

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 340/2000

Date of Decision: 22.07.2003

Avinash Shivaji Jadhav

Applicant

By Advocate Shri S.P. Kulkarni.

Versus

Union of India & ors.

Respondents

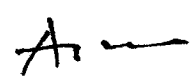
Shri V.S. Masurkar

Advocate for Respondents

CORAM: HON'BLE SHRI A.S. SANGHVI.
HON'BLE SHRI SHANKER PRASAD

MEMBER (J)
MEMBER (A)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.


(A.S. SANGHVI)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.340/2000

THIS THE 22ND DAY OF JULY, 2003

CORAM: HON'BLE SHRI A.S. SANGHVI. MEMBER (J)
HON'BLE SHRI SHANKAR PRASAD MEMBER (A)

Avinash Shivaji Jadhav,
S/o Shivaji Rohidas Jadhav,
At Post Chikharde B.O.
Via Pangri sub post office,
Taluka Barshi (Dist. Solapur)
Pangri P.O. 413 404.

.. Applicant

By Advocate Shri S.P. Kulkarni.

Versus

1. Union of India through
Senior Superintendent of Post
Offices, Solapaur division,
at P.O. Solapur-413 001.
2. Director of Postal Services,
Pune Region, O/o Postmaster General,
Pune Region, at P.O. Pune-411 001.
3. Postmaster General,
Pune Region,
at P.O. Pune 411 001. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)
Hon'ble Shri A.S. Sanghvi. Member (J)

The applicant who was selected for the post of EDBPM Chikarde has approached this Tribunal seeking directions against the respondents to appoint him to that post and also seeking direction of quashing and setting aside the order of the respondents cancelling his selection. According to the applicant the post of EDBPM Chikarde had fallen vacant on account of the incumbent of the post being promoted as Postman and hence the respondents had notified the selection for the

said post on 02.9.1999. The applicant along with other 13 candidates had applied for the post and the applicant being the most suitable candidate was selected and was also informed accordingly. However, before he could be appointed to that post, the original incumbent of the post who was promoted as Postman had resigned the Postman post and had opted to go back as EDBPM Chikarde. The respondents had therefore not given any appointment to the applicant to that post. Subsequently, in view of some court case, the then incumbent of the post was suspended and in view of the post ^{having} ~~being~~ fallen vacant the respondents had again notified the selection for the said post on 10.5.2000. The applicant was selected this time also but was not given the charge of that post. When he made a representation Respondent No.3 he was informed that there was no vacancy of EDBPM Chikarde and that his selection was also cancelled by SSPO Solapur. According to the applicant, cancelling his selection and not handing over the charge of EDBPM Chikarde by the respondents was arbitrary, illegal and deserves to be set aside. According to him the respondents are required to be directed to appoint him. But on the other hand the respondents have maintained that earlier process of selection was started on account of promotion of Mr. A.P. Kulkarni as Postman and the applicant was also selected in that selection. However, he could not be appointed to that post because A.P. Kulkarni had tendered his resignation on 01.02.2000 and had opted to.

rejoin in his original post. The applicant was not therefore given any appointment order and since there was no vacancy in the post, he was informed that the post was not available. Further Mr. Kulkarni was put off duty on 13.4.2000 and since this had caused temporary vacancy, fresh process of selection was started for appointment of EDBPM Chikarde on temporary basis. The vacancy had to be earmarked for SC candidate as the roster showed the point of SC and to fill up the short-fall of SC category the post was notified for reserved category of SC. The first notification was issued on 10.10.2000 and as such the selection of the applicant was cancelled. They have denied that their action of notifying SC vacancy as well as the cancellation of selection of the applicant was arbitrary, illegal or unreasonable and have contended that the applicant has no right to challenge their action.

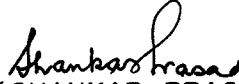
2. We have heard the learned counsel of both the parties and duly considered the rival contentions.

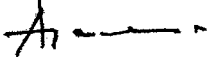
3. It is quite obvious from the above narrated facts that though the applicant was selected for the post of EDBPM Chikarde he was never appointed to that post. It may be that his selection was pursuant to regular process prescribed under rules, but before he could be appointed to that post, the circumstances prevented the respondents from issuing any order.

..4.

Mr. S.P. Kulkarni learned counsel for the applicant had tried to submit that the action of the respondents in allowing A.P. Kulkarni to rejoin the post after he resigned the post of Postman was illegal and as such could not have been held as justified. According to him the department should not have permitted A.P. Kulkarni to rejoin the post as EDBPM Chikarde once he had resigned as Postman as the post of Postman is not a promotional post for EDBPM. We are not aware under what circumstances the department had permitted the incumbent of the post Mr. A.P. Kulkarni to resign as Postman and to take over as EDBPM Chikarde. There is a possibility that Mr. A.P. Kulkarni might have retained his lien on the post of EDBPM Chikarde after he was selected and appointed as Postman and considering that his lien was still operating, the department might have permitted him to rejoin the post when the post was still vacant. In any case, the applicant cannot challenge the decision of the respondents in allowing A.P. Kulkarni to rejoin the post of EDBPM Chikarde as he was never given appointment to that post. Mere selection as EDBPM does not give any right to the applicant to claim appointment to that post. This being the settled position the applicant cannot claim by way of right that he ought to have been given appointment to the post of EDBPM Chikarde and Mr. A.P. Kulkarni should not have been brought back to that post. We therefore do not see any merit in this OA. However, the fact remains that the applicant had

competed with other candidates in the selection for the post of EDBPM Chikarde and was successful in getting selected when the post was vacant. Since he was found to be more meritorious candidate amongst others, we direct the respondents to consider him for appointment in any other vacant post available in the Division, if any vacancy arises in the post of EDBPM in the said division and if otherwise found suitable, may give him appointment to that post. With this direction we dispose of this OA. No order as to costs.


(SHANKAR PRASAD)
MEMBER (A)


(A.S. SANGHVI)
MEMBER (J)

Gajan