

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1058/97

Date of Decision : 10th April 2001.

B.N.Vijapure Applicant

Shri S.P.Kulkarni Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri S.S.Karkera for Advocate for the
Shri P.M.Pradhan Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt. Shanta Shastry, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?

(iii) Library yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1058/97

Dated this the 10th day of April 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastri, Member (A)

Bharat Naganathappa Vijapure,
R/o A.P.Makhani, Tal.Gangakhed,
Dist. Parbhani-431.415.

...Applicant

By Advocate Shri S.P.Kulkarni

V/S.

Union of India through

1. Asstt.Superintendent of
Post Offices, Parbhani
Sub-Division, Parbhani.
2. Superintendent of Post Offices,
Nanded Postal Division,
AT P.O. Nanded.
3. Postmaster General,
Aurangabad Region,
AT P.O. Aurangabad.
4. District Employment Officer,
Employment Exchange,
Parbhani.
5. Shri Lahu Ghanshyam Bhalerao,
Extra Departmental Delivery Agent,
At P.O. Makhani B.O.
(via-Gangakhed),
Dist. Parbhani.

...Respondents

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

..2/-

Sign

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a declaration that provisional appointment of Respondent No. 5 in replacement of applicant's appointment is arbitrary and illegal, to quash and set aside the same, direction to the respondents to hold fresh selection (Regular) to the post of E.D.D.A. Makhani, declaration that removal of the applicant from the provisional appointment as E.D.D.A. Makhani by another provisional appointment of Respondent No. 5 is violative of law, direction to the respondents to pay the back wages from 1.11.1996 to 10.4.1997 as E.D.D.A. Makhani, consider the applicant after giving due weightage on the basis of his experience of work, further declaration that Annexure-'A' para 3 as ultravires and unconstitutional along with cost.

2. The post of Extra Departmental Delivery Agent (E.D.D.A.) at Makhani Branch Post Office in account with Gangakhed S.O. District Parbhani fell vacant due to reitirement of one Shri Rudrappa Gangaram. The applicant after being sponsored by the Employment Exchange after a provisional selection worked on the same post from 25.10.1995 as a stop gap arrangement. The applicant was asked to furnish security bond which he furnished. Abruptly, the Respondent No. 1 discontinued the service of the applicant vide order dated 2.12.1996 and appointed Respondent No. 5 Shri Lahu Ghanshyam Bhalerao provisionally till he completes pre-appointment formalities.

S. Jain

3. The grievance of the applicant is that he is a Dam Affected person and as per the State policy he is to be considered for providing job. He was provisionally appointed. Hence, he cannot be replaced by some one who is also provisionally appointed. Before his appointment as E.D.D.A., he was working on commission basis with MSEB. The Respondent No. 1 initiated the action well in advance of retirement date of Shri Rudrappa and sent a requisition to the Employment Exchange, Parbhani for nominating suitable candidates. He received the call letter. After selection, the Respondent No. 5 was appointed provisionally till he completes pre-appointment formalities. Respondent No. 5 was given charge on 8.4.1997 and not on 2.12.1996. He is not paid the salary for the period 1.11.1996 to 10.4.1997. Hence, this OA. for the above said reliefs.

4. The official respondents resisted the claim of the applicant stating the fact that the applicant was duly engaged as E.D.D.A. on stop gap arrangement by the Branch Post Master, Makhani Branch Office. No appointment order was issued by Respondent No. 1 in favour of the applicant. There is no provision for reservation in E.D.D.A. (Conduct & Service) Rules in respect Dam affected persons. The Respondent No. 5 was appointed provisionally till other formalities completed and later on as he was duly selected, appointed finally. The applicant is the son of Branch Post Master and as per rules no relation can be appointed as E.D.D.A. in the same Post office. No weightage in respect of experience can be provided. Hence, prayed for dismissal of OA. along with cost.

P. M.

..4/-

5. The applicant has also arrayed District Employment Officer, Parbhani as Respondent No.4. The only argument advanced against Respondent No. 4 is that after his services have been terminated, Respondent No. 4 should endorse it on the Employment Exchange Card and afford him further opportunities of employment.

6. Admittedly, the appointment of the applicant was provisional as E.D.D.A. In view of 2000 (2) ATJ 259, D.M.Nagesh & Ors. vs. The Assistant Superintendent of Post Office, Bangalore & Ors. (F.B.), it has been held that previous experience gained by a candidate due to his working as provisional E.D. Agent, such experience cannot be given due weightage at the time of regular selection.

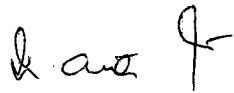
7. The learned counsel for the applicant relied on 1996 (1) S.C. SLJ 293, Sub-Divisional Inspector of Post, Vaikam & Ors. vs. Theyyam Joseph & Ors. which lays down the proposition that Postal Department is not an industry and the employees are civil servants. Therefore, provisions of Industrial Disputes Act, 1947 is not applicable.

8. We agree with the submission of the learned counsel for the applicant that E.D.D.A. are civil servants hence, provisions contained in Industrial Disputes Act, 1947 are not applicable. At the same time, as the applicant is not entitled to count his previous service experience gained as E.D.D.A. and we do not find any other infirmity in the appointment of Respondent No.5.

P. V. M.

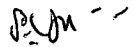
..5/-

9. Hence, OA. deserves to be dismissed and is dismissed accordingly with the observation that in future vacancies keeping in view the eligibility of the applicant, the respondents may consider his claim for appointment on any post as per extant rules and Respondent No. 4 shall consider the grievance of the applicant as now he ceases to be in employment and do the needful. No order as to costs.



(SMT. SHANTA SHASTRY)

MEMBER (A)



(S.L. JAIN)

MEMBER (J)

mrj.