

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 29/06/04

Original Application No.378/2002.

Hazari Lal Saini S/o Shri Moti Ram, aged about 27 years, resident of Village Kaleri Dhani Post Budana via Baggad (Jhunjhunu), last employed on the post of Extra Departmental Branch Post Master Desoosar, Extra Departmental Branch Post Offices Desoosar (Jhunjhunu).

... Applicant.

versus

1. Union of India, through its Secretary to the Government of India, Department of Posts, Ministry of Communications, New Delhi 110 001.
2. Post Master General, Rajasthan Western Region, Jodhpur.
3. Superintendent of Post Offices, Jhunjhunu Postal Division, Jhunjhunu.
4. Shri Pankaj Kumar S/o Shri Ummed Singh, resident of Village and Post Pratap Pura via Jhunjhunu and working as Gramin Dak Sevak Branch Post Master Desoosar District Jhunjhunu.

... Respondents.

Mr. C. B. Sharma counsel for the applicant.
Mr. Arun Chaturvedi counsel for the respondents.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :

(per Hon'ble Mr. A. K. Bhandari)

This Original Application has been filed under Section 19 of the Central Administrative Tribunals Act,

1985 to challenge the order by which applicant's appointment to the post of Gramin Dak Sevak has been terminated without consideration on his handicapped status. The exact prayer reads as under :-

"(i) That the entire record relating to selection process with the earlier selection process be called for and after perusing the same impugned letter dated 21.06.2002, Annexure A/1 with the memo dated 2/1/2002 (Annexure A/2) selecting and appointing the respondent NO. 4 to the post of Gramin Dak Sevak Desoosar, may be declared illegal and the same may be quashed. The respondents may be further directed to treat the applicant as selected for the said post and to issue formal appointment order with all consequential benefits.

(ii) That the respondents be further directed to pay, pay & allowances from the date of joining of respondent No.4 as his selection is arbitrary, illegal and not justified and applicant has been deprived from his legitimate claim without any reasons by quashing any appointment order issued by respondent No.3 in favour of respondent No.4.

(iii) Any other orders/direction of relief may be granted in favour of the applicant as deemed just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

2. The brief facts of the case as enumerated in the application are that the applicant was appointed on the post of Extra Departmental Branch Post Master (EDBPM, for short), Desoosar, on 24.07.2000 and had relieved Mail overseer Bhagirath Singh on 25.07.2000 on this post. Copy of charge report is annexed as Annexure A/3. He worked in this post to the satisfaction of respondents which is evident from various inspections by Senior officers who gave him satisfactory report.

3. That respondents issued advertisement dated 05.10.2000 to fill up the same post permanently and in the Advertisement Annexure A/4 it was stated that the post is reserved for OBC community and preference is to be given to handicapped person. That in pursuance of this advertisement, applicant submitted required

documents alongwith the certificate of handicapped person dated 20.07.1996 (Annexure A/5). The applicant believed that he was at Sl. No.1 in the selection process as he fulfilled all the conditions including having certificate proving his handicapped status, he was expecting that the appointment would be given to him. But respondent No.3 did not issue formal appointment order and instead again notified the post vide memo dated 02.01.2002 (Annexure A/2), in which the clause giving preference to handicapped person has been deleted as mentioned in the earlier notification. The applicant continued to work in the hope that being a handicapped person necessary formal appointment order will be issued in his favour. He was, however, surprised when during his absence on leave on 21/22.06.2002, Respondent No.3 selected Respondent No.4 who is not a handicapped person and instructed him to work on the post and he simultaneously invoking Rule 8 of Gramin Dak Sevak (Conduct and Employment) Rules, 2001 terminated applicant's services vide order dated 21.06.2002 (Annexure A/1).

4. That Respondent No.3 ought to have finalised the selection on the basis of first notification (Annexure A/4) by which the post had been shown reserved for handicapped persons and applicant is the only suitable person for that category but subsequent notification has been issued with the intention to harm the applicant's interest. As such the action is arbitrary. In the grounds it is further stated that since he had worked satisfactorily for about two years and he possessed complete knowledge of the departmental work, he should have been considered more suitable for the post. The action of the respondents is violative of Provisions of Constitution of India as the applicant has been deprived of his legitimate claim without any reason. That the respondents could not have abruptly changed the pre condition of handicapped category and they could also not have invoked the Rule 8 of Gramin Dak Sevak (Conduct and Employment) Rules 2001, as formal appointment in favour of applicant was never

issued. That these rules came into force in April 2001 whereas the applicant has been holding the post from 25.07.2000. For this reason these rules do not apply to him.

5. The respondents have given detailed reply, giving brief history of the matter. It is stated that Shri Jai Singh, BPM, Desoosar had committed irregularities in payment of several money orders during June to July 2000 and also absented himself from 21.07.2000. Complaints in this regard were inquired into and the charge of Branch Office Post temporarily handed over to Shri Bhagirath, Mail Oversear, Jhunjhunu. On receipt of Enquiry Report, Shri Jai Singh, BPM, was put under put off duty vide office letter dated 25.07.2000 (Annexure R/1). In view of put off duty orders, Shri Bhagirath, Mail Oversear, temporarily engaged Shri Hazari Lal, E.D.B.P.M. (the applicant) and made over the cahrge of the post of BPM to him on 25.07.2000 (already annexed as Annexure A/3). This appointment of the applicant was provisional stop gap arrangement on temporary basis. That notification dated 5.10.2000 (Annexure A/4) was issued to temporarily fill the vacant post of EDBPM, on which applicant was engaged by Mail Oversear Bhagirath Singh. That no permanent arrangement for this post could be made till the finalisation of disciplinary case against original incumbant Jai Singh. Local Employment Exchange were also requested to send names and they sent two names. But when contacted, no response from both these persons were received but two applications were received from open market, one of which was of Shri Hazari Lal Saini i.e. the Applicant. However, as per instructions of the Directorate dated 19.04.1998, three applications are necessary for selection whether it is for temporary or for permanent arrangements. In these circumstances, Shri Hazari Lal Saini who was working on temporary basis was allowed to continue. Meanwhile the disciplinary action against Shri Jai Singh, BPM, who ^{was} put ~~up~~ under put off duty was initiated

and after completion of enquiry, penalty of removal from service was awarded vide order dated 26.07.2001. During this entire period, no regular appointment could be made as the post had to be kept vacant due to disciplinary case against Shri Jai Singh, BPM. Only after the expiry of appeal period of Shri Jai Singh, notification for regular appointment was issued vide notification dated 02.01.2002. Copies of this were given to Sarpanch, BPM, DESOOSAR, SPM, Bagar, Head Master, Government School DESOOSAR, Samaj Kalyan Adhikari, Jhunjhunu and Employment Exchange, Jhunjhunu for sponsoring the candidates with the last ^{date} of application as 04.02.2002. In this notification, the post was reserved for OBC category as the same was reserved in the previous notification also. But in previous notification it was mentioned that preference will be given to physically handicapped was found to be contrary to instructions of DG Post, New Delhi, contained in order dated 22.04.1994 (Annexure R/4) and reiterated on 28.06.2002 (Annexure R/5) according to which no specific post could be reserved for this category. Hence the reservation of OBC was kept intact but words "Preference to handicapped" was deleted. In response to this notification 11 applications were received, 8 of which were prima facie complete in all respects including documents of property and income. After verification of the same, Shri Pankaj Kumar who had secured 51.09% of marks in Matric was selected for the post. The applicant was also put on the panel but he having secured only 39.27% marks he could not be selected. After this selection, temporary services of the applicant were terminated vide memo dated 21.06.2002, under Rule 8 of Gramin Dak Seyak (Conduct and Employment) Rules 2001. Copies of these rules are annexed as Annexure R-6 and R-7. As per these rules the applicant was paid one month TRCA. The provisional appointment of the job given to the applicant does not confer any right to regular appointment. This legal position has been reiterated before CAT, Jaipur Bench, Jaipur, in OA No. 423/2001 and OA NO. 339/2001 (Annexure R/8 & R/9).

6. In the parawise reply, the same facts are reiterated. It is mentioned in the reply that the appointment of the applicant was basically a temporary stop gap arrangement. The charge report annexed with the application does not confer any legal right to him. Regarding notification dated 05.10.2000 (Annexure A/4) in which preference for handicapped person is mentioned was a notification for making temporary arrangement as no regular arrangement could be made for the post which had fallen vacant due to disciplinary action against Shri Jai Singh BPM and the applicant continued to work on temporary basis. That as per the terms of Provisional appointment order dated 05.09.2000 (Annexure R/3), the services of the applicant were to be terminated when regular appointment was ~~made~~ finalized. It is further stated that the termination of applicant's service under Rule 8 of Gramin Dak Sevak (Conduct and Employment) Rules 2001 is perfectly legal, since no preference could be given on the basis of temporary service and since the open selection had to be made on the basis of comparative merit of those who applied. Shri Pankaj Kumar, Respondent No.4, having obtained higher percentage of marks i.e. 51.09% in Matriculation than the applicant who scored 39.27% and merit being sole criteria for selection, the appointment of Respondent No.4 is perfectly legal. Since preference to handicapped person clause was not mentioned in the subsequent notification on the basis of policy of the Department, non consideration of applicant's handicapped status is also as per rules. On the basis of these, the grounds of arbitrariness, illegality are denied.

7. Parties were heard at length during arguments.

8. Learned counsel for the applicant reiterated his pleadings and stated that preference ought to have been given to him due to his handicapped status over the other candidates all of whom were of OBC community but were not handicapped.***** That the respondents could not change this pre condition of handicapped status in the subsequent notification. On the contrary, learned counsel for the

respondents emphasised that in terms of clear instructions contained in Annexure R-4 dated 22.04.1994 and Annexure R-5 dated 28.06.2002, no preference for handicapped persons could be mentioned in the notification for filling the permanent post and that Respondents No.4 having obtained higher percentage of marks has been given the appointment.

9. After careful consideration of the pleadings and the arguments, we are of the considered opinion that no irregularity has been committed in denying the appointment to the applicant by not considering his handicapped status and on the basis of the fact that he performed his duty satisfactorily during his tenure of work on temporary basis. The Circular letters dated 22.04.1994 (Annexure R-4) and 28.06.2002 (Annexure R-5), clearly state that reservation or preference to handicapped persons could not be given in view of Government's policy but as far as possible the representation of physically handicapped persons should be ensured in Group C & D posts. Reservation has, however, been provided to the OBC which is as per the reservation policy, but giving benefit of reservation on the basis of handicap status would have been violative of Govt. Policy. The Respondent No.4 undisputedly had higher percentage of marks in the matriculation examination and due to this he could not be overlooked only because he was not a handicapped person. In terms of appointment letter of the applicant dated 05.09.2000 which was to make a provisional temporary stop gap arrangement and in which it is very clearly stated that the same will not give applicant any claim to regular appointment and that his appointment will come to an end when regular appointment for the post is made, make respondent action legal in terminating the services of the applicant. Lastly the procedure laid down in Rule 8 of Gramin Dak Sevak (Conduct and Employment) Rules 2001 has been rightly followed while terminating the temporary services of the applicant and to say that

this Rule does not apply to him is not correct.

10. On the basis of above observations, the Original Application is dismissed with no order as to costs.

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(A. K. BHANDARI)
MEMEBR (A)

W L C
(M. L. CHAUHAN)
MEMBER (J)