

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP AT NAGPUR.

Original Application No.

884/92

Transfer Application No.

Date of Decision : 16.3.1995

K.S.Meher

Petitioner

Shri D.B.Walthare.

Advocate for the  
Petitioners

Versus

Union of India & Ors.

Respondents

Shri A.B.Chaudhari.

Advocate for the  
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

  
(M.S.DESHPANDE)  
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH,  
CAMP AT NAGPUR.

Original Application No.884/92.

K.S.Meher. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande,  
Vice-Chairman,  
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri D.B.Walthare.  
Respondents by Shri A.B.Chaudhari.

Oral Judgment :-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 16.3.1995.

By the present application the applicant challenges the order passed by the Respondents fixing the seniority from 7.11.1989 and seeks a direction that the seniority should be reckoned from 1.5.1982 when he started working ~~as~~ an Extra Departmental Stamp Vendor.

2. According to the applicant he was appointed w.e.f. 1.5.1982 by an order dt. 12.2.1984, but that order was lost. His services came to be terminated wrongfully on 30.6.1987 and he therefore, approached the Assistant Labour Commissioner, Nagpur for conciliation and a settlement was reached on 12.10.89. The terms and conditions of the settlement are as follows:

"1. Management has agreed to take the workman on roll as Extra Departmental Delivery Agent within 45 days from the date of settlement.

2. Management has also agreed to fix the seniority of the workman as per rule of the department.

3. Workman has agreed to forge dues back wages.

4. Both the parties shall submit their implementation report after a period 45 days otherwise it would be presumed that settlement has been implemented."

The settlement did not itself provide the date from which the applicant's seniority should be reckoned and the matter shall therefore have to be determined on the basis of the rules. According to Respondents one W.T.Chachere who was working as Extra Departmental Mail Carrier of Gujarji Bazar handed over the charge to the applicant on 1.5.1982 while he was working on daily wages as Group 'D' against a leave vacancy vice leave arrangement of regular incumbent.

W.T.Chachere provided a substitute, viz. the applicant, who was an outsider, to work on his sole responsibility and he had not been appointed pursuant to any order passed by the Respondent No.2 who was the appointing authority. The post of Extra Departmental Mail Carrier of Kamptee was to be kept unfilled due to job combination as per departmental rules and the work was managed by the other Extra Departmental Delivery Agent and as such the applicant could not get the opportunity of working in place of W.T.Chachere w.e.f. 1.7.1987 and therefore, it was wrong to say that the applicant's services came to be terminated from 1.7.1987.

3. In the course of the arguments Shri D.B. Walthare, the learned counsel for the applicant conceded that the applicant had been working as a substitute of W.T.Chachere. But he urged that the applicant's appointment should be considered as a provisional appointment in accordance with the rules. This does not seem to be the correct position, because as per Director General's instructions issued on 24.11.1970 and the subsequent letters, during leave

every Extra Departmental Agent has to arrange for his work being carried out by substitute who should be a person approved by the authority competent to sanction leave to him. It is therefore, clear that what the departmental authorities do is only to grant approval, but the arrangement has to be done by the Extra Departmental Agent and it is he who nominates his substitute. It is clear that such an appointment cannot be regarded as a provisional appointment under the rules. The counsel for the applicant was not in a position to produce the order of appointment of the applicant purported to have passed on 12.2.1984 effective from 1.5.1982 and the spacious plea taken is that the order was lost. On account of the dis-continuation of the applicant from 1.7.1987, he approached the conciliation authorities and we have already pointed out that no decision was taken at the time of the settlement regarding the seniority of the applicant which had to abide by the rules. We have indicated rule position above. If the applicant's employment was co-terminus with that of W.T.Chachere and came to be dis-continued from 1.7.1987 and he came to be appointed only as a result of the settlement reached during the conciliation proceedings, no exception can be taken to the Respondents ~~to treat~~ the applicant as a fresh appointee. The termination as such had not been challenged immediately after 1.7.1987 by recourse to the Tribunal. The applicant agreed to forego his backwages and this is a circumstances which would militate against the applicant's appointment being made by the departmental authorities.

4. Our attention was also drawn by the learned counsel for the applicant to the Hall Ticket issued on 17.7.1990 for the examination which was to be held on 29.7.1990. The eligibility for appearing at the examination is three years regular service as stated in section 6 page 98 of Swamy's compilation of Service Rules for Extra Departmental Staff of Postal Department (Vth Edition). There is no dispute about the fact that this examination was postponed and was never held. When the question of applicant's eligibility to appear for the examination came ~~up again~~ in the light of the amended rule, the respondents informed by the letter (at Annexure-9 to the reply) that he could not appear at the examination as he had not put in 5 years of regular service he having been appointed as Extra Departmental Agent w.e.f. 1.11.1989. Though the applicant has contended that the respondents will be bound on the principles of <sup>see how</sup> promissory estoppel, we do not think that doctrine could be invoked here merely because of an erroneous Hall Ticket issued earlier. The facts to the contrary would stare one in the face and show that the department's sending of the letter earlier was erroneous and that error was later corrected.

5. In the result, we see no merit in the application. It is dismissed. There will be no order as to costs.

*M.R.Kolhatkar*

---

(M.R.KOLHATKAR)  
MEMBER (A)

*M.S.Deshpande*

(M.S.DESHPANDE)  
VICE-CHAIRMAN

B.