

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

G.A.No. 804 of 1989

DATE OF DECISION: 21-3-1990

~~xxvii~~

P.Srinivasa Rao

Petitioner.

Shri N.Ramamohan Rao, Advocate.

Advocate for the
petitioner(s)

Versus

The Supdt.of Post Offices, Kakinada
Division, Kakinada, & another.

Respondent.

Shri J.Ashok Kumar, SC for Postal.

Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. D.SURYA RAO, MEMBER(JUDICIAL).

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 it needs to be circulated to other Benches of the Tribunals ?
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

B.N.J.
(B.N.J.)

D.S.R.
(D.S.R.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No.804 of 1989

Date of order: 21-3-1990

Between:

P.Srinivasa Rao

..

Applicant

and

1.The Superintendent of Post Offices,
Kakinada Division, Kakinada-533004.

2.The Head Post Master, Head Post
Office, Kakinada-533001. ..

Respondents

Appearance:

For the Applicant : Shri N.Rammohan Rao, Advocate.

For the Respondents : Shri J.Ashok Kumar, Standing Counsel
for Postal.

CORAM

HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER(JUDICIAL))

1. The applicant herein has been working as a Paid Substitute in the post of Extra Departmental Packer on behalf of one G.V.Ramanujaiah, who was appointed as an Extra Departmental Packer in the night Post Office at Kakinada Head Post Office. The applicant states that he has been working as such since 9-4-1984 and he was being paid his pay and allowances regularly on the basis of the number of days working in the said post once in every month. He states that depending upon the necessity, his services have been utilised some times as a Class-IV servant also.

2. The applicant states that he had applied for leave on medical grounds on 7-4-1989 and submitted his application

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duly supported by a Medical Certificate and he reported for duty on 8-4-1989. and On that day he was informed that his services were terminated and he has been prevented from discharging his normal functions ever since then. He submitted a representation on 14-4-1989, but ~~xxxx~~ he has not been reinstated to duty.

3. He further contends that he has also functioned as a Day Watchman from 1-1-1984 to 31-1-1984 and also from 7-12-1987 to 6-1-1988. In fact the applicant had served as Class IV as well as he was attending to other important duties like E.D. Packer, etc.. He states that he had submitted a detailed representation on 16-6-1986 to the respondents herein seeking regularisation of his services in the post of Day Watchman, but there was no response. In view of these facts, he has filed the present application seeking a direction to declare the action of the 2nd respondent in terminating his services from 8-4-1989 as illegal, arbitrary, capricious and unsustainable and to declare that the applicant is entitled to have his services regularised, since he has rendered more than 5 years of continuous service as a paid substitute of Extra Departmental Packer in the Kakinada Head Post Office and also to declare that the applicant is entitled to all consequential benefits such as continuity of service, arrears of wages, pay fixation in the regular scale of pay, etc..

4. On behalf of the respondents a counter has been filed stating that the applicant was never appointed by the Respondents' department as an Extra Departmental Employee or a Casual Labourer. It is stated that Sri G.V.Ramanujaiah, E.D.Packer of Night Post Office at Kakinada Head Office, applied for leave from 16-8-1984 and the applicant was engaged by the said G.V.Ramanujaiah as his substitute on his own responsibility.

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As per Rule 5 of E.D. Agents (Conduct and Service) Rules, 1964 and Director-General, P&T instructions thereunder, every E.D. Agent ^{should} during ^{his absence or} leave ~~should~~ arrange a substitute to carry on the work and the allowances normally payable to the E.D. Agent should, during leave, be paid to the substitute provided by the E.D. Agent. In the instant case the arrangement is between the E.D. Agent and the applicant and not by the Department. It is stated that the applicant has not worked continuously since 9-4-1984, but has been intermittently working in the years 1985, 1986, 1987, 1988 and March 1989 as paid substitute. It is stated that when the applicant went on leave on medical grounds, the E.D. Agent G.V. Ramanujaiah has arranged one G. Venkateswara Rao to carry on his work as his substitute. Since the applicant was never appointed as E.D. Agent by the Department, the question of terminating his services by the Department does not arise. It is further stated that as he worked as Substitute to E.D. Agent on his own responsibility, there is no claim that will accrue to the applicant. They therefore prayed that the O.A. is liable to be dismissed.

5. We have heard Shri N. Ramamohan Rao, learned Counsel for the applicant, and Shri J. Ashok Kumar, learned Standing Counsel for the respondents.

6. On the facts stated above, it is clear that Shri G.V. Ramanujaiah, who is a regular E.D. Packer attached to the Night Post Office at Kakinada Head Post Office has not been working ever since 1984. Intermittently he has been making arrangements for substitutes to work for him. ^{Even if it is admitted} ~~it is a fact~~ that the applicant ^{has been} continuously working as paid substitute, ~~but~~ this arrangement as substitute is by virtue of his being appointed

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by the E.D.Packer, Shri G.V.Ramanujaiah, but not by the Department. He cannot, therefore, contend that the termination of his services is by the Department and he is entitled to regularisation as E.D.Packer/Agent on the ground of his having rendered service intermittently or continuously as a substitute as stated supra. However, it is clear that Shri G.V.Ramanujaiah cannot perform his duties as he is appointed as Class-IV employee. The instructions in regard to the arrangements to be made when a Class-IV employee is appointed to a regular departmental vacancy, are contained in Director-General, P&T, letter No.43/34/71-Pen.,dt.20-3-1971; These instructions make it clear that if an E.D.Agent is appointed against a regular post (departmental) such as Postman, Packer, etc., and the vacancy is of a short duration, he may provide his own substitute subject to the same conditions as in the case of ED Agent proceeding on leave. If, however, an ED Agent is appointed to a regular departmental post for an indefinite period and there is no likelihood of his returning as ED Agent, then the Appointing Authority should make arrangements to fill up the post of ED Agent in the normal manner by calling for applications. When making such appointments, the appointee is to be informed that in the event of the regular E.D.Agent coming back to service, then the services of the said appointee are liable to be terminated.


7. In the instant case it is clear that Shri G.V.Ramanujaiah has been shown against the regular post (departmental). The instructions of the Director-General, P&T, in letter No.43/34/71-Pen., dated 20-3-1971 ought to have been followed in this case by advertising the post and filling up vacancy by a regular ED Agent in accordance with the rules. Instead of that, the procedure allowing the E.D.Agent to appoint his own substitute for years together is being continued. This procedure is clearly in violation of the Director-General, P&T's instructions contained in his letter dated 20-3-1971.

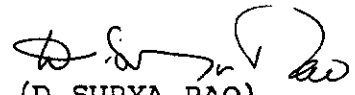
contd...

8. In the circumstances, while rejecting the applicant's claim that he is entitled to regularisation of his appointment as ED Agent/Packer in Night Post Office at Kakinada Head Post Office, we direct the respondents to fill up the post in accordance with the instructions contained in Director-General, P&T, letter No.43/34/71-Pen., dated 20th March 1971, referred to above, duly considering the applicant's case also.

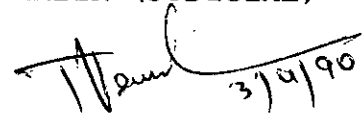
9. In the result, the application is dismissed. No costs.

(Dictated in the Open Court)


(B.N. JAYASIMHA)
VICE-CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDICIAL)

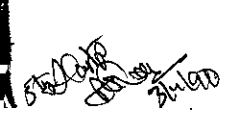
DATE: 21-3-1990


3/4/90
DEPUTY REGISTRAR (A)

TO:

1. The Superintendent of post offices, Kakinada Division, Kakinada-533 004.
2. The Head post master, Head post office, Kakinada-533 001.
3. One copy to Mr. N. Rammohan Rao, Advocate, 604 Brindavan Apartments, Niloufer hospital Road, Red Hills, Hyderabad-500 004.
- NSR 4. One copy to Mr. J. Ashok Kumar, SC for postal department, CAT., Hyderabad.
5. One spare copy.

kj.



SM
31/4/90

Draft by: Checked by: Approved by:
D.P. (J)

Typed by:

Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR. B. N. JAYASIMHA: (V.C.)

A N D

HON'BLE MR. C. SURYA RAO: MEMBER (JUDGE)

A N D

HON'BLE MR. B. NARASIMHA MURTHY: (M) (J)

A N D

HON'BLE MR. R. BALASUBRAMANIAN: (M) (A)

DATED:

21/3/90

ORDER/JUDGMENT:

M. A. / S. A. / C. A. / P. A.

in

T. A. No.

(S. A. No.)

O. A. No.

804/89

Admitted and Interim directions
issued.

Allowed.

Dismissed.

Disposed of with direction.

M. A. Ordered.

No order as to costs.

Sent to Xerox on:

JO
31/4/90

