

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 613 of 2001.

Date of Decision : 10.06.2005

Mrs. Ratnamala S. Nimbolkar, Applicant.

Shri V. N. Tayade
along with Ms. Shubangi, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Smt. H. P. Shah, Advocates for Respondents.


CORAM :

Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri S. G. Deshmukh, Member (J).

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

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(Anand Kumar Bhatt)
Member (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 613 of 2001.

Dated this Friday, the 10th day of June, 2005.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri S. G. Deshmukh, Member (J).

Mrs. Ratnamala Sampat Nimbolkar,
Residing at A-10,
Avadhoot Co.Op Housing Society,
Pardeshi Ali, Panvel,
Dist. Raigad.

... Applicant.

(By Advocate Shri V.N. Tayade
along with Ms. Shubangi)

VERSUS

1. Union of India through
The Secretary,
Post & Telegraph Deptt.,
Post & Telegraph Bhavan,
New Delhi.
2. The Secretary,
Post & Telegraph Deptt.,
Post & Telegraph Bhavan,
New Delhi.
3. The Chief Post Master General,
Maharashtra Circle,
G.P.O.,
Mumbai - 400 001.
4. The Superintendent,
Post Offices,
New Mumbai Division,
Panvel.

... Respondents.

(By Advocate Smt. H. P. Shah)

J

O R D E R (Oral)

PER : Shri Anand Kumar Bhatt, Member (A).

The applicant was sponsored by Employment Exchange, Panvel, for the post of Postal Assistant. The applicant received a call letter and later appeared for the written examination, oral test, typing test and computer test. She completed all the tests successfully and vide order dated 27.12.1996 Respondent No. 4 (Superintendent, Post Offices, New Bombay Division, Panvel) informed the applicant that she was provisionally selected. Later the respondents informed vide letter dated 10.01.1997 that the applicant should undergo practical training of 15 days after which her services will be utilized as Short Duty Postal Assistant (for short SDPA). However, later Respondent No. 4 informed the applicant that nine candidates who could not find place in the revised merit list due to revised valuation of marks in the aptitude test held on 24.11.1996, the applicant and other candidates were placed on the waiting list. The applicant has alleged that this procedure adopted of preparing revised merit list was illegally done to suit the convenience of some of the interested persons. The applicant was appointed on the post of SDPA considering the workload and vacancy in the office. By letter dated 28.09.1999 Respondent No. 4

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informed the petitioner that the applicant should undergo theoretical training at Postal Training Centre, Vadodara, for 75 days. This was followed by 15 days practical ^{training} ~~test~~ (Exhibit-E). The applicant continued to discharge her duty as SDPA up to 02.03.2001 on which date Respondent No. 4 terminated the services of the applicant.

2. The grounds taken by the applicant are that the termination of the applicant is illegal and contrary to Article 309 and 311 of the Constitution. The respondents cannot take the plea that in 1995 the department had taken a policy decision to appoint pensioners on the said post as the applicant was validly appointed by adopting due procedure. The applicant's services were terminated illegally after four years' continuous service. The respondents committed breach of promise given in the letter dated 25.03.1997 where it was promised that the services of the applicant will be absorbed in future recruitments. The relief sought by the applicant is as follows :

"(a) This Hon'ble Tribunal be pleased to quash and set aside the impugned order of termination issued by Superintendent of Post Offices, New Mumbai Division on 2nd of March, 2001.


(b) This Hon'ble Tribunal be pleased to direct the Respondents to appoint the Petitioner to the post of Postal Assistant in the office of Respondent No. 3.

(c) Such other and further order be passed in favour of the applicant in the interest of justice with costs."

J

3. In the oral submissions, Shri V. N. Tayade, Counsel for the applicant, stated that vide respondents' order dated 02.03.2001 services of seven SDPAs were terminated in which the applicant was listed at Sl. No. 7. However, the other six had come to the Tribunal in O.A. 783/2001 in which order was passed in their favour on 17.10.2002.

4. In the reply submitted by the respondents they have stated that the applicant was provisionally selected vide letter dated 27.12.1996 but at the same time it was made clear to the applicant that this provisional selection does not entitle the applicant to claim regular appointment in case any irregularity is noticed in the future. The applicant was not appointed to the post of Postal Assistant on regular basis after completion of practical training and she was simply kept attached to Taloja AVPO to utilize her services as SDPA to cope with the excess work whenever necessary. The respondents have admitted that on completion of the practical training of the applicant the merit list of the candidates initially received was required to be reconciled due to some technical error, as a result of which ^a few candidates took the upper position in the merit list and, therefore, after providing appointment to the candidates according to the merit and that too limited to the vacancies announced, the name of the applicant was kept on the waiting list. They have denied



the contention of the applicant that the merit list was revised to suit the convenience of some other candidates. The applicant was engaged as SDPA. However, this scheme was already discontinued and the applicant's services were terminated vide memo dated 02.03.2001 pursuant to D.G. Posts, New Delhi's order dated 22.02.2001. The applicant was not regularly appointed in the department by any order but was simply engaged as SDPA and, therefore, the question of intimating the reasons for termination does not arise.

5. We have heard Shri V. N. Tayade, Counsel for the applicant and Smt. H. P. Shah, Counsel for the respondents and have gone through the documents. We find that vide the impugned order dated 02.03.2001 the services of seven SDPAs were terminated. Six of them (except the present applicant) had come in O.A. 783/2001 [Ms. Vaishali Ravindra Joshi & 5 Others V/s. Union of India & Others]. The O.A. was allowed on 17.10.2002 with the following observations :

"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 spend 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 cannot be considered. AIR 1972 SC 1311 - Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd. is worth mentioning which is extracted below :



"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 cannot lay their claim for another Division for the reason that they were not selected for the same and even in spite of receipt of reply dated 30.06.2000 (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/- only payable by respondents within one month from the date of receipt of copy of order.

14. In the result, O.A. is partly allowed with costs as detailed in para 13 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."


6. In view of the fact that the above order of the Tribunal is in relation to the same impugned order dated 02.03.2001 by which the present applicant's services were also terminated, we find no reason to disagree with the decision that has been taken by the Tribunal in regard to the other six identically placed Short Duty Postal Assistants. The question has been considered and discussed fully in the O.A. 783/2001 and we ~~find no reason to~~ ^{are in full agreement}

~~disagree~~ with the findings in the case. In view of the above, the following order is passed in the case :

The respondents are directed to make regular appointment of the applicant ^{in the panel prepared for} according to her seniority the post of Postal Assistant in New Bombay Division in the first available vacancy.

7. O.A. allowed partly as above. No costs.


(S. G. DESHMUKH)
MEMBER (J)


(ANAND KUMAR BHATT)
MEMBER (A).

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