

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 3/8/2007

OA 26/95

Bhanwar Lal Sharma, Ex EDEPM, Post Office Udaipur Kalan,
Ajmer.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Post & Telegraph, New Delhi.
2. Sr.Suptt., Postal Office, Ajmer Division, Ajmer.
3. Shri Rajendra Prasad Sharma s/o Shri Surya Narain Sharma r/o Udaipur Kalan, District Ajmer.

... Respondents

CORAM:

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

HON'BLE MR.H.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.S.K.Jain

For Respondents No.1 & 2

... Mr.Hemant Gupta, proxy

proxy counsel for Mr.M.Rafiq

For Respondent No.3

... Mr.C.B.Sharma

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 quash the order of termination and a direction to the respondents to treat the applicant continuous in service on the post of EDEPM with all consequential benefits with interest @ 18% p.a.

2. In brief the facts of the case, as stated by the applicant, are that the post of EDEPM, Udaipur Kalan, District

Ajmer, fallen vacant with the respondents and the applicant was appointed on 21.9.93. The applicant took the charge of the post on the same day but on 4.2.94, on the direction of the respondents, the charge was given to one Shri Satya Narain Sharma. It is stated that services of the applicant were terminated malafidely by an oral order on the recommendations of the Inspector, Post Offices. Therefore, the applicant could not work w.e.f. 4.2.94 to 20.2.94. Again, the applicant was given charge of the post on 21.2.94 and he worked till 22.7.94. It is stated that notification dated 28.9.94 was issued for regular selection on the post of EDBPM, Udaipur Kalan, and the applicant also submitted an application dated 17.10.94 but he was not given appointment. It is stated that the applicant completed more than 240 days service as EDBPM, Udaipur Kalan, therefore, termination of the services of the applicant without following the provisions of Section 25-F of the Industrial Disputes Act was illegal and against the provisions of law. It is stated that as per the instructions contained in the letter dated 24.10.96 it was incumbent upon the respondents to give priority to the applicant as the applicant was in service since more than an year and selection of respondent No.3, Shri Rajendra Prasad Sharma, could not have been done as he was having no experience of service as EDBPM. Therefore, the applicant filed this OA for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant was engaged as a substitute vice Shri Ramesh Chand Sharma in the leave arrangement at the risk and responsibility of the regular incumbent. Therefore, the applicant has no right to the post. It is also stated that when vacancy arose on account of promotion of Shri Ramesh Chand Sharma, a

notification was issued for regular selection on the post of EDPFM, Udaipur Kalan. Name of the applicant was also sponsored by the Employment Exchange, Ajmer, alongwith others and Shri Rajendra Prasad Sharma, respondent No.3, was selected strictly in accordance with his merit. It is further stated that no weightage can be given of the experience gained by the applicant and provisions of Section 25-F of the Industrial Disputes Act are not applicable in the instant case as the respondent department is not an industry. Therefore, the applicant has no case and this OA is devoid of any merit and liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that the applicant was in service and worked for more than an year. Therefore, as per the instructions contained in the letter dated 24.10.86 priority should have been given to the applicant in comparison to respondent No.3, who was not in service at all at the time of applicant's selection. On the other hand, the learned counsel for the respondents has argued that the applicant has worked on substitute basis which was merely a stop-gap arrangement during the leave period. Therefore, the applicant is not entitled to any weightage of the experience gained by him as substitute.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. In D.M.Nagesh v. Assistant Superintendent of Post

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Offices, Full Bench of the CAT, Bangalore Bench held that the decision of Full Bench given in G.S.Parwati's case, which provides for weightage to be given for the experience gained by E.D.Agents appointed as substitute or on provisional basis in the matter of employment cannot be sustained and accordingly over-ruled and E.D.Agents are not entitled to the benefit of circular dated 6.6.88 which provides for preference to E.D.Agents completing the service of 240 days or more in an year.

8. In the instant case, the applicant had worked in two spells on substitute basis and substitute has no right to the post. Moreover, Full Bench of CAT, Bangalore, has over-ruled the order passed in Parwati's case and held that E.D.Agents are not entitled to any weightage of experience if rules do not provide for.

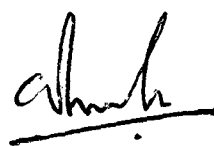
9. The learned counsel for the applicant has also argued that provisions of Section 25-F of the Industrial Disputes Act were not followed before terminating the services of the applicant and he has referred All India Radio v. Santosh Kumar and Another, (1998) 3 SCC 237, On the other hand, the learned counsel for the respondents has argued that the respondent department is not an industry. The applicant was merely working as substitute in leave arrangement only. Therefore, the provisions of Section 25-F of the Industrial Disputes Act cannot be attracted in the instant case.

10. In Union of India and Another v. Kamlesh Kumar Bharti, (1998) 9 SCC 727, Hon'ble the Supreme Court has held that Post Office is not an industry. Therefore, in case of termination of service of an Extra Departmental Delivery Agent provisions

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of Section 25-F of the Industrial Disputes Act are not applicable. In the instant case, the applicant was engaged on substitute basis in leave arrangement only. Therefore, provisions of Section 25-F of the Industrial Disputes Act are not applicable at all. Moreover, selection of Shri Rajendra Prasad Sharma, respondent No.3, on the post of EDBPM is on the basis of merit, which has not been challenged in this OA by alleging that the said selection was not on the basis of merit. As the applicant is not entitled to any weightage of the experience gained by him as substitute E.D.Agent and the provisions of Section 25-F of the Industrial Disputes Act are not applicable in the instant case as the Department of Post and Telegraph is not an industry, as per the verdict given by the Hon'ble Supreme Court, we therefore do not find any merit in this OA and this OA is liable to be dismissed.

11. We, therefore, dismiss this OA having no merits. No order as to costs.


(N.P.NAWANI)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)