

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.167/2000

Thursday this the 16th day of November, 2000.

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

Trimbak Nana Salve,  
Ex-Extra Departmental Packer,  
(Provisional), Chikalthana  
Industrial Estate, Nagsennagar,  
P.C.P.O. Aurangabad - 431 210.

... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

Union of India through

1. Assistant Superintendent of Post Offices, (South), South Sub-Division, At P.O. Aurangabad.
2. The Senior Superintendent of Post Offices, Aurangabad Postal Division, Aurangabad.
3. Shri Vijay B.Bansode, E.D.Packer, Chikal-thana, Industrial Estate, P.O. Aurangabad.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R (ORAL)

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

This is an application under Section 19 of the A.T.Act,1985 seeking the following reliefs :-

*S:481*

..2/-

"(a) This Hon'ble Tribunal be pleased to call for the records pertaining to the post of E.D.Packer C.I.A., Aurangabad and E.D.Agent, Patharwala (maintained by Respondent No. 1) for better appreciation of facts in issue.

(b) Hold and declare action of Respondents to terminate applicant from 4.9.1999 without giving alternative posting (vacant post at Patharwala) as arbitrary and unjust.

(c) Direct Respondents to re-engage applicant in any post of E.D.Agents in South Sub-Division, Aurangabad (since there is no dearth of such vacancies).

(d) Direct Respondents to consider the applicant, if applied alongwith other candidates in future vacancies.

(e) Any other and such further order/relief as may be deemed fit and proper by this Hon'ble Tribunal.

(f) Cost if awarded be paid to the applicant."

2. At the commencement of the hearing, the learned counsel for the applicant stated that he is pressing only the relief at para 8 (d) and he does not want to press other reliefs.

3. On perusal of para 4.2 of the OA., I find that the applicant claims that he has worked for 5 years 4 months and 7 days in 3 spells as substitute. It is true that it is not continuous period of working. The learned counsel for the applicant argued on the basis of judgement in the case of 2000 (3) Administrative Total Judgments 364, Union of India & Ors. vs. Debika Guha & Ors. that as the applicant has worked for more than 180 days, his case deserves to be considered by the respondents. The observation of the Apex Court is as under :-

JLDR' -

"However, it is open to the Appellants to examine the case of the Respondents, if they have worked for long period, to absorb them, as the case may be. The appeal is allowed."

4. The learned counsel for the respondents relied on the application of the applicant dated 6.6.1997 particularly on the fact that he will not claim any right on the post and argued that hence now the applicant is debarred from claiming any relief. Such an undertaking, being against public policy has no effect. As stated by the Apex Court, the substitute has no legal right but his case deserves to be considered in view of long period of working.

5. In the result, though the applicant has mentioned as stated above "he will not claim any right on the post", he is entitled for consideration.

6. OA. is allowed. Respondents are ordered to consider the applicant's case for absorption if applicant applies, within a period of three months after the vacancy arises. No order as to costs.

S.L.JAIN  
(S.L.JAIN)

MEMBER (J)

mrj.