

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 783/2001

Date of Decision : 17th October 2002

Ms.V.R.Joshi & Ors.

Applicant

Shri C.B.Kale

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Smt.H.P.Shah

Advocate for the
Respondents

CORAM :

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

The 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 Benches of the Tribunal ? *No*
- (iii) Library *yes*

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.783/2001

Dated this the 17th day of October 2002.

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

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

1. Ms.Vaishali Ravindra Joshi
2. Santosh Atmaram Lohar
3. Dhanraj Keshavrao Ingale
4. Ganesh Khalapabhai Patel
5. Sulakshana Chimaji Madhavi
6. Jayashree Waman Joshi

...Applicants

By Advocate Shri C.B.Kale

vs.

1. Union of India
through the Director General,
Department of Posts,
New Delhi.
2. The Chief Postmaster General,
Maharashtra Circle,
Mumbai G.P.O.,
Mumbai.
3. Superintendent of Post Offices,
New Mumbai Division,
Panvel.

...Respondents

By Advocate Smt.H.P.Shah

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for direction to the respondents to make regular appointment of all the applicants according to their seniority to the post of Postal Assistants in

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New Mumbai Division, alternatively it is sought that in case no sufficient vacancies are available in New Mumbai Division, they should be directed to appoint the applicants in the neighbouring units in Maharashtra Circle where vacancies are available looking to their convenience as far as possible, the period of service of the applicants as Short Duty Postal Assistants from January, 1997 to 2.3.2001 be directed to be counted for notional increments and other purposes with a prayer to allow them to file joint petition along with cost.

2. The applicants who were registered in Employment Exchange, their names were sponsored by the Employment Exchange for the post of Postal Assistants. In pursuance of the same, the respondents have issued Memo.No.B.2/36/Recruitment/PA-95 dated 13.8.1996 addressed to all the applicants. The applicants in compliance of the same sent forms to Respondents No.3 well in time. Hall permits dated 1.11.1996 were received for written test to be held on 24.11.1996. All the applicants appeared for the written test and thereafter they were called for interview, Typing and Computer test on 18.12.1996 along with original certificates. All the applicants were provisionally selected for vacancy of the year 1996 and they were informed to intimate their acceptance, in case it was accepted to send 3 copies of passport photographs and unconditional letter of acceptance of the same. The applicants accepted the same and they were asked to bring character certificate, statement of declaration, health certificate and attestation form in the prescribed form. They

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instructed to join various Post Offices for practical training of 15 days with allowances at the rate of Rs.660/- + admissible D.A. The practical training for 15 days could not be completed and discontinued by Respondent No.3 vide telegraphic order dated 24.1.1997 without any reason. Vide order dated 25.3.1997 practical training was to be completed by all the candidates. The applicants were given to understand that their services would be utilised as Short Duty Postal Assistants discontinuing the services of college students and they will be paid at the same rate which was being paid to the college students.

3. The applicants name did not find place in the first list but find place in the second list. It was explained that it was a revised list and was prepared as per revaluation of marks in the aptitude test held on 24.11.1996. They were kept in the waiting list. It was informed that in the next year recruitment they would be absorbed and till that time their services will be utilised as Short Duty Postal Assistants till the vacancies arise.

4. The candidates in the first list were given theoretical training at Mumbai and then regularly appointed as Postal Assistants.

Some Postal Assistants promoted from lower cadre i.e. Postman Group 'D' of Mumbai G.P.O. Girgaon Post Office were appointed in New Mumbai Division.

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5. All the applicants figuring in waiting list of 1996 are still waiting for appointment. They were deputed for theoretical training at Baroda and also completed further practical training in Panvel Head Office in January, 2000.

6. Respondent No.2 was represented vide letter dated 19.11.1998 to which reply dated 30.6.2000 was received through Respondent No.3. Though their request to appoint them in other Units was turned down promising that they would be given appointment in New Mumbai Division. All the applicants submitted a combined representation on 9.10.2000 addressed to Respondent No.2, contacted him and it is learnt that case was referred to Respondent No.1. Thereafter they represented to Respondent No.1 vide their representation 26.4.2001. They also prayed for sufficient pay vide their representation 9.10.2000. Their services as Short Duty P.A. were terminated on 2.3.2001. The applicants filed this OA. on 3.10.2001 for the above stated reliefs.

7. The respondents resisted the claim of the applicants to oppose admission on the ground that in pursuance of the C.O. letter No.R&E-12/PA/96, dated 18.3.1997 regarding recruitment to the Postal Assistant cadre from outsider quota for the year 1996, the revised merit list due to re-valuation of marks in the aptitude test held on 24.11.1996 was issued by the C.O. in which the applicants did not find place. As such the applicants were kept on waiting list. In view of Directorate Order

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No.66/58/98-SBP-1, dated 22.2.2002 conveyed under Chief Postmaster General, Maharashtra Circle L.No.Rectt/1-12/1/2001 dated 2.3.2001 the services as Short Duty Postal Assistants were terminated w.e.f. 2.3.2001. In para 16 it is stated that "as promised earlier, the applicants were given reply that they would be absorbed in this Division". Vacancies of 1996 were calculated correctly and were informed to the higher office. The candidates were required to be filled in on 50:50 basis, i.e.50% from Departmental quota and 50% from outsiders. The applicants remained surplus due to nomination of excess candidates than the requirement in the second list received from higher office (Ex.R-1). The respondents received two lists of outsiders quota from higher office after a gap of a month. The applicants remained at the end in the second list as a result of marks in the written test, interview and other tests as compared to other candidates. They were kept on short duty with the hope that they would be absorbed permanently in future. As they were on short duty, question of their transfer to other Division does not arise till they acquire permanent status. With a hope that they would be given permanent absorption, it was decided to put them on short duty and paid allowances as per Rules. As there were no vacancies available to absorb the applicants in the year 1996, in order to accommodate them in future vacancies, they were kept on short duty.

8. The respondents submitted additional affidavit on 1.5.2002 though the OA. was not admitted but after hearing the parties and perusal of the documents, some clarification became

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essential and in compliance of the same the said additional affidavit is filed. In the said affidavit it is mentioned that the marks in the second list were changed since there was a technical problem of the computer in the first mark list and incorrect marks shown by mistake, the revised list was prepared manually and the same was affirmed and signed by all the same members of the Departmental Promotion Committee. As such, applicants were not shown in the merit list and the said candidates were informed that they will be accommodated and absorbed in future vacancies. It is claimed that the mistake was technical and genuine, therefore the marks of all the candidates were revised and there exists no malafides on behalf of the officers against any of the applicants. The Postmaster General, Mumbai Region made it clear that they cannot be adjusted in other units. Subsequently the matter was referred to higher authorities and as per decision taken on 4.3.2002 after filing of the OA. (OA. filed on 3.10.2001), it is made clear that the claim of the applicants cannot be considered.

9. The applicants have filed rejoinder dated 18.3.2002 and after filing of the additional affidavit, further rejoinder dated 3.5.2002 reiterating the facts alleged by them.

10. The applicants were kept in the waiting list vide letter of Respondent No.B-2/36/Rectt/PA/96 dated at Panvel dated 25.3.1997 copy of which was endorsed to them. They did not thought it proper to challenge the same, kept silence till 3.10.2001, may be on assurance/promise of the Respondents that

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they will be considered for the vacancy of the next year, i.e.1997. The said assurance/promise continued till 30.6.2000 vide letter of Respondents Annexure-A-4 (OA. page 14). The said promise further continued till filing of the reply opposing the admission dated 22.2.2002 and even thereafter till clarification by way of an additional affidavit is submitted by the respondents on 1.5.2002. In the mean while, when the matter was subjudice before the Tribunal, though OA. was not admitted, on 4.3.2002 the Respondent No.1. On 4.3.2002 took a decision that the claim of the applicants can not be considered. The said decision of the Respondent No.1 is contrary to earlier stand taken by the respondents.

11. The applicants have completed 15 days training. They were deputed for theoretical training at Baroda and also completed further practical training in Panvel Head Office in January,2000. During the period of training, they were paid allowances @ Rs.660/-p.m. + admissible D.A. The Respondents have also spent huge amount on the applicants. In addition to spending the amount, the applicants were kept on promise for more than 5 years to wait for the job. Therefore, the respondents are now estopped based on principle of promissory estoppel to say that the claim of the applicants can not be considered. A.I.R. 1972 S.C. 1311 - Turner Morrison and Co.Ltd. vs. Hungerford Investment Trust Ltd. is worth mentioning which is extracted below :-

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"Where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relation between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word."

12. The applicants can not lay their claim for another Division for the reason that they were not selected for the same and even inspite of receipt of reply dated 30.6.2000 (Annexure-A-4), they slept over the matter for more than a year.

13. The applicants are unnecessarily dragged to the litigation for the reasons best known to the respondents. As such, they are entitled to costs amounting Rs.1,000/- ^{jointly &} payable by respondents within one month from the date of receipt of copy of order.

14. In the result, OA. is partly allowed with costs as detailed in para 12^m above. The respondents are directed to make regular appointment of the applicants according to their seniority to the post of Postal Assistants in New Mumbai Division in the first available vacancies.

P.C. Jain
(S.L.JAIN)

MEMBER (J)

mrj.

B.N. Bahadur
(B.N.BAHADUR)

MEMBER (A)