken in N. Haragopal 1987 SCC (L&S) 227. The Full Bench has also held that the decision of Ernakulam Bench of this Tribunal in the case of P. Suresh Babu V/s. Head Postmaster and others 1990(6) SLR 304 is not correct. The Full Bench has not expressed any opinion on the question as to whether a person appointed on provisional basis on being sponsored by the Employment Exchange should be sponsored by the Employment Exchange to be eligible for a regular appointment. In the instant case the applicant has not been sponsored by the Employment Exchange and she has worked for only 7 months on Stop Gap arrangement. As such she cannot claim as a matter of right for regularisation in the said post. Since it is a selection post, the respondent No.5 has been appointed as per Rule, therefore, the question of quashing of the appointment order of Respondent No.5 at this stage is not called for. Accordingly we are of the view, that there is no merit in the O.A. The O.A. is dismissed accordingly. No order as to costs.


(P.P. Srivastava)
Member(A)


(B.S. Hegde)
Member(J)

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