

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT AURANGABAD.

ORIGINAL APPLICATION NO.774/2000.

Tuesday, this the 4th day of November, 2001.

Hon'ble Shri S.R.Adige, Vice-Chairman (A),
Hon'ble Shri S.L.Jain, Member (J).

A.E.Shinde,
Extra Departmental Mail Carrier,
At & Post Gangakhed - 431 514.
Dist. - Parbhani.
(By Advocate Shri S.P.Inamdar)

...Applicant.

v.

1. Union of India through
The Post Master General,
Aurangabad Region,
Aurangabad.
2. The Supdt. of Post Offices,
Nanded Division,
Nanded.
3. The Sub Post Master (LSG),
Gangakhed - 431 514
Dist. Parbhani.
4. Shri Avinash Dyanoba Latpathe.
At and Post Kodri EDBO,
Gangakhed - 431 514,
Dist. Parbhani.
(By Advocate Shri V.S.Masurkar).

... Respondents.

O R D E R (ORAL)

By S.R.Adige, Vice-Chairman (A).

Applicant impugns Respondents order dt.28.7.2000
(Annexure - A-1) terminating his services as Extra
Departmental Mail Carrier (EDMC) Gangakhed S.O.

2. Heard both sides.
3. Consequent to the post of EDMC, Gangakhed S.O.
falling vacant due to a promotion of a regular incumbent,
applicant was temporarily appointed as EDMC, Gangakhed
vide Memo dt. 6.10.1999 (Annexure - A-2) which had made

it clear that applicant's appointment was purely temporary and was likely to be terminated without any notice. Subsequently, Respondents issued memo dt. 2.6.2000 (Annexure - A-3) reiterating applicant's provisional appointment as EDMC, Gangakhed w.e.f. 6.10.1999. This order ~~also~~ made it clear that applicant's appointment was purely provisional and on temporary basis, and was liable for termination at any time and without any notice or assigning any reason.

4. Respondents contend that during an investigation made into applicant's appointment, it was revealed that the SPM Gangakhed while making appointment had committed serious irregularities, inasmuch as, applicant was not reaching within the range of eligible candidates according to merit.

5. In this connection, we are informed that ~~during~~ ^{preceding} the ~~period~~ of applicant's provisional appointment as EDMC, Gangakhed, Respondents had initiated action for filling up the post on regular basis. As many as 30 candidates applied of whom 26 possessed SSC qualification, whilst the remaining six, including applicant, were non-matriculantes, i.e. 9th Standard and below.

6. As per prescribed Rules for appointment of EDMC 8th standard pass is the minimum educational qualification, but those possessing Matriculation qualification, ~~are to be~~ given preference, and in the present case, when candidates possessing Matriculation/SSC qualification were available, it is clear that they would have to be preferred.

7. During the course of arguments, applicant's counsel Shri Inamdar has contended that if indeed the SPM Gangakhed had committed any irregularities, it was open to Respondents to have taken disciplinary action against him, but the fact that they did not do so, and allowed him to retire voluntarily makes it clear that no irregularities had been committed. He has also emphasised that applicant was terminated from service at the behest direction of authority superior to his appointing authority, which was illegal and in this connection has relied upon CAT, Cuttack Bench order dt. 16.11.2000 - S.K.Mohanty Vs. UOI & Ors. (ATJ 2001(1) 161), CAT Chandigarh Bench order dt. 21.10.1994 in OA No.916/HP/94 - Amar Singh Vs. UOI & Ors. (ATJ 1995 (1) 64) and CAT Cuttack Bench order dt. 27.2.2001 - B.C.Behera Vs. UOI & Ors. (ATJ 2001(1) 592).

8. These rulings may have been of some assistance to the applicant, if he could have established that there were no other candidates, with educational qualification superior to that of his^{own}, but when there were candidates with SSC/Matriculation qualifications available, it is clear that they would have had to be given preference in appointment as compared to him. Hence, these rulings, do not help the applicant's case.

9. Shri Inamdar has also relied upon the Hon'ble Supreme Court Ruling in Shrawan Kumar Jha & Ors. Vs. Ram Sewak Sharma and Ors. (1991 (16) ATC 938) to argue that in accordance with the principles of natural justice, applicant should have been given an opportunity of being

heard, before his services were terminated.

10. In this connection, we note that applicant's appointment order made it amply clear that his appointment was purely provisional and temporary and was liable for termination at any time and without any notice or any reason. In the light of the aforesaid specific provisions contained in applicant's appointment order, it cannot be construed that there has been any violation of the Hon'ble Supreme Court's order in Shrawan Kumar Jha's case (supra), when his services were terminated without giving him a hearing. In this connection, ECIL Vs. B. Karunakaran & Ors. it has been clearly held by a seven Judges Constitution Bench of the Hon'ble Supreme Court that where violation of principles of natural justice is pleaded, it has to be established by the person pleading the same, as to what prejudice was caused to him by the action or inaction of the respondents. In the light of the fact that persons possessing Matriculation/SSC qualification were available while applicant is only a Non-Matric it has not been established to our satisfaction, as to what prejudice was caused to the applicant, even if an opportunity for hearing was not given to him before the impugned orders dt. 20.7.2000 were passed.

11. We are now informed that the post of EDMC Gangakhed has been filled up by a regular surplus employee, who was available with the Respondents.

12. In the light of the foregoing discussion, we find no good reason to warrant interference with the impugned order dt. 20.7.2000. The OA is therefore, dismissed. No costs.

P. Jain
(S.L.JAIN)
MEMBER (J)

S.R. Adige
(S.R.ADIGE)
VICE- CHAIRMAN (A).

B.

dt 11/10/01
order/judgment despatched
to Applicant/Respondent (s)
on 11/10/01

*ms
24/10*