

(2000) 08 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 45730 of 1999

Chief Post Master General in Karnataka, Bangalore

APPELLANT

Vs

H.N. Dayananda

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 9

Citation : (2000) 8 KarLJ 142

Hon'ble Judges : Mrs. Manjula Chellur, J;G. C. Bharuka, J

Judgement

G.C. Bharuka, J.-The present writ petition has been filed against the order of the Central Administrative Tribunal which has virtually granted the status of permanent appointee to the respondent though admittedly he was given appointment on the post of Extra Departmental Branch Post Master on provisional basis and as a stop gap arrangement because the regular incumbent Sri B. James was put off duty in terms of Rule 9 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (in short "the Rules").

2. It is a matter of record that the permanent incumbent to the post in question was put off duty because he was facing disciplinary proceedings. The Government instructions contained in D.G.P. and T Letter No. 43-4/77-Pen, dated 18-5-1979 read with Circular No. 19-34/99-ED and Trg., dated 30-12-1999 clearly stipulate appointment of provisional Extra Departmental Agents inter alia on the following grounds.- "(i) as far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor;

(ii) wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the

appointment will be terminated on expiry of the specified period that he will have no claim for regular appointment. Where a new Post Office is opened or where a new post is created or where an ED Agent dies while in service or resigns from his post and it is not possible to make regular appointment immediately, a provisional appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure-A).

(iii) where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment."

3. In the above circumstances, the respondent herein was given provisional appointment by the Senior Superintendent of POs under letter dated 24-6-1997 clearly indicating that his appointment as ED BPM shall be in the nature of contract and shall be liable to be terminated by informing in writing as per the Rules. Subsequently, regular ED BPM Mr. James was dismissed from service on 2-12-1997. Accordingly, the respondent was intimated by letter dated 5-6-1998 (Annexure-D) that since regular services of ED BPM Mr. James has been terminated therefore the vacancy is to be filled up by following the regular process of recruitment. It was also intimated to him that his services will be terminated after selection of a suitable candidate for the post in question. Therefore, the vacancy was notified on 11-6-1998 under Annexure-C. But, immediately thereafter the respondent called in question the communication made to him under Annexure-D and notification at Annexure-C virtually claiming that he is entitled to be regularised on the post since he possessed all the requisite qualification for the same except that relating to adequate means of income from landed property or immovable assets. The Tribunal on consideration of the submission addressed to it by the contesting parties in paragraph 13 gave the following direction.

"In the result, we allow the application in part and direct the respondents to continue the applicant as EDBPM Sillvapura Post Office and not to terminate his service only on the ground that he does not have adequate means of livelihood as derived from landed property or immovable assets held in his own name."

4. So far as the eligibility criteria based on income and livelihood is concerned, it is engrafted in the method of recruitment prescribed by the Central Government as found in Section IV of the Swamy's Compilation of Service Rules for Postal ED Staff. It reads as under:-

"3. Income and ownership of property: The person who takes over the agency (EDSPM/EDBPM) must be one who has an adequate means of livelihood. The person selected for the post of EDSPM/EDBPM must be able to offer space to

serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business premises such as shops, etc., may be preferred)."

5. The validity of the above eligibility criteria was examined and upheld by the Punjab and Haryana High Court in the case of *Union of India v V. Premchand*, C.W.P. No. 15356 of 1997, DD: 23-3-1998, by holding that.- "A careful reading of the qualifications and the contents of the letter issued by the Government of India show that the property qualifications prescribed for recruitment of ED BPM is an essential and mandatory qualification. The tenor the language used in the rules does not indicate that the rule making authority had intended this qualification to be directory or only a preferential qualification. The letter dated 6-12-1993 issued by the Government of India also does not give any such indication. Therefore, it must be held that the Tribunal has erred in holding that the provision regarding "adequate means of livelihood" is not an essential pre-requisite but is only a preferential qualification. Any other interpretation of the letter issued by the Government of India would be contrary to the rules regulating recruitment to the service."

6. Even otherwise, the Supreme Court in the case of *Union of India v Kameshwar Prasad*, (1997)11 SCC 650, after tracing out the history regarding appointment of Extra Departmental Agents, in para 2 has held that.- "The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose (See Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department p. 1)".

7. So far as the constitutionality of the Rules are concerned, the same was upheld by the Apex Court in the above case by clearly holding that-

"The Rules lay down a complete code governing the service and conduct of Extra Departmental Agents including proceedings for taking disciplinary action against them for misconduct."

8. Coming to the facts of the present case, we find that Tribunal has interfered with the regular process of recruitment for the post in question at a premature stage virtually stalling the process of regular appointment to the post as per the Rules. If the respondent felt that he was eligible for appointment to the post, then he ought to have made an application pursuant to Annexure-C and faced the process of appointment by competing with the other eligible candidates. In

the above view of the matter, we find it difficult to sustain the order for the Tribunal.

9. Accordingly, the impugned order dated 8-6-1999 passed by the Tribunal in O.A. No. 313 of 1998 is quashed. The petitioner is permitted to go ahead with the recruitment process to the post in question as per the Rules.

10. The writ petition is accordingly allowed but without costs.