

(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : HYDERABAD

Q.A 571/91.

Dt. of Order : 21-1-94.

V.Balasubrahmanyam

...Applicant

Vs.

 Union of India represented by :

1. The Secretary to Govt.,
Department of Posts, New Delhi.
2. The Post Master General,
Vijayawada.
3. The Sr.Superintendent of
Post Offices, Vijayawada.
4. The Sub-Divisional Inspector (Postal),
Nandigama Sub-Division, Nandigama.
5. Shri K.Ramadas, B.P.M.,
Lime Stone Town B.O.

...Respondents

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Counsel for the Applicant : Shri K.S.R.Anjaneyulu

Counsel for the Respondents : Shri N.V.Ramana, Addl.CGSC

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CORAM:

THE HON'BLE SHRI A.B.GORTHI : MEMBER (A)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

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...2.

(Order of the Division Bench passed by Hon'ble
Shri B.Gorthi, Member (A)).

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The applicant who assumed charge of B.P.M., Lime Stone Township near Jaggayyapeta Mandal on 6-8-90 on a provisional basis claims by means of this application a direction to the respondents to appoint him as a regular B.P.M., Limestone Township B.O.

2. Soon after the applicant assumed charge of B.P.M., Limestone Township, the respondents issued notification dt.22-9-90 calling for applications from suitable candidates for the purpose of regularly filling up of post of B.P.M. Limestone Township. The applicant submitted his application enclosing therewith all the relevant documents. The contention of the applicant is that amongst the candidates who applied for the post, he was better qualified and stood selected for regular appointment but the Respondents wilfully delayed his appointment and offered the said post to Sri K.Ramadas (Respondent No.5).

3. The Respondents in their counter affidavit have clarified that the applicant was a substitute appointment appointed as ² A By the then B.P.M. at Limestone Township Sri K.Krishnamurthy when he proceeded on leave. The respondents, wanting to regularly fill up the post, issued notification dt.29-9-90 in response to which the applicant also submitted his application. All the applications received from the candidates were sent for verification to the Sub-Divisional

Inspector, Nandigama Sub-Division. In the meantime on account of closure of N.S.Colony B.O. under the same sub-division with effect from 27-12-90 FN Sri K.Ramadas who was working as E.D.B.P.M. was thrown out of job. As a requirement under the/instructions, Sri K.Ramdas was to be provided immediate alternate employment. ^{extant} ~~according~~ As ² the selection process for regularly filling-up of the post of E.D.B.P.M., Limestone Township B.O. was not finalised, ~~but~~ the said post was offered to Respondent No.5.

4. We have heard learned counsel for both the parties. Shri Anjaneyulu, counsel for the applicant contends that the post ~~in~~ in which the applicant worked was a regular post for the filling up of which the official respondents issued ^{to} a Candidate for the said post notification. The applicant having submitted himself as/ ~~as~~ the respondents ~~was~~ duty bound to finalise the selection. It is further contended that the applicant was ^{the} selected candidate and accordingly the applicant should have been offered appointment as E.D.B.P.M. of Limestone Township. On the other hand the respondents wilfully and with intention ^{made fide} ~~not~~ posted the 5th respondent, ^{instead of} ~~besides~~ ^{to} finalising the selection process.

5. As regards offering alternative employment of E.D.s thrown out, the relevant DGP & T instructions (reproduced at page-69 of Swamy's compilation for service rules for E.D.Staff, 1989 Edition) reads as under :-

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"2. The matter has been examined and it has further been decided that if the time of departmentalisation of a particular office, it is not possible to provide the discharged ED Agent in a vacancy in the vicinity/neighbourhood of his residence, his name may be kept on the waiting list and he be offered the vacancy that may arise subsequently in the vicinity/neighbourhood of the place of his residence. If, however, the discharged ED Agent refuses to avail himself of this opportunity, no preference for further vacancies may be given to such an Agent."

6. In view of the above, there is no doubt that if a vacancy exists ⁱⁿ for a post at the time when an ED Agent becomes ~~as~~ surplus, he should be offered that post. If no vacancy exists, then the name of ED Agent is required to be kept in the waiting list ~~and~~ ^{his employment against a} with a view to offer ^{have} vacancy that may arise subsequently. In the instant case, the respondents ~~on~~ ^{have} page-4 of their counter, has categorically stated that the applications were sent for verification to the Respondent No.4 and they were returned to the Respondent No.3 only on 5-1-91. In the meantime Sri K.Ram Das became surplus. ~~they~~ they acted in accordance with the DGP & T instructions in offering the post of E.D.B.P.M., Limestone Township to him.

7. As regards the ^{next} contention of the learned counsel for the applicant that the applicant having been appointed to the post of B.P.M. and having offered himself as a candidate for selection to that post on regular basis he

acquired a vested right to be appointed to that post in case he is selected, we may refer to a judgment of the Hon'ble Supreme Court in Shankar San. Dash Vs. Union of India (AIR 1991 SC 1612). Relevant portion from the judgment is re-produced below :-

"It cannot be said that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under not legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

8. There is no doubt that the official respondents cannot act arbitrarily in the matter of quashing the selection process. From the explanation offered in the counter affidavit, it is evident that the official respondents gave up the selection process for no other reason than that a

surplus employee had to be offered alternative employment.

In these circumstances we do not find any irregularity or illegality in the manner in/ the official respondents did not finalise the selection process initiated by them but directed Sri K.Ram Das (Respondent No.5) to take over charge of post of B.P.M., Limestone Township B.O. In the result we are unable to ~~accept~~ ^{the} claim of the applicant and the application is therefore dismissed. No order as to costs.

T.U.
(T.CHANDRASEKHAR REDDY)
Member (J)

signature
(A.B.GORTHI)
Member (A)

Dated: 21-1-94.
Dictated in Open Court.

av1/

Ananya 8/2/94
Deputy Registrar (Jud1.) co.

Copy to:-

1. The Secretary to Govt., Department of Posts, Union of India New Delhi.
2. The Post Master General, Vijayawada.
3. The Sr. Superintendent of Post Offices, Vijayawada.
4. The Sub-Divisional Inspector (Postal), Nandigama Sub Division Nandigama.
5. One copy to Sri. K.S.R.Anjaneyulu, advocate, CAT, Hyd.
6. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Ram/-

O.A-571/91

TYPED BY

COMPARED BY *[Signature]*

CHECKED BY *[Signature]*

APPROVED BY *[Signature]*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated: 21/1/1994

ORDER/JUDGMENT: _____

~~N.L.R.A/C.A.NO.~~

O.A.No.

in
(71/9)

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

pvm

