

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:755.99

DATE OF DECISION: 28th Aug. 2000

Shri Sanjay Nateshwar Pile

Applicant.

Shri B.Dattamurthy

Advocate for

Applicant.

Versus

The Union of India and others.

Respondents.

Shri V.S.Masurkar.

Advocate for

Respondents

CORAM

Hon'ble Shri D.S.Baweja, Member (A)

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

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library.

yes

S.L.JAIN
(S.L.JAIN)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 755.99

the 28th day of AUGUST 2000

CORAM: Hon'ble Shri D.S. Baweja, Member(A)

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

Sanjay Nateshwar Pile
Working as Extra
Departmental Stamp Vendor,
Parole P.O. residing near
Hinglaj Mata Mandir,
Parola.

...Applicant.

By Advocate Shri B. Dattamurthy.

V/s

1. Supdt. of Post Offices
Jalgaon Division
Jalgaon.

2. Union of India through
Director,
Postal Services
Aurangabad Region,
Aurangabad.

...Respondents.

By Advocate Shri V.S.Masurkar.

ORDER

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for the declaration that the order dated 9.6.1999 is arbitrary, illegal and violating of principles of natural justice, seeking the relief to quash the same alongwith a declaration that the selection and appointment of the applicant as Postal Assistant is valid and order reinstatement of the applicant to his position of Postal Assistsant since the date of his appointment with all benefits alongwith cost.

2.....The applicant was employed as an Extra Departmental stamp Vender in Parola Post Office in Jalgaon. The Superintendent of Post Office Jalgaon division under his letter No. B 2/59/96-97 dated 16.7.1996 called for the applications of Extra Departmental

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staff for filling up four posts of Postal Assistants against the quota for promotions for the year 1995. The applicant an OC candidate was eligible for the said post, applied for the same, the Superintendent of Post office Jalgaon called an interview and ability test of typing, Computer on 24.1.1997 which was postponed and the applicant was called for interview on 21.2.1997. On 24.2.1997 the Superintendent of Post Office of Jalgaon informed that he has been provisionally selected as Postal Assistsant and directed to produce original certificates. He was also supplied with blank attestation forms, statement for medical examinations and declaration for completion and submission by 3.3.1997. He was also given to understand that he will have to serve as short duty staff till regular appointment is made. The applicant furnished the required documents duly completed alongwith character certificate. The applicant was ordered under letter No.B/2/59/CANDT/1/96-97 dated 11.3.1997 to report at Jalgaon Head Post Office for practical training from 25.2.1997, alongwith the fact that on successful completion of practical training he will be appointed as short duty Postal Assistant. He joined as Trainee on 25.3.1997. He was sent for theoretical training for a perdiod of 2 1/2 month from 18.8.1987 vide letter No. B-2/59/CANDT/1/97-98 dataed 9.8.1997. On completion of training the applicant was appointed and directed to report as Postal Assistaqnt Bhadgaon Post Office vide appointment order No. B-2/59/CANDT/1/97 dated 20.10.1997. The applicant reported at Bhadgaon Post Office on 27.10.1997 and comenced working as Postal Assistant. He appeared for confirmation examination held on 3.5.1998 and was declared successful under Chief Postmaster General Mumbai's letter No. ADR/R& E-6/CE May 98 dated 13.8.1998.

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He was required to file DCRG nomination in prescribed form and submitted the same on 30.11.1998. He has received memo No. D-2/64/NKP/99-2000 dated 9.6.1999 cancelling his appointment as Postal Assistant Bhadgaon Post office on the ground that his selection was found to be erroneous from factual error and ordering that he be appointed in his previous post of E.D. stamp Vendor, Parola.

3. The applicant submitted a representation in the matter of termination of Postal Assistant to Superintendent of Post Office Jalgaon on 22.6.1999 and was informed under letter No. B2/64/NKP/99-2000 dated 15.7.1999 that the selection was erroneous and that he cannot be reappointed. He submitted an appeal to the Director Postal Services Aurangabad region in detail against the said termination on 14.7.1999. On 25.8.1999 the applicant filed this OA for the above said reliefs.

4. During the pendency of the OA the appeal of the applicant was decided on 26.8.1999 and the reason for cancellation of appointment is communicated to the applicant which is to the effect that out of 6 selected candidates the first 3 candidates belongs to OBC but due to their merits they should have been adjusted againsts OC points and one OBC candidates should have been selected from the list against OBC point. The D.P.C. however failed to do so.

5. Regarding the facts stated above there is no dispute between the parties. Dispute relates to the date of employment as an Extra Departmental Stamp Vendor, Parola Post office in Jalgaon Postal division as the applicant claims his appointment since 7.12.1991 while respondents alleges it to be from 17.8.1992. The dispute is not material one for the reason that

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the cause of termination of service is not on the ground of ineligibility. The another dispute between the parties is that the applicant has joined the post of Extra Departmental Stamp Vendor after termination of his service as Postal Assistant. The applicant is not supposed to sit idle hence this conduct of the applicant in no way prejudice his case or principle of estoppel comes in his way.

6. The defence of the respondents is that the break up of the four vacancies was OC - 3, OBC - 1 and the D.P.C. members were knowing the vacancy position correctly but made a mistake.

7. The learned counsel for the applicant relied on 1991 Supreme Court Cases (L & S 1018) Shraaun Kumar Jha and others V/s State of Bhiar and others and argued that holders of appointment orders are entitled to opportunity of hearing before cancelling their appointments. We agree to the said proposition of law laid down by the Apex Court of the land and hold that the respondents have failed to afford the opportunity of hearing to the applicant before termination of his appointment.

8. The learned counsel for the applicant relied over 2000 Supreme Court cases (L & S) 380 Lakhnai Tripathi V/s Commandant general and others which also laid down the same proposition that before termination of appointment principles of natural justice are to be followed.

9. The said case is also relied for the proposition that even in case when the cadre was abolished, the applicant was ordered to be absorbed on an appropriate post as his other colleagues had been absorbed in Government department.

10. The learned counsel for the applicant relied on AIR 1991 SC 295 H.C. Puttaswamy and others V/s the Hon'ble Chief Justice of Karnataka High Court and argued that even if the appointment was not proper it should be treated as regularly appointed on humanitarian ground. On persual of the facts we find that in the said case the employees have put in 10 years service while in the present case though the appointment was regular but due to mistake of DPC Members it continued from 25.3.1997 till 9.6.1999 about 2 1/4 years.

11. The learned counsel for the applicant also relied on (1991) 18 ATC 338 Shrimati Sadhna Saxena and others V/s Union of India and others which lays down the proposition that a regular appointment though not cleared by the Staff Selection Commission cannot be termed as Adhoc and the Government cannot take the stand that this was the error on the part of Government officers concerned and individual employees cannot be allowed to suffer.

12. In the present case due to error of DPC Members the applicant who was eligible and successful appointed as Postal Assistant continued as such having all attendent benefits for 2 1/4 years cannot be allowed to suffer for the fault of the D.P.C. members.

13. The respondents has placed before us the roaster for Postal Assistnats Cadre and on examination of the same we find that there were only 7 vacancies in the OBC cadre(quota) but none was filled from the said cadre.

14. In view of R-4 OM No. 36012/22/93-Estt (SCT) dated 8.9.1993 candidates belonging to OBC's recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not to be adjusted against the reservation quota of 27%

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15. Vide R-1 dated 16.7.1996, the respondents failed to mention the number of vacancies meant for each category i.e. OC, OBC, SC and ST. The respondents have placed on record R -2 the statement showing the vacancy position in Postal Assistant's cadre in Jalgaon Division as on 1.1.1996 and on perusal of the same we find that vacancies were as under:

OC - 3 OBC - 1 SC - Nil ST - Nil. Total - 4.

16. As OBC candidates three in number have qualified on the basis of merit on the same standard prescribed for the General candidates they ought to have been treated or adjusted against general candidates and not against the reservation quota of 27%. The respondents have also placed on record vide R -3 the minutes of Interview Board held on 21.2.1997 for the recruitment to the PA cadre of departmental quota - 1995 and outsider quota 1996. On perusal of the same we find that 3 OBC candidates have been on merit and better than the applicants. Hence they have been adjusted against the OC vacancies. As the applicant who is OC candidate cannot be considered against the vacancy of OBC candidate.

17. It is true that respondents were duty bound to issue show cause notice to the applicant before termination of service stating the facts but as now the facts brought before us, which are not disputed by the applicant, issue of a fresh show cause notice would not serve any purpose as the applicant has no other defence than brought out in the present OA. Issue of fresh show cause notice would be only an empty formality and would not help the applicant in any way.

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18. As the applicant has been already posted to the post of EDA in Parola which he was occupying earlier to the posting of Postal Assistant, he is not out of job. Further more he has served only 2 -1/4 years. Hence even on humanitarian ground the applicant's case does not deserves to be considered for any relief.

19. In the result we do not find any infirmity in the impugned order dated 9.6.1999. The OA deserves to be dismissed and is dismissed accordingly. In view of the fact that the respondents were bound to state the reasons of termination of his services and afford an opportunity to the applicant which are brought on record only in the written statement, this is a fit case where the applicant is entitled to costs amounting to Rs. 650/- (Rs. 500/- as legal practitioner's fee and Rs. 150/- as other expenses) payable to him within a period of three months.

S.L.JAIN
(S.L.JAIN)
Member(J)

D.S.BAWEJA
(D.S.BAWEJA)
Member(A)

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