

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 97 of 1999.

Dated this Monday, the 19th day of August, 2002.

Smt. Jayashree Sukumar Moghe, Applicant.

Shri S. P. Kulkarni, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for
Respondent Nos. 1 & 2.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library ? No

B. N. BAHADUR
MEMBER (A).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 97 OF 1999.

Dated this Monday, the 19th day of August, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

Smt. Jayashree Sukumar Moghe,
W/o. Shri Sukumar Moghe,
Extra Departmental Branch Post
Mailer, Sajani BO
(Ichalkaranji HQ), Dt. Kolhapur,
Residing at : Sajani,
Faluqa : Katkanangle,
Dist. Kolhapur - 416 115.

... Applicant.

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. Union of India through
Senior Superintendent of
Post Offices, Kolhapur Divn.,
At. P.O.: Kolhapur - 416 003.
2. Postmaster General,
Goa Region, At P.O.: Panaji.
3. Shri Ravindra alias Balasaheb
Anandrao Patil,
At. Sajani B.O. Tal. Hatkanangle,
(Via. Ichalkaranji H.O.)
Pin - 416 115, Dist. Kolhapur.

... Respondents.

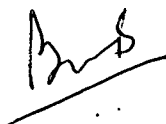
(By Advocate Shri V. S. Masurkar for
Respondent Nos. 1 & 2).

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case is aggrieved by the selection of Respondent No. 4 to the post of E.D.B.P.M. at Sajani in Kolhapur District. Although para 8, which sets out the reliefs sought, is couched in detailed language, the basic fact is that

...2

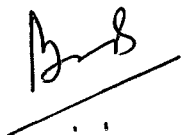


the second selection at which Respondent No. 4 is selected is what is questioned here. We have gone through all papers in the case and have heard the Learned Counsel for respective sides, namely, Shri S. P. Kulkarni for the Applicant and Shri V. S. Masurkar for the Respondents.

2. The basic facts in the case are that the Applicant was appointed as E.D.B.P.M. in an ad hoc arrangement, and subsequently a selection process taken up. The first attempt at selection by considering people sponsored by the Employment Exchange did not fructify in view of the reasons given in the Written Statement by Respondents. Hence, further names were called by notification in response to which Smt. Jayashree Sukumar Moghe, the present Applicant, also applied. We shall discuss below the issues and stands taken on behalf of both sides in the written pleadings and in the argument and deal with them ad seriatum.

3. Learned Counsel for the Applicant first made the point that the appointment of Respondent No. 3 ordered on 06.05.1999 (page 62 of the paper book) is provisional in nature, as could be seen from its language, and that, such provisional appointment was bad in law as it violates the ratio of the well-known judgement in the matter of State of Haryana & others V/s. Piara Singh & others reported at 1992 SCC (L&S) 825. It was the argument of the Learned Counsel, Shri Kulkarni, that this was a clear case of replacing one ad hoc appointee by another and as

...3



clearly laid down in para 46 of the aforesaid judgement of Piara Singh, this could not be done. The words used were "provisional appointment" and not ad hoc appointment, but they had the same effect according to the Learned Counsel, Shri Kulkarni.

4. Reacting to the defence taken in the Written Statement of Respondents that all regular procedure was followed and that the appointment was provisional only because of character antecedent verification was not complete, Learned Counsel, Shri Kulkarni, made the point that, as per rule, the regular appointment (copy at page 38) should be made only after character-antecedent verification, etc. has been done, unless as ordained by procedure laid down, the certificates of Gazetted Officers were undertaken.

5. Learned Counsel for the Respondents made the point that the selection and appointment follows the prescribed norms and selection process which had been undertaken is described and mentioned above briefly. In other words, regular notification and calling of names from Employment Exchange was undertaken. Shri Masurkar asserted that the only right which the Applicant could seek was one of consideration and it was undoubtedly clear that the Applicant had been considered. She had lower marks in S.S.C. as compared to the persons selected (statement at page 56 - Exhibit R-1) and in no way could the Applicant be said to be prejudiced by the selection of Respondent No. 3.

6. Learned Counsel for the Respondents further refuted that the ratio decidendi in the matter of Piara Singh helps the case

...4

AmB

of the Applicant. He stated that this was not a case of an adhoc apointee being replaced by another ad hoc appointee. Granting that the word "provisional" was used in both appointments, he reiterated that in case of Respondent No. 3 it was an appointment by following all due process of selection and the only reason why appointment was made provisionally (for three months) was as explained in the Written Statement, namely - that reference had been made to District Magistrate for verification of character/ antecedents.

7. It has to be seen that the facts per se are not in dispute. The appointment of the Applicant was ad hoc or, as called, provisional in a manner that it could certainly be taken to be a stop-gap arrangement. This is not disputed. The second selection that was undertaken has also not been contested on the ground of procedure not followed or any malice or malafide. There is no doubt that all procedure has been followed first by calling names from Employment Exchange and rejecting it on grounds, which as per the Written Statement seem plausible, and, secondly, by issuing a notification. The Applicant has not lost the right of consideration and also not prejudiced, especially because she has secured lower marks in S.S.C.

8. Now the issue boils down to the assertion made by the Learned Counsel, Shri Kulkarni that there was no need for the appointment to have been made on provisional basis on the ground that verification of character and antecedants was being done. As is the normal course, the Respondents should have waited for

...5



the report from District Magistrate. In other words, admittedly the argument of the Learned Counsel for Applicant, if viewed in a technical sense, results in conclusion that Applicant could have perhaps served for three months more.

9. Now what is found in the first place after considering the facts, as discussed above, is that it cannot be said that the ratio in Piara Singh's case has not been violated or that the selection of Respondent No. 3 is bad in law. We have gone through the case of Piara Singh. In the first place, consideration of the Applicant's case has been made for the purpose of selection and there is no weakness on that count in the action of Respondents. Secondly, while the Applicant's appointment was clearly ad hoc in the sense of its being stop-gap without following any procedure, the appointment of Respondent No. 3 has undoubtedly been made after following due procedure. Also, we find no reason of malice whereby we can come to a conclusion that preferring Respondent No. 3 over the present Applicant was wrong.

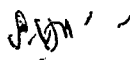
10. The point that remains for our consideration is whether the appointment of Respondent No. 3 could have been delayed awaiting the reply of the District Magistrate with regard to verification of character and antecedents. In this regard, we must clearly state that the Applicant is not prejudiced even if the technicality of this procedure was in doubt. We also recall that in the same instructions it is stated that the Respondents are entitled to appoint the persons after getting character certificates from two Gazetted officers. Thus, alternative

...6

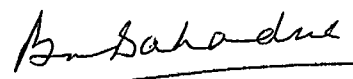


course not followed, it is only in a technical sense and that too, for a period of three months. Prejudice is not caused to the Applicant. At one stage it was even suggested by the Learned Counsel for Applicant that perhaps the relief provided could be in terms of the right of Applicant to continue in ad hoc position for some three months. The clock in any case cannot be turned back and that a balance of consideration providing the relief of the nature of provision of three months salary, etc. would neither be a right of the Applicant nor will it be conducive to the public interest. We are, therefore, not convinced that provision of any such relief for a hyper-technical reason is justified. All procedure has been followed. No favortism or malice, etc. is evident and the formality also in respect of verification of character and antecedent has also not gone against Respondent No. 3.

11. Under the circumstances, we are not convinced that the Applicant has made out a case for interference in the matter. The O.A. is, therefore, dismissed. No costs.


(S. L. JAIN)
MEMBER (J)

os*


(B. N. BAHÁDUR)
MEMBER (A).