

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

O.A. No. 681/90

Smt. Ujwala Bhavsar Applicant

v/s

Department of Posts Respondents

CORAM :

- 1) Hon'ble Shri B.S. Hegde, Member (J)
- 2) Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE :

- 1) Shri G.R. Menghani, Advocate for Applicant
- 2) Shri P.M. Pradhan, Advocate for Respondents

JUDGEMENT

DATED: 8.11.94


(Per: Hon'ble Shri B.S. Hegde, Member (J))

1. The short question for consideration is whether the order of reversion from the post of Grade 'D' to that of Extra Departmental Stamp Vendor by the Respondents against the order dated 21-8-1990 issued by the Respondents is in accordance with the procedure laid down by law and the same is justified in the facts and circumstances of the case. The Applicant has been working as Part-time Extra Departmental Stamp Vendor w.e.f. 1981 and has drawn a salary of Rs. 350/- per month. Being a part-time Extra Departmental Stamp Vendor, she was not entitled to extra benefits which are otherwise available to regular employees in the Department of Post. Of course, in that capacity she has been working till about May 1987. In the year 1986, the Respondents conducted an examination for appointment in Group 'D' post for



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regular appointment of Extra Departmental agents working on part-time basis to which outsiders were also entitled to appear. The Applicant had come out successful in the said examination and had been placed on the top and 18 outsiders were declared successful. As a result of her selection she has been asked to undergo medical examination and after medical examination she was posted to work as Grade 'D' in Dahisar Post Office w.e.f. 28-5-1987 in a clear vacancy which had arisen as a result of dismissal of one Shri D.S. Kocharekar from Government service. It is true that she was appointed on regular basis on probation of three years which is evident from the order itself and she had completed the probationary period on 27-5-1990. However, the said examination was cancelled on 21-8-1990 subsequent to the completion of probation period without assigning any reasons as to how the recruitment rules were not observed at the time of examination held on 28-12-1986, against which she requested the Respondents to enable her to give a reply; thereafter, she issued advocate's notice vide dated 10th September 1990. When she did not get any reply to Advocate's notice, she filed this O.A. seeking relief that she should not be reverted to the post of Stamp Vendor as she had been regularly appointed and posted in a Group 'D' post.

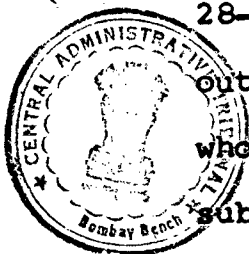


2. The Respondents in their reply conceded that she was regularly appointed in a clear vacancy which had arisen as a result of dismissal of one Shri D.S. Kocharekar from Government service. In support of their contention, the Respondents relied upon the decision of this Tribunal in O.A. 726/90 A.P. Mahade & Others v/s Union of India

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wherein the Tribunal after hearing both the sides have observed that it is for the Department to decide whether or not to cancel the examination. It is a matter of discretion and the Tribunal will interfere only if the decision of the Department was arbitrary and entirely against the principles of natural justice. We do not see any such vice in the reasons which went into the decision and there is no reason to hold that in 1986 the examination was arbitrarily cancelled.

3. In the light of the above the question for consideration is whether the facts of the aforesaid decision is applicable to the facts of this case. The learned counsel for the Applicant draws our attention that all the Applicants in that O.A. are outsiders i.e. recruited through the Employment Exchange and not from EDAs who were already working as Extra Departmental agents; therefore, the facts of that case is not the same in the present one and thus the same is distinguishable. The Respondents in their reply also conceded, the cancellation of examination for Grade 'D' cadre on 28-12-1986 vide their letter dated 27-11-89 is for outside candidates but the Extra Departmental Agents who were declared successful in the examination were subsequently appointed as Grade 'D' with effect from 12-5-1987. In the note submitted by the Respondents, during the course of hearing, it is stated that the examination was cancelled for outsiders i.e. candidates from Employment Exchange. But the EDAs who were declared successful in the examinations were subsequently appointed as Grade 'D' with effect from 12-5-1987. The Respondents declared 18 candidates sponsored by the Employment Exchange as successful as against 15 vacancies



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meant for the outsiders; therefore, in so far as the outside candidates are concerned, examination was required to be cancelled on 8-12-1989. Further, the appointment letter issued to EDAs as well as to outside candidates are different in nature and contents.

4. The Applicant's reversion has not taken place because she secured interim stay. After hearing both the sides, the Tribunal was convinced and stated that the reversion order is not tenable and directed the Respondents not to revert the Applicant till the disposal of the O.A. It is also made clear in the Respondents' letter dated 8-12-1989 stating that the said examination is treated as cancelled except in respect of EDAs who have qualified in the said examination and who have already been appointed as Grade 'D'. That being the factual position, we are not convinced that the explanation offered by the Respondents stating that the recruitment rules were not observed at the time of examination held on 28-12-1986 is found to be incorrect and not based on records.

5. In fact, the Applicant has passed all the papers she appeared and was successful in the examination and it is clear on perusal of the records that cancellation was made for outside candidate and not for EDAs who had been working earlier. In the instant case, the Applicant has been working regularly after selection for a period of four years without any break in service; therefore, the reversion order passed by the Respondents is not in accordance with the relevant rules nor the Respondents have given any show cause notice before



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reverting the Applicant from the post which she held.

6. As stated earlier, the cancellation was in respect of Employment Exchange nominees and not for EDAs who have successfully come out of examination. The judgement relied upon by the Respondents is distinguishable from the present case and hence the same cannot be applied.

7. In the result, we are of the view, that the reversion order passed by the Respondents is not only arbitrary in nature, but cannot be sustained, and the same is liable to be quashed. Accordingly, we allow the application of the Applicant, and direct the Respondents to regularise the Applicant in Grade 'D' post which she is holding, within a period of two months from the date of receipt of this order. In the circumstances, no order as to costs.



(M.R. Kolhatkar)
Member (A)

(B.S. Hegde)
Member (J)

Certified True Copy
Date

ssp.

Section Officer
Central Admin. Tribunal,
Bombay Bench.