

(2017) 04 BOM CK 0064
In the Bombay High Court
Case No : 1873 of 2017

Shri Vaibhav N. Tambadkar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Citation : (2017) 04 BOM CK 0064

Hon'ble Judges : V.K.Tahilramani, M.S.Karnik

Bench : DIVISON BENCH

Advocate : Vicky A.Nagrani, ?Anjali Helekar, P. Khosla

Judgement

1. Rule. By consent of the parties, Rule is made returnable forthwith and the matter is heard finally.
2. The petitioner's challenge in this Petition is to an order dated 16/09/2016 passed by the Central Administrative Tribunal, Mumbai (for short "Tribunal") whereby the Original Application filed by him came to be dismissed.
3. The petitioner claims to belong to Other Backward Class (for short "OBC") category. In the residential premises that petitioner owns, a branch post office is housed since prior to 09/04/2013. According to the petitioner, he is eligible and qualified to be appointed as a Gramin Dak Sevak Shakha Dakpal (for short "GDS"). The post of GDS at the said branch post office was reserved for OBC candidate and one Shri Anant Ramchandra Mhatre was working on the said post. After

promotion of Shri Anant Mhatre, the petitioner was appointed in his place with effect from 09/04/2013.

4. It is further the case of the petitioner that the respondents published a public notice / notification dated 15/02/2014 inviting applications from the candidates belonging to ST category to fill up the said vacant post of GDS on regular basis although the said post was previously reserved for OBC candidate. The roster point was not correctly applied and in fact the reserved post was deliberately shifted to ST category only with a view to deprive the petitioner from the benefits of the said post. The petitioner, therefore, challenged the said notification dated 15/02/2014.

5. The respondents filed a detailed reply opposing the Original Application. According to the respondents, the notification was issued to fill up the post of GDS on regular basis by issuing an advertisement. According to the respondents, the petitioner was engaged as GDS purely on temporary basis and as stop-gap arrangement to run the branch post office, Sudkoli for rendering services to the villagers. The impugned notification was issued to fill up the said vacant post through direct recruitment by inviting applications from the eligible candidates from open market as per Recruitment Rules. The impugned notification was issued and the post was shown reserved for ST category by following the roster point. There was backlog of ST candidate employees and therefore a decision was taken to allot the said post to ST category. No letter of appointment was issued to the petitioner and as the petitioner was not appointed by the regular mode of appointment in accordance with the Rules, the respondents are justified in issuing notification.

6. We have gone through the impugned order passed

by the Tribunal. The Tribunal by the impugned order was pleased to dismiss the Original Application. Learned Counsel for the petitioner urged that since his appointment on 09/04/2013 by virtue of interim order passed by the Tribunal, he completed 3 years of service on 08/04/2016 whereupon his services ought to be regularised in accordance with the policy of the respondents. The said contention raised by the petitioner can only be stated to be rejected. The notification was issued on 15/02/2014 for filling up the post of GDS on regular basis as per the Recruitment Rules. The petitioner continued only under interim orders of the Tribunal. Assuming that the petitioner is entitled to the benefit of the guidelines, but the same can only be in a case where the petitioner has completed 3 years of continuous service with the respondents in the regular course but surely not under the interim order of the Tribunal. Continuation in service of the petitioner under the interim order cannot enure to the benefit of the petitioner so as to facilitate a back door entry contrary to the Recruitment Rules. There is thus no merit in this contention raised by the petitioner.

7. Learned Counsel for the petitioner next contended that he was appointed on regular basis as GDS and therefore, the respondents are not justified in issuing notification. No letter of appointment has been produced on record nor the petitioner is in a position to demonstrate that he was appointed after following regular selection process. The contention of the petitioner that he was appointed on regular basis is therefore, without any merit.

8. Learned Counsel for the petitioner next contended that the post of GDS was meant to be filled in by the candidate belonging to OBC category and the respondents have wrongly

applied roster point. According to the learned Counsel for the petitioner, in view of the instructions regarding reservation for OBCs, in so far as the Extra Departmental (for short "ED") categories are concerned, no specific point is to be reserved for appointment of candidates belonging to OBC in ED category. According to the learned Counsel for the petitioner, the stand taken by the respondents that 27% of the posts are reserved for OBC is contrary to the guidelines which provided that no specific point will be reserved for appointment of candidates belonging to OBC in ED categories. The contention of the learned Counsel for the petitioner is without any basis & unfounded in as much as the guidelines itself provide that since EDAs are the feeder cadres for filling up posts in Department Group "C"/"D" cadres and any deficiency in the representation of candidates belonging to OBCs in ED categories will result in inadequate representation for candidates belonging to OBCs in Departmental cadre also, a decision has been taken that the provisions contained in the Compendium of Instructions on Reservation for Other Backward Classes in Services and Posts under the Government of India issued by the Department of Personnel and Training will also apply to ED categories. The contention of the petitioner that the roster point is not correctly applied, therefore, is without any merit.

9. The Tribunal has in paragraphs 25 & 26 of the impugned order considered total sanctioned strength and the actual working of the roster point while holding that the decision of the respondents in notifying the vacancy reserved for ST category is justified. The Tribunal after taking into consideration the stand of the respondents came to the conclusion that the respondents were justified in taking a policy

decision to fill up the vacant post of GDS at Sudkoli by ST candidate instead of OBC or ST candidates since there was huge backlog in the ST category. The Tribunal has also recorded that the policy of the Government is to give preference to SC/ST candidates in appointments particularly in postal department. The contention of the petitioner that the roster point is wrongly applied is therefore rejected.

10. Learned Counsel for the petitioner has further urged that the post is shown as reserved for ST category only with a view to deprive him of the said post as he belongs to OBC category. However, except contending that action is deliberate, nothing has been produced on record to indicate that the said post is reserved for ST category only with a view to defeat the petitioner's claim or debar him from applying the said post. The Tribunal in our opinion, has rightly come to the conclusion that there is hardly any substance in the contention of the petitioner as regards this aspect of the matter.

11. In paragraph 23 of the impugned order, the Tribunal has observed thus :

"So far as claim for regularization is concerned, the land mark decision rendered by the Hon"ble Supreme Court in the state of Karnataka Vs. Uma Devi and subsequent decisions on regularization or absorption in service particularly in Group "D" posts through back door entry i.e. without facing

the regular recruitment process is totally prohibited. This was with a view to have transparency in appointment of eligible and suitable persons in public offices through a regular selection process and to avoid nepotism and favoritism in making appointment on daily wages or contract basis, without requiring them to undergo regular recruitment process. This will also avoid injustice to be caused to the eligible candidates who could not manage to get the job on daily wages or contract basis with fixed remuneration. In any case the applicant is not justified in asking for regularization/absorption in service on post of GDS on regular basis, simply because he was engaged as GDS on temporary basis and as a stop gap arrangement with technical break and fixed remuneration for some period."

12. We, therefore, do not find any merit in the present Petition. We do not see any reason to interfere with the findings recorded by the Tribunal. The Writ Petition, therefore, stands rejected with no order as to costs. Rule is discharged.