

7

16

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 89 of 1998 of

DATE OF DECISION 8.12.00

Shri Nalini Prasad Sarmah Baruah, PETITIONER(S)

Mr. B.K. Sharma, ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors. RESPONDENT(S)

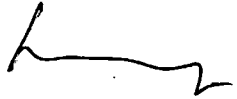
Mr. B.S. Basumatary, Addl. C.G.S.C., ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 89 of 1998.

Date of decision : This the 8th day of December, 2000.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Shri Nalini Prasad Sarmah Baruah,
resident of village Patidarang,
P.O. Deomornoi,
District-Darrang

Applicant

By Advocate Mr. B.K.Sharma.

-versus-

1. The Union of India,
represented by the Secretary to the
Government of India, Ministry of
Communication, Department of Posts,
New Delhi.
2. The Director General,
Posts, New Delhi.
3. The Chief Postmaster General,
Assam Circle, Meghdoot Bhawan,
Guwahati-1.
4. The Superintendent of Post Offices,
Darrang Division,
Tezpur.
5. The Sub-Divisional Inspector of
Post Offices, Mangaldai Sub-Division,
Mangaldai.

..Respondents

By Advocate Mr. B.S.Basumatary, Addl. C.G.S.C.

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

The sole controversy is relatable to the order of removal from service of the applicant vide Annexure-6 order No. B-2/Staff/Gen/98 dated 22.4.1998. The father of the applicant late Satya Prasad Sharma Baruah was working as Cash Overseer at Mangaldai Head Post Office under the respondents. Satya Prasad Sharma Baruah died in harness on 10.10.1992 leaving behind his wife, four sons including the

applicant and three daughters. The applicant applied for compassionate appointment under the respondents as per the scheme prevalent in the department. The application was duly forwarded. It appears from the records that the Selection Committee in fact upon considering the case of the respective applicants recommended in its meeting dated 8.11.1993 for appointment under relaxation of normal rules in Group 'D' cadre about thirty six candidates. In the said list the name of the applicant Sri Nalini Prasad Sharma Baruah at serial No. 28 also surfaced. The recommendation of the committee was duly approved by the competent authority. As per the recommendations the Divisional Heads were asked to engage them in leave or stop gap temporary vacancy. It was also directed to the Divisional Heads for engaging them on daily wage basis against leave vacancies/vacant posts till they were regularly allotted to the units under relaxation vacancy. The applicant alongwith four others were found suitable and their names had been approved for appointment under relaxation of normal rules in Group D cadre vide C.P.M.G., Guwahati letter No. APMG(S) Confidential - 1/93 Relaxation dated 7.12.1993 and they were allotted to the unit shown against their names to engage them in leave or stop gap temporary vacancy of Departmental/E.D. post till they were allotted by Circle Office to the Division. The order further indicated that those persons were to be made to understand that they would not be entitled to claim any seniority or pay benefit in future for such short term engagement. The applicant was accordingly allotted to the S.D.I.(P). He worked as such in the cadre of Group 'D' till he was posted as Mail Peon cum Packer vide order dated 16.11.1994. While he was serving at Tangla as Mail Peon by the impugned order dt. 22.2.98 he was removed from service with effect from 23.4.98. Hence the application challenging the order of removal is arbitrary.

Contd..

2. The respondents in its written statment stated that the applicant was ordered to work as Mail Peon cum Packerman, Kheirabari. The respondents stated that as per his appointment letter the applicant could not claim seniority/ pay benefit in future and his engagement in Group D cadre was to be terminated any time. He was engaged in Group D cadre as per instructions of CPMG's letter No. APMG(S)/Confidential-1/93-Relaxation dated 7.12.93 and the termination order was also issued as per instructions contained vide CPMG, Guwahati letter No. Staff/16-Misc./97 dated 20.2.98. The respondents stated that the applicant had to be removed from service in view of the direction contained in letter dated 28.2.98. Apparently there is no dispute as to the approval for appointment under relaxation of normal rules in Group D cadre. There is also no dispute in the engagement of the applicant on leave or stop gap arrangement till he was allotted in circle office as per the policy of the respodents. By a communication dated 30.3.1998 addressed to all SDIPOs, Darrang Division which referred to the communication of the CPMG, Assam Circle, Guwahati letter No. Staff/16-Misc/97 dated 20.2.98. The aforementioned letter contained the mesage that the approved candidate in respect of relaxation appointment should not be engaged unless and until clear vacancy was secured. Therefore the approved candidates engaged temporarily, if, any was to be removed immediately. The direction contained in the memo dated 20.2.98 was on the basis of the letter issued by the Superintendent of Post Offices, Darrang Division dated 11.2.1998. The said memo infact was the order issued by the Superintendent of Post Office, Darrang Division to engage Shri Sushil Chandra Deka, Ex. P.A. in any leave vacancy or stop gap vacancy till he was appointed against regular

Contd..

vacnacy. The full extracts of the aforementioned order is reproduced below :

Shri Sushil Ch. Deka, son of Late Satish Ch. Deka, Ex-PA, Tezpur HQ has been approved for appointment under relaxation of normal rules in Postman Cadre vide C.P.M.G., Assam Circle, Guwahati Memo No. Staff/16-Misc/97 dtd. 3.2.98 and he is allotted to the Unit of Postmaster, Tezpur HO to engage him in any leave vacancy or Stop gap temporary vacancy till he is appointed regularly. Shri Deka should be given clear understanding that he cannot claim any seniority/pay benefit in future for such short short term engagement."

A copy of the aforementioned memo dated 11.2.1998 was sent to the Postmaster, Tezpur and to the CPMG, Assam Circle, Guwahati. Pursuant to the aforesaid information the full instruction was issued by the CPMG vide Memo No. Staff/16-Misc/97 dated 20.2.98, which reads as follows :

"I am directed to inform you that appointment under relaxation of normal recruitment rules is restricted to 5%. As such arrangement for short period is ordered vide your above cited letter will create some problem. You are therefore requested not to make such arrangement in future unless there is any clear vacancy for absorption of the candidate over the arrangement made vide your letter u/r may be treated as cancelled"

From the facts narrated above it thus emerges that the sole ground for removal of the applicant was the instruction on the basis of the instructions issued by the aforementioned memo dated 20.2.98. Apparently the aforementioned CPMG's instruction was relatable to the case of of Sushil Ch. Deka and did not bear any nexus to the appointment of the applicant. The engagement of the applicant alongwith others were made by the respondents after completing the necessary exercise for such engagement through the recommendation CSC. The recommendation of the CSC was approved for absorbing in the future vacancies as per order of Directorate letter dated 30.7.93 till they were finally absorbed in regular Group D posts. The respective Divisional Heads were also advised to engage

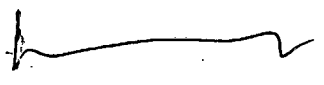
Contd..

137

them in leave or stop gap temporary vacancies of the department till they were allotted by C.O. to units accordingly as and when such vacancy arises. Such engagement by itself was not conferred the pay benefit in future.

3. In the facts and circumstances of the case the removal of the applicant was unjustified. The grounds relied for removal of the applicant therefore cannot be legally sustained. For the reasons mentioned above the order of removal of the applicant issued under letter No. B-2/Staff/Gen/98 dated 22.4.98 is liable to be set aside accordingly the order of removal of the applicant from service dated 20.2.98 (Anexure-6) is set aside. The applicant shall now be reinstated in service forthwith with full back wages.

4. The application is allowed to the extent indicated above. However, there shall be no order as to costs.


(D.N. CHOWDHURY)
Vice-Chairman

trd