

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.

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OA NO. 162/93

DATE OF DECISION
18.3.93

DURGA PRASAD ... Applicant.
Mr.R.N.Mathur ... Counsel for the applicant.

VERSUS

UNION OF INDIA & ORS. ... Respondents.
Mr.K.N.Shrimal ... Counsel for the respondent

CORAM :

THE HON'BLE MR.JUSTICE D.L.MEHTA, VICE CHAIRMAN
THE HON'BLE MR.B.N.DHOUNDIYAL, ADMN. MEMBER.

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

Mr.R.N.Mathur, appearing on behalf of the applicant, has challenged part of the scheme (Annexure-A/1) relating to tenure post. The part under challenge is referred to in para 5 of the scheme which is as under :-

"Subject to the condition mentioned in (4) above, a D.O. PLI shall not be allowed to hold the post for more then a period of 5 (five) yours continuously at a time. An official who has worked for five years as a Development Officer should not be allowed to hold such posts within the next five years. The period of term shall not ~~be~~ extended in any case other than the official who has secured prizes for two continuous years (for getting an effective business of Rs. 75 lakhs) provided such officia~~ts~~ do not reach the age of superannuation or promotion to higher grade as the case may be. In respect of such officers extension upto a period of one year may be given by the Heads of Postal Circles at their discretion. All other castes for extension shall be referred to ~~xxxx~~ this directorate for a decision. The tenure of Development Officer may begin/and at the begining/ close of financial year as far as possible. If any existing Development Officer is to complete his tenure, before the end of September, his tenure may be terminated by the preceeding March so that a fresh tenure appointment may be made at the descretion of the Head of the Circle, if a particular incumbent's performance has been extraordinary good in

which case he may be allowed to continue till the end of next March. If a Development Officer is to complete tenure after September he may be allowed to remain Development Officer till March next."

2. Thus it is provided that a Development Officer, Postal Life Insurance shall not be allowed to hold the post for more than a period of 5 years. Mr. Mathur submits that creating any post with fixed tenure is against the public policy and is against the objects of the Scheme.

3. Mr. Mathur has also cited before us the case of Smt. Maneka Gandhi Vs U.O.I., reported in AIR 1978 SC 597 involving violation of the provisions of Article 21 of the Constitution. Smt. Gandhi ^{was} intended to go abroad and the Government without disclosing any reasons impounded her passport. Hon'ble Supreme Court held that it is a restriction on the free movement of a citizen. In this context, Article 14 was considered with provisions of Article 21 relating to personal liberty. Even in para 56 referred to by Mr. Mathur, there is a reference to the observations made in case of E.P. Royappa Vs. State of Tamil Nadu that "from a positivistic point of view, equality is antithetic to arbitrariness". Mr. Mathur further submits that such arbitrary act is violative of Articles 14 and 16. As held in Ajay Hasia Vs. Khalid Musid Seharwardi (AIR 1981 SC 487) ^{that} every act of the State must be just, right and fair, though the State has liberty to frame the rules, particularly, under Article 309 looking to the conditions which may be necessary for the creation of the post, for the nature of the work, for the efficient running of the scheme or the projects etc. It is for the Government to consider which post should be a tenure post and which post should be a regular post or temporary post. The Government in its wisdom has created this post as a tenure post and has subsequently mentioned therein that in no

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case any person shall continue on the post for a period exceeding 5 years. ~~Creation~~ Creation of the tenure post in this case cannot be said to be discriminatory because the provision applied uniformly to all and after the first three years, extensions are granted on the basis of performances. So equal treatment is given to all the persons who are allowed to hold this post. Apart from that this is not a regular^{ly} promotion post. Promotion of the UDC is always on the channel of the ministerial cadre and the promotional channel is altogether different. We do not agree with Mr. Mathur that the condition of tenure is arbitrary in nature. Sometimes it is necessary that the benefits of the post including the benefits of experience and monetary benefits should be distributed in large number of people and the incentive should be given to them to ~~make~~ make them developmental minded so that even ministerial staff may give up the habit of dealing with the papers in a routine manner. Mr. Shrimal's submission is that the wider the experience to the large number of people the more the society benefits. ~~Apert from~~ ⁱⁿ Mr. Shrimal submits that it is not discriminatory in as much as it applies to all equally without any exception to the general rule. He further submits that creation on the tenure post is prerogative of the Government and the court should not ordinarily interfere.

4. Mr. Mathur submits that the object of the scheme is that the maximum life insurance business should be secured. However this can be achieved by the persons also who are holding the tenure posts. No open market competition is allowed for this post.

5. We do not find any force in the submissions made by Mr. Mathur and the O.A. is rejected summarily with no orders as to costs.

B. N. Dhoundiyal
(B.N.DHOUNDIYAL) 18/3/93
Member (Admn.)

D. L. Mehta
(D.L.MEHTA)
Vice Chairman

Shashi/