

(46)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.78 of 1990

Date of the order: 9-7-1991.

Between

K.Subbaramaiah

...APPLICANT

A N D

1. Union of India rep. by
The Director General, Posts,
Dak Bhawan, New Delhi-1.

2. The Superintendent of Post Offices,
Tirupathi.

3. The Asst. Supdt. of Post Offices,
Srikalahasti.

4. Shri T.Mohana Rao

... RESPONDENTS

Appearance:

For the applicant : Shri C.Suryanarayana, Advocate

For the Respondents 1to3 : Shri Naram Bhaskar Rao, Addl.CGSC

For the Respondent No.4 : Shri K.Nageswara Reddy, Advocate.

CORAM

The Hon'ble Shri Justice Kamleshwar Nath, Vice-Chairman

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

J U D G M E N T

(of the Bench delivered by Hon'ble Shri Justice Kamleshwar Nath,
Vice-Chairman).

This is an Application under Section 19 of the Administrative Tribunals Act, 1985 questioning the selection to the post of Extra Departmental Branch Post Master (EDBPM), Branch Post Office, Alathur, district Chittoor. The facts are not much in dispute. In anticipation of the ensuing vacancy for

...2.

the post, on 9-6-1989, the Respondent No.2, the concerned Superintendent of Post Offices, notified the vacancy on 5-12-88 to the Employment Exchanges of Chittoor and Tirupathi. The Employment Exchanges did not submit the panel of names. On 9-1-89, the Respondent No.2 issued public notice inviting applications. Five persons including the applicant, Shri K.Subbaramaiah and the Respondent No.4, Shri T.Mohana Rao applied. The Respondent No.4 was selected.

2. The selection of Respondent No.4 was challenged by the applicant in O.A.No.610/89 and also by another candidate in O.A.No.448/89 before this Bench of the Tribunal. An interim order was passed in O.A.No.448/89 in the matter of temporary appointment at the post office. Initially the applicant was appointed temporarily by an order dated 10-6-89, but later on the temporary appointment was cancelled and the Respondent No.4 was appointed.

3. The two Original Applications were heard and decided on merits by judgment dated 28-8-89. The Bench, inter alia, held as follows:

"... summary rejection of the application of the applicant in O.A.610/89 is not valid. We, therefore, direct the Respondents to call for fresh applications indicating specifically the certificates to be produced and the authorities from whom such certificates have to be produced and proceed over the selection in accordance with the rules. This has to be done within four months from the date of receipt of these orders."

...

...

...

On consideration of these submissions, we direct that the temporary appointment of the applicant in O.A. 610/89 shall be continued till the selection is made in accordance with the direction given."



...3.

48

- 3 -

4. On 16-10-89, the Respondent No.2 issued another public notice inviting applications but without reference to the Employment Exchange. The charge of the post of EDBPM was made over to the applicant temporarily on 3-10-89.

5. Six persons applied again including the applicant and the Respondent No.4. On 13-11-89 an Income/Property Certificate appears to have been issued to the applicant by the Mandal Revenue Officer, B.N.Kandriga. On 1-1-1990 the Respondent No.2 selected the applicant for the post. On 4-1-90, the M.R.O., B.N.-Kandriga wrote to the Respondent No.2 perhaps withdrawing the Income/Property Certificate. On 8-1-90, the Respondent No.2 re-examined the case, informed the applicant of the contents of the M.R.O's letter and directed the applicant to submit another Property Certificate within a week.

6. Before he could ^{reply}~~employ~~, the Respondent No.2 passed orders on 13-1-1990 selecting the Respondent No.4 as in the mean-time, the applicant did not submit the Property Certificate. On 23-1-1990, the Respondent No.4 took charge as EDBPM in place of the applicant.

6.A On 25-1-1990, this O.A was filed. The applicant's case is that he belongs to S/C category, is physically handicapped, had passed S.S.C. examination and possesses all the qualifications requisite for appointment and for preferential treatment. His grievance is that the entire selection process has been vitiated because it was done without inviting the names afresh from the employment exchange and was in breach of the direction of this Tribunal in OA 610/89. He seeks a declaration that he is a duly selected candidate or in the alternative for a direction to hold the selection afresh by notifying the vacancy to the Employment Exchange in the first instance.

...4.

[Handwritten signature]

[Handwritten signature]

7. The defence of the Respondents 1 to 3 is that the names had been initially invited from the Employment Exchange on 5-12-88, but since the Employment Exchange did not sponsor the names, the public notification was issued on 8-1-89. It is, therefore, urged that it was not necessary to approach the Employment Exchange again. It is next said that this Tribunal had not ordered that the Employment Exchange should be approached again. It is further urged that the Applicant's Income/Property Certificate dated 13-11-89 had been withdrawn by the M.R.O. and the applicant did not furnish a fresh Certificate when called upon. The selection of Respondent No.4 was urged to be valid.

8. The Respondent No.4 was served and made appearance through an advocate but he did not file any counter. The learned advocate for Respondent-4 did not appear when the case was taken up on 3-7-91 and again on 5-7-91. We, therefore, concluded the arguments and reserved the case for judgment.

9. The first point raised by the counsel for the applicant is that the original selection having been set aside by the previous judgment dated 28-8-89 of this Tribunal, it was the duty of the respondents to proceed 'de novo' with the process of selection and for that purpose, to invite the names from the Employment Exchange. The contention of the learned Standing Counsel for the Respondents 1 to 3 is that since the Employment Exchange had been approached once and they failed to sponsor any name, it is no more necessary to invite the names from them again.

[Handwritten signature]

[Handwritten signature]

10. The principle of law is that as and when a regular vacancy occurs, the entire process of selection has to be initiated from the first stage i.e. the Employment Exchange has to be approached for sponsoring the names. The process of selection comes to an end as soon as an appointment is made and the person appointed assumes charge of office. When the selection/appointment is cancelled for any reason, the vacancy comes into being again. On the accrual of such vacancy the process of selection has to begin again from the initial stage. In the present case, the process of selection came to an end as soon as the Respondent No.4 was appointed. The orders of this Tribunal in the earlier case extracted in para 3 of the judgment would show that the directions were given to the Respondents to call for fresh applications and to proceed over the selection in accordance with the rules. The result of the decision was that the selection made by the Respondent No.2 was totally cancelled. Once that happens, the entire process of selection has to be gone over 'de novo' in accordance with the rules. Since in this case, the Employment Exchange was not approached, we hold that the process of selection leading to the selection of Respondent No.4 is illegal.

11. The next point raised by the counsel for the applicant is that in accordance with the judgment dated 28-8-89 of the previous case, it is the applicant who was required to be continued as EDBPM till selection could be made in accordance with the directions given by the Tribunal. There is worth, therefore, in the contention of the counsel for the applicant that after the selection leading to the appointment of Respondent No.4 is set aside, it is the applicant who must be placed in position till a final selection in accordance with the rules and the directions given in the judgment dated 28-8-89 is made.


[Handwritten signature]

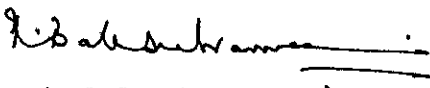
To

1. The Director General, Union of India, Posts,
Dak Bhawan, New Delhi -1
2. The Superintendent of Post Offices, Tirupathi.
3. The Asst. Superintendent of Post Offices, Srikalahasti.
4. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.Bench.
5. One copy to Mr.N.Bhaskar Rao, Addl. CGSC CAT.Hyd.
6. One copy to Mr.K.Nageswar Reddy, Advocate for R.4.
198/2RT vijayanagar colony, Hyderabad.

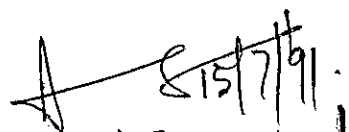
12. The counsel for the applicant has also pointed out that the applicant belongs to S/C category and is a handicapped person and is, therefore, entitled to some preferential treatment under the applicable rules. It is expected that the competent authority will bear in mind all the applicable rules including those of preferential treatment before making the final selection for the post.

13. The application is allowed and the order dated 13-1-1990 selecting the Respondent No.4 as EDBPM of Branch Post Office Alathur, District Chittoor, is quashed. The Respondent No.2 is directed to undertake the entire process of selection 'de novo' by inviting names of suitable candidates from the concerned Employment Exchange. He shall thereafter make the selection in accordance with the law and the observations made in the body of this judgment (including the earlier judgment dated 28-8-89). We further direct that within two weeks of receipt of a copy of this judgment, the Respondent No.2 shall allow the applicant herein to work on the post till the final selection thereof is made. The Respondents shall carry out the entire process of selection and appointment within a period of four months from the date of receipt of a copy of this judgment. The parties are directed to bear their own costs.


(Kamleshwar Nath)
Vice-Chairman


(R. Balasubramanian)
Member (Admn.)

Dated the 9th day of July, 1991.


Deputy Registrar

mhb/-



Zero

7

*Sent for
Review
17/7/91*

TYPED BY
CHECKED BY
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

COMPARED BY
APPROVED BY

THE HON'BLE MR *Kamleshwar Nath* V.C.

AND

THE HON'BLE MR.

M(J).

AND

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

AND

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

DATED: 9 - 7 - 1991 ✓

~~ORDER~~ JUDGMENT

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

in

D.A. No. 78/90. ✓

~~T.A. No.~~

(W.P. No.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction

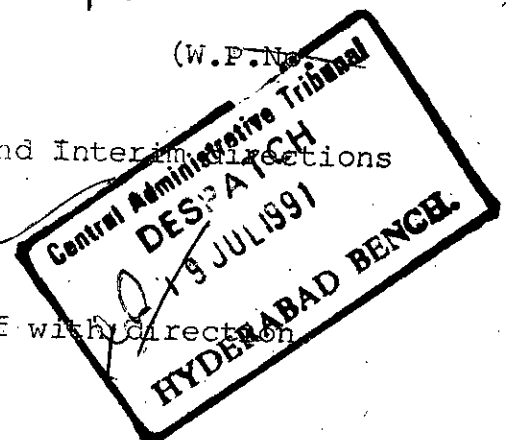
Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.



*DD
15/7/91*