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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.  
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Date of Decision: 22.2.94.

OA 78/94

MADAN LAL SHARMA ... APPLICANT.

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).  
HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI R.P. PAREEK.

For the respondents ... ---

PER HON'BLE MR. O.P. SHARMA, MEMBER (A).

Applicant Madan Lal Sharma has filed this application u/s 19 of the Administrative Tribunals Act, 1985, praying that the respondents may be directed to allow the applicant to continue on the post of EDBPM, Mahapura, District Sawaimadhopur and that Annexures A-1, A-2, A-5 and A-6 may be quashed. He has further prayed that the services of the applicant may be regularised.

2. The applicant was appointed as EDBPM, Mahapura Post Office, on 4.3.93. Annexure A-4 is the charge report handing over charge of the post to the applicant on 4.3.93. By order dated 7.2.94 (Annexure A-1) the Superintendent of Post Offices, Sawaimadhopur, (Respondent No.3), passed order appointing one Shri Nand Kishore Soni as EDBPM in place of the applicant. The appointment of the applicant was made as EDBPM, Mahapura, on retirement of the previous incumbent and in response to his application dated 8.3.93 (Annexure A-3). In this application the applicant stated that he had learnt that the previous incumbent of the post was retiring and therefore the applicant had offered himself for being appointed to the said post.

3. Vide Annexure A-5 dated 9/13.7.93 an order was issued by the respondent No.3 stating, inter-alia, that since it was not possible to make a regular appointment to the post of EDBPM,

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Mahapura, the applicant was being appointed to the said post from 4.3.93 to 1.6.93 or till 90 days, whichever is earlier. It was clarified in the said order that the applicant's appointment was provisional in nature and that it will be terminated when regular appointment is made. Annexure A-2 dated 16/21.7.93 is a notification calling for applications for filling up the said post. The applicant did not apply in response to the said notification. The educational qualification mentioned in the said notification for filling up the post is that the candidate should have passed 10th standard examination.

4. The learned counsel for the applicant stated during the arguments that the applicant had been appointed against a post vacated by a retired official. Under the instructions dated 18.5.79 issued by the Department, as far as possible provisional appointment should be avoided and provisional appointment should not be made to fill up vacancies caused by the retirement of E.D. Agents. The instructions continued that in such cases the appointing authority should take action well in time before the retirement of the E.D. Agent to select a suitable successor. Therefore, according to the learned counsel for the applicant, the applicant's appointment, made against a post vacated by a retired official, could not be treated as provisional in nature. He stated that the applicant had not applied for appointment on a regular basis in response to the notification dated 16/21.7.93 (Annexure A-2) because the educational qualification mentioned therein was 10th passed, whereas the qualification prescribed in the rules in Section-3 is 8th standard. He has added that the requirement of 10th passed as the educational qualification is operative from 1.4.93 and not from any earlier date, as per the instructions dated 12.3.93 issued by the department. He has further stated that the applicant fulfils all qualifications required for filling up the post, whereas the person sought to

be appointed against the applicant is not a resident of Mahapura and he is already working as an E.D. Agent at some other Post Office. He has also drawn our attention to the judgement of the Tribunal in the case Bishnukant Jha Vs. Union of India & Ors., reported at (1991) 15 ATC 15, wherein the facts, according to him, are almost identical with those of the present case. In Bishnukant Jha's case, the Tribunal had held that although the appointment of that applicant was mentioned as provisional, it was held to be perpetual. He has, therefore, prayed that keeping in view the facts and circumstances of the case as also the judgement referred by him, the applicant may be declared to be a regular appointee to the post of EDBFM, Mahapura and he may be allowed to continue on the said post.

5. We have carefully considered the facts on record and have heard the learned counsel for the applicant. Initially there was no formal appointment order appointing the applicant to the post of EDBFM, Mahapura. The formal order was issued on 9/13.7.93 (Annexure A-5), in which it is mentioned that the applicant's appointment was from 4.3.93, the initial date of appointment, to 1.6.93 or for a period of 90 days, whichever was earlier. It was made clear in the said order that the appointment was provisional and was liable to be terminated when a regular appointment was made. The argument that since the Department's instructions stated that provisional appointment should not be made against the post vacated on retirement the applicant's appointment should be treated as on a regular basis, is not tenable. It is very clear from the reading of these instructions that these are directory in nature. The respondents had issued notification (Annexure A-2) inviting applications for filling up the post on regular basis. The notification is dated 16/21.7.93 and the applications were invited till 17.9.93. The applicant did not apply for the post because, according to


him, the educational qualifications prescribed were 10th passed whereas the requirement as per the rule was that the applicant should have passed 8th standard examination. However, the rules also make clear that 10th passed candidates would be preferred. By prescribing higher qualification the respondents have sought to fill up the post by better qualified candidates. We do not see any legal hurdle in their being able to do so. Moreover, the learned counsel for the applicant himself concedes that from 1.4.93 the educational qualification required for filling up the post was Matriculation. His argument is that since the applicant had been appointed on 4.3.93 initially, the higher qualification was not applicable to him. However, the point is <sup>that</sup> on 4.3.93 the applicant's appointment was provisional in nature and the regular appointment was sought to be made after 1.4.93 and by issuing a notification (Annexure A-2) which was issued after 1.4.93. The respondents were justified in mentioning 10th passed as the educational qualification required for filling up the post. A copy of this notification was also sent to the Mahapura Post Office. The applicant was presumed to be aware of this notification.


6. The applicant's further grievance is that the respondents should have called for names from the Employment Exchange before filling up the post. However, it is to be noted that the applicant's own appointment was made on the basis of a simple application made by him, not in response to any notification or advertisement. The applicant seeks regularisation of his own appointment which was made in this manner and without being sponsored by the Employment Exchange.

7. We have carefully gone through the judgement of the Patna Bench of the Tribunal in Bishnukant Jha's case, cited by the learned counsel for the applicant. The facts of this case are clearly distinguishable from those of the applicant

before us. In para-3 of their judgement the Patna Bench have stated that the appointment of the applicant was made on the vacant post for which nominations have been called for from the Employment Exchange and it was after due enquiries, verifications and interviews that the applicant was found fit to be appointed and was in fact so appointed. In the instant case, it is not the applicant's case that his name was sponsored by the Employment Exchange or that a further process of selection by way of enquiries, verifications or interviews was conducted before appointing him to the said post.

8. On a careful consideration of the matter, we do not find any force in this application, which is dismissed at the admission stage, with no order as to costs.

  
( O.P. SHARMA )  
MEMBER (A)

  
( GOPAL KRISHNA )  
MEMBER (J)