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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 16/5/2000

OA 685/93

Kailash Chand Sen, EDBPM, Brikchiawas, Distt. Ajmer.

... Applicant

v/s.

1. Union of India through Secretary, Deptt. of Posts, Ministry of Communication, New Delhi.
2. Post Master General, Rajasthan Eastern Region, Ajmer.
3. Supdt. of Post Offices, Beawar Postal Division, Beawar.
4. Shri Bajrang Lal, EXBPM, Brikchiawas (Beawar).

... Respondents

CORAM:

HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER
HON'BLE MR. N. P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr. K. L. Thawani

For the Respondents ... Mr. K. N. Shrimal

O R D E R

PER HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER

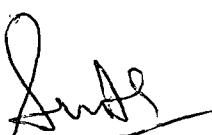
In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes a prayer to direct the respondents to appoint the applicant as Extra Departmental Branch Post Master (EDBPM), Brikchiawas, where he was working since 16.11.91, and to quash and set aside the impugned order dated 14.10.93 (Annexure A/1) and also to quash the selection of Shri Bajrang Lal as EDBPM, Brikchiawas.

2. The facts of the case, as stated by the applicant, are that the applicant was appointed as EDBPM, Brikchiawas, on 16.11.91 provisionally after sponsoring his name by the Employment Exchange, Ajmer, and the applicant was continuing on the post since then. It is stated that the Superintendent of Post Offices, Beawar, issued a circular dated 28.6.93 for selection of EDBPM, Brikchiawas. The applicant made



representation with a prayer to allow him to continue as EDBPM, Brikchawas, but the Superintendent of Post Offices, Beawar, issued ~~xxxxxxxxxxxx~~ an order of termination of services of the applicant dated 14.10.93 (Annexure A/1). It is stated that the applicant is continuously working on the post since 16.11.91, therefore, termination of services of the applicant is in violation of Articles 14 and 16 of the Constitution of India and in violation of the provisions contained in Section 25-F of the Industrial Disputes Act, 1947. It is also stated that the applicant possessed all the requisite qualifications for appointment on the post of EDBPM but the Superintendent of Post Offices, Beawar, has issued notice of selection to outsiders and order of termination, at Annexure A/1, has been issued under Rule-6 of P&T EDA/ (Conduct & Service) Rules, 1964, which is not sustainable in law. Therefore, the applicant filed this OA for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that the applicant was appointed provisionally on the post and the service of the applicant was terminated vide order dated 14.10.93 in terms of Condition No.2 mentioned in the order of appointment. It is stated in the reply that Shri Bhag Chand Soni was removed from service vide order dated 29.11.93, therefore, action was taken by the respondents to make appointment on the post of EDBPM on regular basis and as such the process of selection was started. and Shri Bajrang Lal Tailor was selected on the post of EDBPM, Brikchawas, on regular basis. It is also stated that the applicant was given the order of termination alongwith one month's pay but the applicant refused to accept the same. It is stated that the applicant was appointed provisionally as EDBPM when Shri Bhag Chand Soni was put off duty because a disciplinary case



was pending against him. In the order of appointment, condition nos.2 and 3 were specifically inserted, which are reproduced below :-

"2. The provisional appointment is tenable till the disciplinary proceedings against Shri Bhag Chand Soni are finally disposed of and he has exhausted all channels of department and Judicial appeals and petition etc. (This clause may be deleted if vacancy was caused by the dismissal/removal of an EDA) and in case it is finally decided not to take Shri Bhag Chand Soni back into service till regular appointment is made.

3. Shri Kailash Chand Sen is offered the provisional appointment to the post of EDBPM, Brikchiawas. Shri Kailash Chand Sen should clearly that if ever it is decided to take Shri Bhag Chand Soni back into service, the provisional appointment will be terminated without notice."

It is made clear in the reply that since permanent incumbent Shri Bhag Chand Soni was removed from service, regular appointment was made on the post and Shri Bajrang Lal was selected as EDBPM, Brikchiawas, after following the process of selection on regular basis. It is also stated that the applicant is not having the requisite qualification for the post as he is not Matriculate, hence he cannot be appointed on the post and appointment of Shri Bajrang Lal on the post of EDBPM, Brikchiawas, cannot be said to be arbitrary and against the rules. It is, therefore, prayed that this OA having no merit is liable to be dismissed.

4. Heard Mr.K.L.Thawani, ~~xxxx~~ learned counsel for the applicant, and Mr.K.N.Shrimal, learned counsel for the respondents, and also perused the whole record.

5. Learned counsel for the applicant submits that the applicant was working on the post since 16.11.91 on provisional basis, therefore, the applicant should have been selected on the post of EDBPM, Brikchiawas, when Shri Bhag Chand Soni was removed from service. On the other hand, the learned counsel for the respondents has submitted that when Shri Bhag Chand Soni was removed from service, a notification was issued to



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fill up the post and the Employment Exchange, Ajmer, was requested to sponsor the names and the respondents have considered the names sponsored by the Employment Exchange as well as those who have submitted applications for consideration of appointment on the post of EDBPM, Brikchawas. The respondents thereafter selected Shri Bajrang Lal as he was having the highest merit. We have perused the whole record. The post of EDBPM, Brikchawas, notified on account of removal of Shri Bhag Chand Soni vide Annexure R/1, in which essential qualification for the post has been mentioned as Matriculation or equivalent but admittedly the applicant was not Matriculate. The learned counsel for the applicant has submitted that on the date of provisional appointment the minimum qualification for the post was only 8th Class and on the basis of this the applicant was appointed on provisional basis on 16.11.91. Therefore, his candidature cannot be rejected on the ground ~~xx~~ that he is not Matriculate. In support of his contention, the learned counsel for the applicant has referred AIR 1998 SC 2810 - Union of India and Others v. Ravi Shanker and Another, and RLR 1999 (1) 507 - Rajendra Singh v. State of Rajasthan and Others. We have perused the legal citations, as referred by the learned counsel for the applicant, and also heard the learned counsel for the respondents. Admittedly, as per requisition, the minimum qualification for the post is that a candidate should be Matriculate and that was in consonance with the rules, as amended for this purpose. Therefore, the applicant cannot claim on the ground that at the time of provisional appointment on the post he was having the requisite/ minimum qualifications for the post. The applicant must have been qualified for the post on the date of notification i.e. 24.5.93 but admittedly the applicant was only 8th Class passed.

6. The learned counsel for the applicant has also argued

that Rule-6 of the P&T EDA (Conduct & Service) Rules, 1964 is not attracted in the instant case regarding termination of service of the applicant. We do not accept the contention of the learned counsel for the applicant as the applicant was appointed provisionally as a stop-gap arrangement because Shri Bhag Chand Soni was put off duty and the applicant was appointed with certain conditions mentioned in the order of appointment. It is also very much evident that Shri Bhag Chand Soni was removed from service, therefore, the department has taken a decision to make appointment on the post of EDBPM, Brikchiaras, on regular basis and after due process, selected to Shri Bajrang Lal on the post, which cannot be said to be arbitrary, bad in law or against the rules in any way.

Provisions of Rule-6 of the P&T EDA (Conduct & Service) Rules, 1964 reproduced as below :-

"6. Termination of Services - (a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month:

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

On the perusal of these rules we are not inclined to accept the contention of the learned counsel for the applicant that provisions of Rule-6 of the EDA (Conduct & Service) Rules are not attracted in the instant case. In Superintendent of & Ors.

Post Offices v. E. Kunhiraman Nair Muliyan, 1998 (9) SCC 255, it was held by the Hon'ble Supreme Court of India that

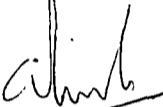


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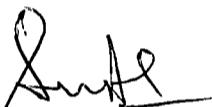
temporary and provisional appointment of EDBPM with stipulation that the same could be terminable at any time without assigning any reason and that that his services could be governed by P&T EDA (Conduct & Service) Rules, termination of such appointment on administrative ground within the time limit, as contained in Rule-6 of the said rules, held termination simpliciter and not stigmatic and hence did not attract the provisions of Article-311 of the Constitution.

7. In view of the above legal position and facts of this case, we are of the considered view that the applicant has no case for interference by this Tribunal and we, therefore, have no alternative except to dismiss this OA.

8. We, therefore, dismiss this OA with no order as to costs.


(N.P.NAWAN I)

MEMBER (A)


(S.K.AGARWAL)
MEMBER (J)