

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT NAGPUR

OA NO.947/96

Nagpur this the 25th day of September, 2001.

Hon'ble Mr. Govindan S. Tampi, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Talakchand s/o Nagayan Gurav,
R/o Sawli, Post Swli, Dongargaon,
B.O. Tah Deori, Distt. Bhandara-441 902. -Applicant

(By Advocate Shri D.B. Walthare)

-Versus-

Union of India & Others

(By Advocate Shri R.S. Sunderm)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Heard the learned counsel for the parties. The case of the applicant is that despite having worked as EDDA and appointed as per the rules in vague the services of the applicants have been dispensed with without following the due process of law and instead one Sh. Yashwant was appointed by the respondents. The applicant assails the order whereby his request against the termination has been rejected by the respondents by letter dated 9.4.96. The learned counsel for the applicant states that the termination of the applicant is punitive without giving him a show cause notice or issuing a chargesheet. It is also stated that respondents 1-4 have not followed the procedure in appointment formalities as contained in P&T EDA (Conduct) Rules. The learned counsel further alleges malafides against R-4 by stating that he has demanded money from the applicant to accord him appointment and as he failed to fulfil the illegal demand his services have been terminated. The applicant further stated that without following the Rule 6 of the EDA (Conduct) Rules the services of the applicant have been terminated.

2. On the other hand, strongly rebutting the contentions of the applicant the learned counsel for the respondents stated that the applicant has been appointed on ad hoc basis subject to the condition that the same is provisional and he would be replaced by a regular incumbent. It is also stated that no regular procedure has been adopted while appointing the applicant provisionally and he further stated that the applicant though was accorded an opportunity to participate in the selection process for appointment on regular basis but as he failed to fulfil the eligibility criteria he cannot be appointed on regular basis. The learned counsel further stated that no material has been placed on record to show that any bribe etc. has been called for by the respondent No.4 from applicant and failure of the applicant to comply with the illegal demand of R-4 he has not been considered for regularisation. The learned counsel for the applicant at this stage contended that the respondents have rejected his case for consideration for appointment on permanent basis on the ground that he has no independent source of income or immovable property in his name. He placed reliance on the decision reported in 1996 (32) ATC 35 that possession of adequate means of livelihood does not inter alia include that the candidate possesses immovable property. Replying to this the learned counsel for the respondents stated that this ratio is distinguishable and would not apply in the present case as even if the applicant is not having immovable property in his possession yet he has to show that he has independent income of his means which is one of the eligibility criteria for consideration for appointment on regular basis.

3. Having considered the rival contentions of the parties and perusing the record we find that the applicant has failed to make out a case for our interference. The applicant admittedly was appointed on ad hoc basis subject to the appointment of regular incumbent cannot claim a right on the basis of continuing on the post for certain years. He has been replaced by the regularly selected candidate who was found eligible in all respect having fulfilled the eligibility criteria in the laid down procedure. The applicant whose case was considered by the respondents has not been found as per the criteria as such he was not found entitled for accord of regular appointment as EDDA. The contention of the applicant that the appointment of R-5 is vitiated on account of personal malafides of R-4 as having demanded bribe from applicant he failed to accede to his illegal demand his case has been arbitrarily rejected and not considered is concerned, firstly it is a cardinal principle of law that while alleging personal malafides the person against whom malafides are alleged should be named in person. Here the applicant has impleaded R-4 in his official capacity. This would not be sufficient to sustain the allegations of the applicant regarding malafide. Secondly the applicant has failed to show any material or evidence indicating that the R-4 has demanded bribe and having failed to pay the same his case has been rejected and not considered arbitrarily. This contention is therefore, rejected. In the result, and having regard to the reasons recorded the DA is found devoid of any merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (B)

(Govindan S. Tampi)
Member (A)