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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

STAMP APPLICATION NO. 50/91(OA 477/91)

O.A. No.

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DATE OF DECISION 12-7-1991

Rajkumar P. Gajbhiye Petitioner

Mr. A S Bhagat Advocate for the Petitioner (s)

Versus

Union of India & 2 ors. Respondent

Mr. Ramesh Darda Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. P S Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY - 400 614
CIRCUIT SITTING AT NAGPUR

STAMP APPLICATION NO. 50/91 (CA 477/91)

Rajkumar Pralhad Gajbhiye
Extra Departmental Branch
Post Master,
Kandri E.D.B.O.;
A/O Andhalgaon
Talq. Mohadi
Dist. Bhandara

.. Applicant

V/s.

1. Union of India
through Secretary to the Govt.
Ministry of Communication
Department of Posts
Dak Tar Bhuwan
New Delhi 110001.
2. The Postmaster General
Nagpur 440010
3. The Senior Superintendent of
Post Offices, MFL Division
Nagpur 440012

.. Respondents

CORAM: HON. SHRI JUSTICE U C Srivastava, V.C.
HON. SHRI P.S. CHAUDHURI, MEMBER (A)

APPEARANCE

Mr. A S Bhagat
Advocate
for the applicant

Mr. Ramesh Darda
Counsel
for the respondents

JUDGMENT:

DATED: 12-7-1991

(PER: U C SRIVASTAVA, VICE CHAIRMAN)

The applicant Rajkumar Pralhad Gajbhiye was working as Extra Departmental Branch Post Master under Bhandara Head Post Office. It is alleged that based on the oral approval of his predecessor, one Uttam Prahladji Gajbhiye, who was sent on deputation to Army Postal Service, he took over the charge of the

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said post on 31.3.1990 and continues to hold it since then. The Mail Overseer, Bhandara inspected the Post office and according to the applicant he recorded his note for continuing the appointment of the applicant who is a member of the Scheduled Caste Community. After 15 months of so working he was removed vide impugned order dated 14.6.1991. This order has been challenged by the applicant on the ground that it is in contravention to the provisions of Sec.25F of the Industrial Disputes Act and is unfair labour practice under item 10 of the Fifth Schedule to the Industrial Disputes Act. The applicant made reference to village politics in his representation against his termination order and the resolution of the village people for his continuing in the post. Prior to this termination order a notification was issued on 10.6.91 calling for applications from candidates for appointment as Substitute Extra Departmental Branch Post Master. The impugned termination order issued to the applicant indicates that a notification has been issued and that the appointment of the applicant was illegal. The candidates of EDBPM are to be called for from the Employment Exchange as per instructions received by Sr. Superintendent of Post Offices, Nagpur. It is also stated that after appointment of new person the applicant would be relieved from the post of Extra Departmental Branch Post Master, Kandri.

2. As such the applicant's appointment was not in accordance with the rules which provide the mode and manner of appointment. His name was never sponsored.

by the Employment Exchange and he was appointed without any notification and that too without any written orders by his predecessor Extra Departmental Post Master. Such appointments are allowed in certain contingencies which obviously were wanting in this case. Thus the applicant's appointment apparently is not correct.

3. The learned counsel for the applicant contended that as the applicant has continued to hold the said office for more than 15 months he gets a right over the post. He referred to a judgment of Central Administrative Tribunal, Cuttack Bench DEVI PRASAD TRIPATHY Vs. UNION OF INDIA & OTHERS, I(1989)ATLT(CAT)(SN)11, wherein it was held that the petitioner in that case should be permitted to be one of the applicants for the post of Extra-Departmental Branch Post Master if he files such an application and his case should be considered for appointment along with others keeping in view that he was provisionally appointed for a particular period. However, we do not see how this helps the applicant as exactly the same facility has already been extended to him by the impugned order dated 14.6.1991.

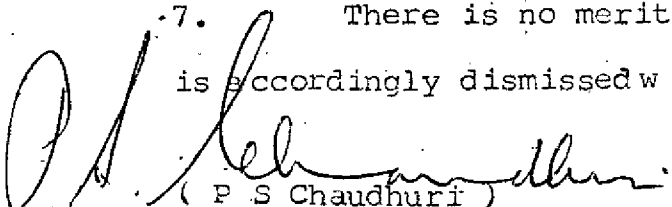
4. The learned Counsel for the applicant also referred to the Full Bench decision of 3 Members in S.K. SISODIA Vs. UNION OF INDIA & ORS. Page 47 of "Full Bench Judgements of Central Administrative Tribunal, (1986-1989)", wherein the applicant was recruited as an Apprentice in 1981 for 3 years and completed his apprenticeship and was on probation for 1 year, but no order of confirmation was issued and


after minor penalties his services were terminated. It was held that termination under Rule 301 of the Indian Railway Establishment Code is illegal as Section 25 F of the Industrial Disputes Act was not followed. But we do not see how this helps the applicant as the said judgment has been overruled by a larger Bench in the case of A. PADMAVALLEY V. C.P.W.D. & ORS. etc., etc., 1991(1) SLR 245.

5. Even otherwise the applicants' appointment was not as per procedure inasmuch as the applicant was orally appointed by his predecessor who under no certain circumstances could have made such appointment in his absence. As such the applicant was not an appointee by the Department. Such appointments cannot be legal and such irregular appointments which are not in accordance with the law/procedure will not confer the status of a workman who can invoke the provisions of the Industrial Disputes Act.

6. Even without entering into the question as to whether it in fact amounts to industry, on the assumption that it does, the applicant cannot get the benefit of the same in view of the fact that such termination was a result of the process of appointment in accordance with the rules and so would not amount to retrenchment and would not attract the provisions of the Industrial Disputes Act.

7. There is no merit in the application and it is accordingly dismissed with no order as to costs.


(P. S. Chaudhuri)
Member (A)


(U. C. Srivastava)
Vice Chairman