

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 146/93  
T.A. No.

198

DATE OF DECISION 6-10-93

CHANDRA PRAKASH

Petitioner

Mr. S.K. Jain

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS

Respondent

Mr. U.D. Sharma,

Advocate for the Respondent(s)  
No. 1 & 2.

Mr. K.L. Thawanai

Advocate for the Respondent  
No. 3.

CORAM :

The Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

The Hon'ble Mr. P.P. Srivastava, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?  yes
2. To be referred to the Reporter or not ?  Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
( P.P. SRIVASTAVA )  
Administrative Member

  
( D.L. MEHTA )  
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. NO. 146/93

Date of decision: 6.10.93

CHANDRA PRAKASH

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. S.K. Jain

: Counsel for the applicant.

Mr. U.D. Sharma

: Counsel for Respondent no. 1&2

Mr. K.L. Thawani

: Counsel for Respondent no. 3.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. P.P. Srivastava, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Shri Kailash Chandra Pareek was working as Extra-Departmental Branch Post Master (EDBPM) at Barana. He was promoted as Postman. He handed over the charge to one, Mohan Lal Sharma, without informing the Respondent no. 2. Subsequently, vide Annexure A-1, at the instance of the Inspector of Post Offices, the charge was handed over to Chandra Prakash on 10.12.91. Supdt. of Post Offices directed the Inspector of Posts, Kishangarh vide Annexure R-3 that till the temporary or permanent appointment is made he should arrange for a substitute and a competent person should be handed over the charge. There was a further direction that in case competent person is not available then the charge may be handed over Mail Overseer. In pursuance of the said order, the applicant was handed over the charge on 10.12.91. The compliance report was submitted to the Supdt., Post Offices vide Annexure R-4 dated 13.12.91.

2. The services of the applicant, Chandra Prakash, were terminated on 17.2.93 and he was directed to hand over the charge to Shri Balu Ram, vide Annexure R-7. Chandra Prakash handed over the charge to Shri Balu Ram on 17.2.93. The applicant immediately submitted this O.A. before this

Tribunal and submitted that the Postal Department is an 'Industry' and the post of the EDBPM falls within the purview of 'workman' and his verbal termination without notice and without the payment of compensation U/S 25F of the I.D. Act is bad in law and he should be deemed to be in continuous service and his termination should be set aside.

3. Shri Balu Ram and the respondents have filed the reply.

4. We were not satisfied with the reply filed by the Department and on 10.9.93, we wanted to know whether a formal appointment order was issued in favour of Chandra Prakash and if so, what were the terms and conditions. As Mr. U.D. Sharma argued on that day that there is a practice of taking over the charge and handing over of the charge for the post of EDBPM and no formal appointment letters are issued in emergent cases. On that day, he also argued that it should be treated as stop-gap arrangement.. We wanted to know that whether Chandra Prakash was appointed as per rules or not and whether appointments are made in the Department as per rules or not. We also wanted to know if the appointment was given in violation of the rules, then whether any action has been taken against the person who has violated the rules. We wanted to know that which is the rule which provides for taking the work without giving an appointment. However, Mr. Sharma was not prepared to answer the queries made by the Court. We were constrained to say that the dignity of the advocates is not maintained by the Department, may be because of the fact, that there may be some degradation in the professional duties. We directed the CPMG to appear before us in this case as well as in other cases so that he may understand personally that the cases of the Postal Department are not contested properly and the State Exchequer is losing on account of negligence in contesting the cases by the Department. It was also pointed out to Mr. L.C. Ram, CPMG, who appeared

before the Court and informed about the prevalent conditions of the Postal Department in Rajasthan, particularly, in relation to the pending cases and <sup>improper</sup> representation. Mr. L.C. Ram himself felt, after considering the issues, that it is necessary to gear up the Department for proper representation of their cases and he assured the Court that necessary action will be taken against the defaulting officers.

5. This extreme step was taken not only to save the State Exchequer from the loss but also for the betterment of the nation as failure of the communication system leads to the disaster. Today, additional reply with an affidavit, as directed, was filed by the respondent (~~Private~~) and it was submitted that Shri Balu Ram was selected by the authorities, in which cases of six persons were considered. Some astonishing factors came to the notice of the Tribunal that the candidature of Shri Ganesh Chandra who is graduate and who owns a house and is living with his father, has been rejected on the ground that the owner of the house is his father and it is not his personal property. Similarly, the candidature of Suraj Karan who is also a graduate, has been rejected on the ground that he owns a property jointly with family members and it is not a personal property. Thus, the persons who were graduates were deprived from the right of consideration on the ground that they are owning the property with the family members, namely, the father and brothers and they are co-partners and the property is not in their names. Even a person having a better qualification than Balu Ram is not been considered for promotion though he had an individual property.

6. Balu Ram has passed the 9th Class and he also does not own the property individually. In the record, it has been mentioned that <sup>he has</sup> an agricultural land and Balu Ram is a Jat by caste and is having 1/3rd share in

in the land. Then there was no justification for rejecting the cases of those persons who were graduates only on the ground that they were co-partners or they were joint holders of the property. This, we are writing only for the purpose of exposing the proceedings which have taken place at the time of selection of Balu Ram and what has transpired in between can only be inferred. Mr. U.D. Sharma, learned counsel for the Department, submits that the proceedings which have been produced and marked as Annexure R-5 do not disclose the sincere attempt in the matter of the process of selection. However, this should not be made an issue at this stage. We, after perusing the Annexure R-5, are of the view that the selections might have taken place because of the extraneous reasons which can only be inferred and we direct the CPMG to look into the matter and particularly, the Annexure R-5 and to find out what is the position in his Department, and what is prevailing in his Department.

7. As far as the question of Chandra Prakash is concerned, it is an admitted fact that he worked from 10.12.91 to 17.2.93. It is also an admitted position that no notice was served to Chandra Prakash and no compensation has been paid to Chandra Prakash while terminating his services. Even the termination order has not been served. Only oral directions were given and the charge was taken over from him.

8. The first question though not agitated but needs our consideration is about whether the Department can be considered as an 'Industry' or not. Section 2 of the Industrial Disputes Act defines "public utility service". In clause (iii) of Sec.2(n), it has been mentioned that any postal, telegraph or telephone service is a 'public utility service' under I.D. Act. Apart from that one should look to the First Schedule in which 'Banking',

'Services in Bank Note Press, Dewas', 'Currency Note Press' have been included in the First Schedule as "Industry".

'Printing of Currency Notes' is a sovereign function of the State even then it has been included in an "Industry". Apart from that, the very definition of the 'Public Utility Service' in S.2(n)(iii) that 'Postal service is a public utility service under the I.A. Act, goes to show that postal services are ordinarily services which fall within the purview of industrial services and the employees can get the benefit of a workman as defined U/S 2(s) of the I.D. Act.

9. We hold that the termination of Chandra Prakash without the payment of compensation, with a notice, under a verbal order is nothing but an act which is violative of the I.D. Act and, particularly, of the provisions of S.25F. Apart from that, the submissions of the respondents that no appointment order was issued inadvertently has to be looked into in a way that it creates a suspicion in the mind of the Court about the truth of the submissions made by the respondents in their affidavit. Treasury or Accounts Branch will not pass a bill for more than a year without an appointment order or a regular order and the Accounts Section will object if the orders have not been issued. This creates a suspicion, particularly, as the submissions made today are not consistent with the submissions earlier recorded in the proceedings dated 10.9.93. In the result, there is one more factor which we would like to write at the cost of repetition again that the selection process was nothing but a farce. Graduate candidates are rejected on the ground that they are holding property with the family members or jointly and the 9th class passed candidate who was holding the property jointly with his family members was selected and the objection which has been taken in relation to graduate persons has not been in relation to Balu Ram who is only a 9th Class person.

10. In the result, we accept the O.A.; set aside the verbal order of termination dated 17.2.93 and Chandra Prakash should be deemed to be in continuous service from that date, viz. 17.2.93 and he should be handed over the charge again. As far as Balu Ram is concerned, we would not like to pass any order. This is for the appointing authority to pass any order which they may think proper according to the facts and circumstances of the case.

11. The respondents will be at liberty to pass any order, according to law, in respect of Chandra Prakash also, if necessary. The order should be implemented immediately.

12. The respondent nos. 1 and 2 will pay Rs. 500/- as costs.

13. A copy of this order may be sent to the Chief Post Master General, Jaipur for his information and necessary action.

  
( P.P. SRIVASTAVA )  
Administrative Member

  
( D.L. MEHTA )  
Vice-Chairman