

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 665/92.

Transfer Application No:

DATE OF DECISION: 29th Nov, 94.

DIGAMBER DATTATRAYA DHAVALE Petitioner

S.P.KULKARNI

Advocates for the Petitioners

Versus

UNION OF INDIA & ORS.

Respondent

KARKERA FOR P.M.PRADHAN

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri D.C.Verma, Member (J).

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

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

abp

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH. BOMBAY.

(9)

O.A.665/92.

DIGAMBER BATTATRAYA DHAVALE

... APPLICANT.

V/s.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

Hon'ble Shri D.C.Verma, Member(J).

APPEARANCES:

Shri S.P.Kulkarni, Counsel for
Applicant.

Shri Karkera, Counsel for
Respondents.

ORAL JUDGEMENT:

1. Per Shri M.R.Kolhatkar, Member(A). DATED : 29th Nov.94.

1. The applicant was appointed provisionally as E.D. Branch Post Master Sawana Post Office by Supdt. of Post Offices, Nanded Division, Nanded vide order dt. 1/4/82 with retrospective effect from 2/3/92. The appointment letter clearly stated that the provisional appointment will be terminated when regular appointment is made. It appears that the requisition was sent to the Employment Exchange for sending list of candidates on 3/1/92. A copy of this exhibit is not produced by Applicant but was produced as Annexure-II to the written statement of Respondent. The requisition ante-dates the date of order of appointment of the applicant apparently because the vacancy occurred w.e.f. Feb.92 consequent on one Shri K.S.Wankhede who was working as Branch Post Master at Sawana being promoted. Thus advance action was taken. In the requisition, the educational qualifications are mentioned as "atleast VIIth standard pass with priority or preference being given to candidates with 10th standard pass." The words "VIII standard have been interpolated in hand. It is the contention of the

applicant that the requisition was faulty because it was not very clear that a list of Candidates with 10th standard pass was primarily to be sent, the 8th standard pass being only the minimum qualification. It appears that the list of candidates which was sent by the Employment Exchange on 28/2/92 contained names of fourteen candidates of who twelve were 9th standard pass and two were 8th standard pass and not a single candidate was 10th standard pass. It appears that the department selected Sr. No. 11 in the list and on 16/6/92, Supdt. of Post Office, Nanded wrote to Sub Divisional Inspector(Posts) in Hingoli regarding action to transfer the charge to the selected ~~candidate~~ ^{not} candidate who had/actually been informed and did not join. There was an interim order that if any selection is made that will be subject to the final outcome of the application. The Department appears to have treated this as a Stay on selection and appointment and therefore the further qualification in the order that if the selectee joins the post he shall be treated as one of the respondents did not come into play.

2. The main contention of the applicant is that he is 10th standard pass and he belongs to a category which is preferential other things being equal and since the department does not have any candidate at all with 10th standard pass, the selection made by the department is bad. Consequently, he also contends that he has a right to be called for the interview for purpose of selection. It is contended that he has already registered in the Employment Exchange (vide page-10 of the application). It is further contended that he also fulfills other qualifications laid down for the selection. In particular, attention is drawn to Swamy's Compilation-1992-fifth

edition for Extra-Departmental Staff in Postal Department

- It says at page-58, that the candidate must have adequate means of livelihood. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such, business premises such as shops, etc, must be preferred regardless of the various categories of preferences mentioned above. The applicant contends that he fulfills this preferential qualification also.

3. The relief originally sought by the applicant is that respondents should be directed to hold fresh interview by placing proper requisition inter-alia including SSC pass candidate. But at the argument stage, it has also been prayed as earlier mentioned that the respondents should be directed to invite the applicant for selection on the weight of the experience gained by him even if his name does not appear in the list of Candidates sponsored by Employment Exchange, For this purpose reliance has been placed on the judgement of the full bench (5 member bench) at Ernakulam which decided the OA 29/90 on 8/11/91 vide G.S.Parvathy v. S.D.Inspector (Postal) & Ors (Ern.) 1992(1) SLJ-540. The relevant portion in para-42 reads as follows:-

"In this connection, it is also worth referring to Rule 11(2) of Section II-Method of Recruitment - in Swamy's Compilation of Service Rules for E.D.Staff in P & T Department, hereinafter referred to as the Rules which reads as follows:-

"Efforts should be made to give alternative employment to ED Agent who are appointed provisionally and subsequently discharged/from service due to administrative reasons, if at the time of discharge they had put in not less than three years service. In such cases, their

names should be included in the waiting list of ED Agents discharged from service, prescribed in D.C.P. & T., Letter No.43-4/77-Pen., dated 23.3.1979."

This clearly shows that the department considers that the experience gained by the provisional appointee is quite valuable and that thereby he acquires a right for appointment after three years of service. Those whose experience falls short of three years and who cannot therefore claim the benefit of the above quoted rule are certainly entitled atleast to weightage being given to the extent of the experience acquired."

4. For the proposition that the provisionally appointed candidate is entitled to be included in the interview list, the applicant relies on the judgement in Suresh Babu v. Head Post Master, HPO, Palai and Ors. (1990) 13 ATC 245. In para-14 it is stated that not being sponsored by the Employment Exchange, as required under rules, is not a dis-qualification but only a procedural requirement. In any case, this will not be an equitable or just consideration to keep out of the process of selection of a provisional appointee, who will be replaced by the regular appointee who will be replaced by the regular appointee when selected."

5. The respondents have opposed the application stating that the applicant was fully aware of the fact that his appointment was purely provisional. The requisition which was sent on 3/1/92 was perfectly in order. When it came to notice that not a single 10th standard pass candidate had been included in the list, the department wrote to the Employment Exchange on 4/4/92 requesting the Employment Exchange to arrange to supply candidates having qualification of 10th standard. The Employment Exchange in their reply dated 9/4/92, regretted their

inability to send any further list unless the result of the earlier list was communicated to the Employment Exchange. In view of this, the department finalised the selection. In view of the pendency of the case in the CAT not further action was taken. According to the department, the applicant could not be considered for any selection since his name has not been sponsored by the Employment Exchange.

6. In his rejoinder, the applicant has taken some additional grounds namely that interview was taken by the Sub.Sub-Divisional Inspector(Postal) Hingoli who is not the appointing authority and that the requisition was not proper and was liable to be misunderstood and thus selection has been vitiated and is liable to be quashed.

7. There is no doubt that the applicant possesses the preferential qualification of having passed 10th standard as against the list of 14 candidates which was sponsored by the Employment Exchange. The case law no doubt supports the contention of the applicant that the experience gained by him as a provisional appointee is entitled to weightage. The fact that he has not been sponsored by the Employment Exchange is no doubt relevant but not conclusive. It is likely that his name was not sponsored because he was 10th standard pass and the Employment Exchange was under the mis-conception regarding the need for including in the list the name of a candidate who was 10th standard pass. It is also clear that he is entitled to be called for interview with ~~the~~ others, even if his name is not sponsored by the Employment Exchange. There is no doubt therefore that the applicant must succeed. We, therefore, dispose of the OA by passing the following order:-

ORDER.

OA is allowed. The selection held by the respondents on the basis of the requisition dt. 3/1/92 is quashed and set aside. Respondents are directed to send a fresh requisition in accordance with rules to the Employment Exchange. Respondents are also directed to consider the case of the applicant alongwith other candidates whether or not his name is sponsored by the Employment Exchange, also giving due weightage to the experience gained by him as a provisional appointee. Till the final selection and appointment as above, the respondents should allow the applicant to continue to officiate as provisional ED BPM, Sawana. No orders as to Costs.

D.C.VERMA
(D.C.VERMA)
M(J)

M.R.KOLHATKAR
(M.R.KOLHATKAR)
M(A)

abp