

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 103/95

Date of Decision: 9.12.98

Shri Vithal Rajaram Mahale Petitioner/s

Shri S.P.Kulkarni. Advocate for the
Petitioner/s.

v/s.

Union of India and others. Respondent/s

Shri S.S.Karkera for Advocate for the
Shri P.M.Pradhan. Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, Member (A)

(1) To be referred to the Reporter or not? *✓✓*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *✓✓*

R.G.Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

(S)

Original Application No. 103/95

Wednesday the 9th day of December 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

Vithal Rajaram Mahale
Residing at Shirasgaon
(Harsul Nashik) Branch
Office, District Nashik.

... Applicant.

By Advocate Shri S.P.Kulkarni.

V/s.

Union of India through
Senior Superintendent of Post
Offices, Nashik Division,
At P.O. Nashik.

Postmaster General,
Aurangabad Region,
Aurangabad,

Shri Mohan Sable
Extra Departmental Branch Postmaster
Shirasgaon Extra Departmental
Branch Post Office, (Harsul-Nashik
Sub Office) Nashik. ... Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed under Section 19 of the Administrative Tribunals Act. 1985. The respondents have filed reply. We have heard the learned counsel for both sides.

2. The applicant had been appointed as EDBPM on 4.12.93 as a stop gap arrangement. It appears that subsequently the department wanted to fill up the post on regular basis and called for nominations from Employment Exchange. It appears that simultaneously the department also issued a public notification calling for names. The applicant appears to have responded to the public notification

and filed an application for appointment. After getting name from the Employment Exchange, interview has been held and as per Rule, the department has selected respondent No.4 and appointed him as EDBPM as per order dated 4.10.94 and simultaneously the applicant's services were terminated from the same date. Being aggrieved by the action of the respondents, the applicant has approached this Tribunal.

3. The respondents in their reply have stated that respondent No.4 is appointed following the rules and procedure prescribed under rules and the ^{the} applicant was appointed on stop gap basis has no legal right.

4. After hearing both sides we do not find that the applicant has made out any case for interfering with the appointment of respondent No.4.

5. As per rules the appointment has to be made after getting the nominations from the Employment Exchange. The rule also provides that in case sufficient number of candidates are not sponsored by the Employment Exchange then the department can go for open market by issue of public notification. The learned counsel for the applicant contended that without exhausting the nominations from the Employment Exchange the respondents could not have issued the public notification. He further submitted that having issued public notification and the applicant responded to the same, the respondents cannot consider the selection only ^{by} candidates sponsored by Employment Exchange and they have no right to ignore the claim of the applicant who has

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responded to the public notification.

6. The rule only says that if sufficient number of candidates are not sponsored by Employment Exchange then only the department have to go for public notification. The learned counsel for the applicant states that the issue of public notification itself was wrong and contrary to rules. If that is so then the applicant cannot get any benefit of such wrong steps taken by the department in issuing the public notification without exhausting the nominations from the Employment Exchange. Even agreeing for a moment that the applicant had responded to the public notification, the question is whether he ^{was} acquired a right to be considered for appointment. It is mentioned that candidates responded to the notification will have to be considered only if the candidates is sponsored from Employment Exchange. If that is so no right is granted to the applicant and the candidates like the applicant who responded to the public notification, if there are candidates sponsored by Employment Exchange. In this case admittedly the candidates were sponsored by Employment Exchange. Therefore the department ~~confined~~ the selection process only to those candidates and did not consider other candidates who had responded to the public notification. Therefore in our view the selection process is not vitiated and therefore the appointment of respondent No.4 cannot be faulted. The applicant cannot claim any right in the post in question. Admittedly the applicant has put in only about 10 months service as EDBPM. He has requested that if and when next recruitment takes place then the applicant's case may be consider as per rules.

7. In the result the O.A. is dismissed. However we direct that in case fresh recruitment takes place, then the applicant's case may be considered having regard to his experience as per rules. In the circumstances of the case there will be no order as to costs.

D.S. Baweja
(D.S. Baweja)
Member (A)

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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