

(110)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.963 of 1990

DATE OF JUDGMENT: 25.7.1991.

BETWEEN:

Mr. V.Madhusudhan Rao .. Applicant

AND

1. The Superintendent of Post Offices,
Wanaparthy Division,
Wanaparthy.
2. The Sub Divisional Inspector of
Post Offices,
Jedcherla,
Mahbubnagar District.

3. Mr. P.Venkateshwar Rao .. Respondents

(Respondent No.3 is impleaded as per order of Tribunal dated 3.12.90
in M.A.No.498/90)

COUNSEL FOR THE APPLICANT: Mr. S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.Bhaskar Rao, Addl.CGSC
for R 1 and 2

Mr. K.S.R.Anjeneyulu for
Respondent No.3.

CORAM:

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

Hon'ble Shri R.Balasubramanian, Member (Admn.)



(41)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioner for a relief to set-aside the orders of the 1st respondent directing ^{petitioner} ~~the~~ to transfer the charge to other candidate, in disregard to the Administrative instructions as illegal, invalid and colourable exercise of the powers and to order regularisation and continuance of the services of the applicant. The facts of the case are briefly as follows:-

The applicant was selected and appointed as an Extra Departmental Branch Post Master, Tipparedy-pally Branch Office and the charge of the post was made over to him on 1.2.1989. He had furnished necessary documents. Eversince he has been working as Branch Post Master till date. After 1½ years i.e., on 3.8.1990, the 1st respondent issued notification dated 3.8.1990 calling for applications for selection to the post of ED BPM at Thippa Reddy Pally, A/W Vangoor S.O., from the eligible candidates. In all 5 candidates including the applicant applied for the said post. The applicant fulfilled all the requisite qualifications as laid down in the notification for recruitment to the post of EDBPM and there are administrative instructions to give preference among other categories, to the working ED Agents also, who fulfilled the requisite qualifications.

2nd gr

.. 3 ..

2. Vide letter dated 3.8.1990, the 1st respondent directed the 2nd respondent to transfer the charge of the post of the BPM to the selected candidate and endorsed a copy of the same to the applicant. The applicant understood that some one was selected for the said post to the detriment of the applicant who has already been continuously working in the post. Aggrieved by the order dated 3.8.1990 of the 1st respondent, the applicant filed this application for the above said relief.

3. The respondents filed a counter which reads briefly as follows:-

The applicant was appointed on 1.2.1989 as EDBPM, Thippareddypalli purely on provisional basis. A declaration accepting the conditions of the provisional appointment was also obtained from the applicant on 1.2.1989 according to which his services can be terminated at any time without notice and without assigning any reasons. He continued as Provisional EDBPM till his replacement on 1.12.1990 by a regularly selected EDBPM. The applicant was appointed on provisional basis since he fulfilled the minimum educational qualifications of VIII standard and other conditions required for appointment as Provisional EDBPM. At the time of regular selection, the case of more meritorious candidate viz., Mr.P.

[Handwritten signature]

[Handwritten mark]

.. 4 ..

Venkateswar Rao who passed Matriculation, the better and preferable qualification for the post, was preferred. The ruling cited by the applicant i.e., letter No.STA/1/28-Rlgs. dated 24.10.1976 deals with cases, where a working ED Agent, applied for a different ED post when falls vacant in order to get preferential treatment in selection. But, since the applicant was only a Provisional EDBPM, this ruling is not applicable in his case. Moreover, in respect of the ED posts, no preference need be given to the past services rendered. The other ruling quoted by the applicant viz., Letter No.43-19/79-Pen. dated 22.6.1979 from the Director General, P&T, New Delhi is also not relevant in his case, since it deals with giving preference to such categories of applicants who belong to SC/ST/Ex-Servicemen and weaker section of the community, but not to the candidate like the applicant, who does not belong to any of these categories. The selection was made purely on merits and hence transfer of charge was ordered from the applicant to the selected candidate and it is perfectly in order. So, it is stated that there are no grounds for the applicant to get the relief asked for.

4. On behalf of the 3rd respondent, a counter has been filed. The contents of the counter affidavit are briefly as follows:-



(44)

Pursuant to the notification calling for and on receipt of applications applications, the appointing authority after considering all the applications, selected the 3rd respondent on merit. The selection of the 3rd respondent is legal and valid. The applicant was directed to hand over the charge to the 3rd respondent on 3.8.1990 and on 16.11.1990. Without complying with the orders and even without impleading the 3rd respondent as a party, the applicant filed this application suppressing the facts. The 3rd respondent was impleaded as a party only on the orders of the Tribunal. The applicant was not selected in the order of merit and he is not better qualified than the 3rd respondent. The provisional appointment does not confer any right for regular appointment. The case law cited by the applicant is not relevant to the facts and circumstances of the case. The application is also not maintainable as Union of India has not been impleaded as party. For the above reasons, it is stated that the application is liable to be dismissed.

5. Shri S.Ramakrishna Rao, learned counsel for the applicant; Shri K.S.R.Anjeneyulu, learned counsel for the 3rd respondent and Shri N.Bhaskar Rao, learned Additional Standing Counsel for the Central Government/ Respondents 1 and 2, argued the matter. The main contention of the applicant is that he was selected

h

(45)

and appointed as EDBPM Tippareddypally on 1.2.1989 and ever since he has been working as such uninterruptedly till date. The applicant contended that applications were called for by the Respondents/Department on 3.8.1990 and requisite qualifications ~~are~~ were also mentioned in the notification. 5 candidates including the applicant applied for the post. The applicant fulfilled all the requisite qualifications as per the notification and he got experience as EDBPM for about 1¹/₂ year and got preferential treatment to be given as per the administrative instructions of the Department. The letter dated 1.2.1989 appointing the applicant as Provisional EDBPM clearly states that the applicant was appointed as EDBPM Tippareddypalem purely on temporary basis and the 2nd respondent also directed in the letter dated 1.2.1989 to apply for the post of EDBPM when applications are called for for regular appointment. It was also stated in the letter that for any reasons if the applicant was not selected for the regular appointment, he will be discharged from service and he will be terminated at any time without notice and without assigning any reasons for administrative grounds. When the applicant was appointed, it was clearly stated in the letter dated 1.2.1989 that the appointment was purely on temporary basis and and he cannot claim any right over the post. The applicant also applied for the post on regular basis along with the other applicants² candidates and the 3rd respondent who applied for the

✓

To

- 1) The superintendent of post office,
wanaparthy division, wanaparthy.
- 2) The sub divisional inspector of post offices,
Jedcherla, mahabubnagar Dist.
- 3) one copy to Mr. S. Ramakrishna Rao, Advocate,
1-16-29, Ashoknagar, Hyderabad.
- 4) one copy to Mr. N. Bhaskar Rao, Addl. CUSC CAT, Hyd.
- 5) one copy to Mr. K.S.R. Anjaneyulu, Advocate for R.3.
CAT. Hyd.
- 6) one copy to Hon'ble Mr. T. Parasimhamurti, M(L)
CAT. Hyd
- 7) one spare copy.

Rs.
11

.. 7 ..

post was selected as he was having better qualification than the applicant. The Department after considering all the 5 applicants who applied for the post including the applicant, selected the 3rd respondent which selection was made purely on merit basis and the 3rd respondent was appointed for the post. The Department, therefore, asked the applicant to hand-over the charge to the 3rd respondent. The applicant has no claim for the post because a regularly selected candidate was posted in his place and his provisional appointment as EDBPM cannot be taken into consideration for regular selection to the post of EDBPM. The Department gave preference to the persons who passed SSC/Matriculation examination and the applicant is only a VIII standard candidate. The 3rd respondent also satisfied all the other conditions that were announced in the notification. So, the claim of the applicant to continue in the post is not tenable and we hold that the 3rd respondent is entitled to be appointed to the post of EDBPM and the applicant is not entitled ~~for the post~~ to continue in the post. There are no merits in the application and the application is liable to be dismissed. The application is accordingly dismissed. There is no order as to costs.

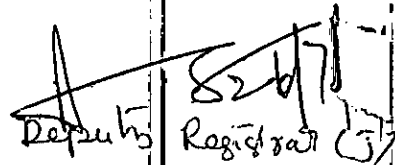


(J. NARASIMHA MURTHY)
Member (Judl.)



(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 25th July, 1991.



Deputy Registrar

EN
8
TYPED BY
CHECKED BY
J

ASK
25/7/91
COMPAED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR

V.C.

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY: M(J)
AND

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

DATED: 25-7-1991 ✓

~~ORDER~~/JUDGMENT

~~M.A./R.A./C.A. No.~~

D.A. No. 963/90 ✓

~~T.A. No.~~

(W.P. No.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

Central Administrative Tribunal
DESPATCH
5 AUG 1991
HYDERABAD BENCH.

25/7/91