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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 464/92.

Dt.of Decision : 25.11.94.

Shakeel Ahmed

.. Applicant.

Vs

1. UNION of India rep. by
The Secretary to Government,
Department of Posts, New Delhi.
2. The Chief Postmaster General,
Hyderabad.
3. The Sr. Superintendent of Post
Offices, Hyderabad City Division,
Hyderabad.
4. The Assistant Superintendent of
Post Offices, Hyderabad (North
Sub Division) Hyderabad.

.. Respondents.

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

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

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

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O.A.No.464/92

Date of Order: 25.11.94

X As per Hon'ble Shri A.B.Gorthi, Member (Admn.) X

The applicant was working as a Group 'D' employee under the Hyderabad North Sub Division (Department of Posts), when his services were terminated by the impugned order dt. 27.5.92 invoking Sub Rule (i) of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965. Aggrieved by the same he has come up with this OA with a prayer that the impugned order be set aside and that he be reinstated with consequential benefits. At the time of admission of this OA interim order was passed directing the respondents to keep the impugned memo in abeyance and as such the applicant is continuing as a Group 'D' employee under the respondents.

2. The applicant served for several spells as a substitute E.D. Stamp Vendor. He applied for a Group 'D' Post for which he was selected and also appointed vide memo dt. 29.9.89. The said appointment order indicates that he was appointed as a Group 'D' employee on a purely adhoc ~~on a~~ ^{and} temporary basis, in the scale of pay of Rs.750- 940. ~~After~~ ^{thus} having been regularly appointed as a Group 'D' employee, he was sent for selection for enrolment in the Army Postal Service. He was found fit in all respect for enrolment and was accordingly enrolled in the Army Postal Service. There he served for 2 years. However, as he was recalled by the parent department, he was discharged from the Army Postal Service vide order dt. 23.8.91. On his ^{return &} written to his parent department

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he was served with the impugned order by which his services were terminated after due notice.

3. The facts stated by the applicant in the OA are not disputed by the respondents. They however contend that the various spells of service rendered by the applicant as a substitute E.D. did not count for his eligibility, to be appointed in a Group 'D' post. According to the respondents 3 years continuous service as an EDA was a pre requisite for selection and appointment to Group 'D' post. As the applicant did not serve for 3 years as a regular EDA he was not eligible for appearing for the Group 'D' examination. In other words, the contention of the respondents is, that the applicant was inadvertently, erroneously allowed to appear for the Group 'D' examination. As such, the very appointment of the applicant in the Group 'D' post was irregular and ~~as~~ ~~he~~ he should not have been sent for enrolment in the Army Postal Services. There is no dispute that the applicant was qualified, in all other respects, except for his service as a regular ED Agent, for appointment to a Group 'D' Post. It is also not disputed that the applicant did serve for various spells as an ED Agent prior to his regular appointment. ~~as~~ But the said service rendered by the applicant was only as a substitute and not on a regular or provisional post.

4. In view of what is stated above there is no doubt that the applicant is in no way responsible or can be said to be ^{instrumental in} ~~for~~ his appointment to Group 'D' post under the respondents or for his subsequent enrolment in the Army Postal service.

(163)

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5. Learned counsel for the applicant therefore contends that the applicant should not be made to suffer for the acts/omissions of the respondents. In support of his contention he has drawn our attention to a judgement of the Tribunal in Lalita Rani Vs. Union of India and reported in 1990 (12) ATC 664. In that case the applicant was not eligible to appear in the test for regularisation of adhoc appointment as she did not have the prescribed length of service. However she was allowed to appear in the examination and she succeeded and thereafter the mistake was deducted and the termination order was issued. The Principal Bench held that the termination order was issued because the applicant did not conceal any facts regarding her ineligibility.

6. Another case on which learned counsel has placed reliance is that of P. Joseph v. Additional Post Master General and others reported in 1989 (6) SLR 429. That was a case of reversion on the plea that the applicant was ineligible to take the examination. Madras Bench of the Tribunal held that the applicant having been allowed to appear in the examination and also allowed to join duty in the higher post after being declared successful in the examination, it was not permissible to revert him on the ground of being ineligible to take the examination.

7. Apart from what has been decided by the Tribunal in the aforesaid cases, we also bear in mind the facts and circumstances of this case. The applicant is a Matriculate, appeared for Group 'D' examination and was successful thereat. He was consequently appointed to

Group 'D' post. He volunteered for and was sent for selection for enrolment to the Army Postal Service. Having been found fit for enrolment, he was taken into Army Postal Service, where he had rendered service for 2 years. It was after that, the respondents (Postal authorities), decided to recall the applicant from Army Postal Service and to terminate his services. They did not even care to examine the case from the point of view whether he should be retained as an ED Agent. In view of all these circumstances and also as the applicant had been rendering satisfactory service in the Group 'D' post, although by virtue of the interim order of this Tribunal, we are not inclined to accept the respondents' contention that the service of the applicant deserves to be terminated. In the result, the impugned order dated 27.5.92 is hereby set aside. The applicant will be entitled to consequential benefits. There shall be no order as to costs.

transcript
(A.B.GORTHI)
Member (Admn.)

Meen
(A.V.HARIDASAN)
Member (Judl.)

Dated : 25th November, 1994

(Dictated in Open Court)

Amber
DEPUTY REGISTRAR(J)

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To

1. The Secretary to Govt., Department of Posts, Union of India, New Delhi.
2. The Chief Post Master General, Hyderabad.
3. The Senior Superintendent of Post Offices, Hyderabad City Division, Hyderabad.
4. The Asst. Superintendent of Post Offices, Hyderabad (North Sub Division), Hyderabad.
5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT, Hyderabad.
6. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
7. One copy to Library, CAT, Hyderabad.
8. One spare copy.

YLKR

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Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIOSAN : MEMBER(2)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(3)

DATED: 25-11-94

ORDER/JUDGMENT.

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

in
O.A.NO. 464/92
T.A.NO.

Admitted and Interim Directions
issued.

Allowed.

Disposed of with Direction.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered

No order as to costs.

YLKR

