

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA 237/93.

Dt. of Order: 29-3-94.

Samanthula Venkata Ramana

....Applicant

Vs.

1. The Supdt. of Post Offices,
Vizianagaram.
2. Maradana Veerabhadra Swamy
3. The Post Master General,
Visakhapatnam Region,
Visakhapatnam.

....Respondents

Counsel for the Applicant : Shri K.V.Subrahmanya Narsu

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

CORAM:

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

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

.....2.

J U D G M E N T

(as per Hon'ble Sri R.Rangarajan, Member(Administrative))

The applicant was appointed provisionally on 24.6.1991 against a 'put off vacancy' of a permanent Extra Departmental Branch Post Master, Logisa village, Vizayanagaram District. He worked in that post upto 14.9.1992.

2. While he was working so a notification was issued bearing Memo No.B/ED-3/247 dt. 16.8.1991 calling for applications from eligible candidates for appointment to the post of EDBPM ^{Logisa} on permanent basis. Applicant and three others applied for the said post, the last date to receive applications as per the notification was 16.9.1991. It is stated that R-2 did not apply in pursuance of the notification. It is further stated that on 14.10.1991 the Sub-Divisional Inspector of Post offices, Gajapathinagaram conducted the verification of the certificates of the candidates who had applied in response to the notification quoted above for the post of EDBPM, Logisa.

3. While the matter stood so on 14.9.1992 the Sub-Divisional Inspector, Gajapatinagaram came to Logisa village and directed the applicant to hand over the charge of the post of EDBPM stating that R-2 was appointed in that post. Having learnt so, the applicant submitted two representations dt. 24.9.1992 and 14.1.93 to R-3, stating that the appointment of R-2 as EDBPM, Logisa is illegal as he has not even applied when notified for filling up of the post. On behalf of R-3, Asst. Director informed him that R-2 is a thrown out of E.D.Agent and hence he has been posted as EDBPM, Logisa. The applicant was advised to apply for any other suitable post when notified.

4. This O.A. is filed for a declaration that the appointment of R-2 as EDBPM, Logisa village is illegal and arbitrary and for a further direction to R-1 and R-3 to make the appointments to the said post from among the applicants who have applied for the post in pursuance of the notification dt. 16.8.1991.

5. Before going into the various contentions, we have looked into the rules for method of recruitment of ED Agents. As per the method of recruitment contained in Section-III in the Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department in its 1990 Edition under para-6(11)(iii), it has been stated that only provisional appointment can be made whenever E.D. agent is put off duty till the departmental/judicial proceedings are finalised. The relevant instruction is reproduced.

"Para-11: Provisional appointment of ED Agents:

- | | xx | xx | xx | xx |
|--------|---|----|----|----|
| (i) .. | .. | .. | .. | .. |
| (ii) . | .. | .. | .. | .. |
| (iii) | Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made, in the form annexed (Annexure B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent the provisional appointment will be terminated and that he shall have no claim to any appointment. | | | |

Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional. The offer for appointment should be in the form annexed (Annexure B).

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6. As per the above instruction no permanent appointment to ED post can be made against a put off vacancy before finalisation of the departmental/judicial proceedings which are contemplated against the put off ED Agent. The above instruction also states that permanent arrangement should not be made till the dismissed/removed E.D. Employee has not exhausted all the channels of appeal. Till such time, ED Agents appointed against the 'put off' vacancy can only be provisional. Contravening the above provisions of the Rules, notification dt. 16.8.1991 was issued by R-1 for permanent posting of EDBPM, Logisa against the put off vacancy. This notification is patently irregular, as the permanent incumbent of the post of EDBPM, Logisa was undergoing disciplinary proceedings for offences committed by him and no final decision had been taken by 16.8.1991 regarding his continuance in that post. Records produced by the learned counsel for the respondents reveal that the 'put off' permanent EDBPM/Logisa was removed from service only on 30.1.1993. Hence, if at all any permanent arrangement has to be made for filling up the vacancy of EDBPM/Logisa the process can only start after 30.1.1993. No notification to fill up the post of EDBPM, Logisa in anticipation of the vacancy occurring can be issued before 30.1.1993. In view of the instruction of the D.G.P.&T., dt. 18.5.1979 extracted above, the notification dt. 16.8.1991 cannot be sustained as the permanent EDBPM, Logisa was removed only on 30.1.1993 and it has to be held as void and consequently this notification dt. 16.8.1991 has to be set aside. Accordingly we do so.

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7. The second point that arises is in regard to the legality and competency of combining the duties of EDBPM, Logisa EDDA, Logisa Post office as contemplated by the respondents. Under ^{section} ~~S-6~~ VII, which gives the miscellaneous decisions taken by the P&T authorities, in the Swamy's Compilation of the 1990 Edition, para-(6) deals with the Combination of ED Agents. The combination of ED Agents has been envisaged in Department of Posts letter No.41-437/87-P.E.II dt. 16.12.1987 and 6.7.1988. Relevant instruction is reproduced for convenience.

"(6) Combination of duties of ED Agents: Latest Instructions: Savor Committee appointed by the Department to go into the service conditions of the ED Agents, has made certain recommendations regarding combination of duties and designation of ED Agents as a result of combination of duties.

2. It has been decided that combination of duties may be done wherever feasible. Whenever, there is combination of functions, the ED Agent be designated by the nomenclature pertaining to the functions predominantly performed by him.

3. A doubt has been raised that in the combined duties of an ED BP and ED MC ~~or~~ or ED DA the work of ED MC or ED DA may be more predominant but the ED BPM cannot possibly be designated as ED DA or ED MC. The recommendation of the Savor Committee No.4, 41 accepted by the Postal Services Board states that wherever the combination of functions is resorted to, the designation of the person may be ED Branch Postmaster if he performs any other function in addition to his work as branch postmaster and in all the other cases the designation may be of the function which is the most predominant, i.e. where delivery agency and main conveyance constitute the combined functions of an individual he can be designated as delivery agent or mail carrier depending on the longer time devoted on the particular duty. Action in this regard may be taken accordingly."

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8. As per the above instruction, the combination of duties of ED Agents ~~is~~ is permissible wherever feasible and whenever there is combination of functions, the ED Agent^{post} be designated by the nomenclature pertaining to the functions predominantly performed by the ED employee. However, when the post of EDBPM and another ED post is combined, designation would, ~~designation would~~ invariably be ED BPM. It can be inferred from the above Rule that even the Superintendent of Post offices~~x~~ herein R-1, is competent to combine the ED Post wherever feasible and found necessary. In this case R-3 has advised R-1 to combine the post of ED BPM and ED DA, Logisa, in view of the fact that this Branch post office was running on huge loss of Rs.15,050-00 per year and it was felt necessary to reduce this loss by reducing the manpower by this combination. As a measure of economy the combination was done to reduce expenditure. Before doing so, proper approval has been taken from R-3 by R-1 as can be seen from records. R-3 has instructed R-1 to examine the possibility of combining these posts and take action as necessary. Hence, we see no irregularity in combining the post of EDBPM and EDDA, Logisa.

9. The learned counsel for the applicant vehemently submitted that as per reply affidavit it was decided by R-3 to keep the post of EDDA vacant only and hence to consider the incumbent of EDDA post namely R-2 for the post of BPM is irregular. As the post of EDDA ^{was} ~~is~~ kept vacant and not surrendered, he contended that there is no combination of posts and hence R-2 is not a thrown out ED employee.

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He further contended that even the thrown out employee can be posted against the other available ED post only if the thrown out employee is suitable for that post. He relied on the D.G.P&T letter No. 27-3/77(Pt.) dt. 19.8.1978 and No.295-4/53 dt. 8.8.53. The relevant instructions are extracted below:

"(15) Giving alternative employment to ED Agents thrown out of employment for want of vacancy:-

It has been brought to notice that post offices are being closed as a result of the instructions, but the ED Agents in those post offices are not being offered any alternative employment and are thus thrown out of their jobs. In this connection attention is invited to D.G., P&T Letters No.SP.B 295-4/53 dt. 8.8.1953 and 43-24/64-Pen. dt. 12.4.1965. This is to clarify that these orders will also be applicable in cases where ED Agents are deprived of their employment because a post office has to be closed down (downgraded on account of being considered unremunerative as per Rule 568-A of P&T Manual, Vol.IV. It is requested that these instructions may be brought to the notice of all concerned and implemented carefully. (as per letter dt. 19.8.1978).

It has been decided that the ED Agents, whose services are to be dispensed with on departmentalisation of their offices, may be provided for in other available extra-departmental posts if they are suitable and willing. (as per letter dt. 8.8.1953). "

10. The learned counsel for the applicant further stated that the respondents cannot take a different stand now other than what is stated in the counter affidavit, viz. that the post of EDDA, Logisa was kept vacant. The contention of the respondents that the post of EDDA had lapsed ~~lapsed~~ as the post was not filled over a year is also not tenable submits the applicant's counsel. At the time when R-2 was posted as ED BPM the post of EDDA was not vacant for ~~over~~ ^{the period} over a year and hence it was contended by the applicant that the post of EDDA had lapsed for it was vacant over a year is not borne by facts.


...8/-

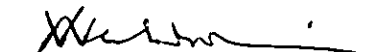
11. We have examined the above contentions. At the time when R-2 was posted as EDB^M the post of EDDA, Logisa was combined with that of ED BPM, Logisa as an economy measure. This combination in our opinion is permissible in view of the rule position quoted above and is essential to avoid wasteful expenditure if both the duties can be performed by a single employee. R-1 after seeing the necessity and feasibility had combined the posts of EDB^M and EDDA Logisa which combination was warranted because of the fact that this Branch post office was running on huge loss of Rs.15,050-00 per year. A public office which runs for the benefit of the public has to be run on economical and commercial basis and cannot run only for giving employment. In this view of the matter, the combination is not only in order but it should also be held that the post of EDDA under the above ~~2~~ circumstances is to be treated as abolished. As the post of EDDA was abolished, the incumbent of the post has to be taken as ~~an~~ thrown out ED Agent. In the present case R-2 who was holding the post of ED DA, Logisa has to be treated as an ED Agent thrown out of employment for want of vacancy. As R-2 is a thrown out ED Agent he has to be offered alternate employment in the other available departmental post if he is suitable. The only other ED post available for accommodating R-2 at that time was the post of EDB^M in that post office. It is also revealed from records that R-2 was qualified to hold that post of EDB^M, Logisa. Hence, he was appointed in that post of EDB^M, Logisa cancelling the earlier notification dt.16.8.91 calling for applications from eligible candidates for

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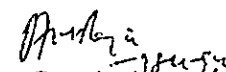
appointment to that post. Though, it is stated that R-2 was not eligible for consideration as he has not applied for that post in response to the notification dt. 16.8.1991, it is not necessary for him to apply as he was a thrown out EDDA and it is the responsibility of the Postal department to rehabilitate R-2 who was a thrown out ED Agent without asking for any application from him. In view of the above, we see no irregularity in appointing R-2 as EDEPM, Logisa cancelling the notification dt. 16.8.1991.

12. In the result the O.A. is unsustainable and hence dismissed. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 29.3.1994.


Deputy Registrar (J) CC

Grh.

To

1. The Superintendent of Post Offices,
Vizianagaram.

~~XXXXXXXXXXXX~~

2. The Postmaster General,
Visakhapatnam Region, Visakhapatnam.

3. One copy to Mr. K. v. Subrahmanya Narsu, Advocate
Flat No. 2, Manohar Apartments, vidyanagar, Hyd.

4. One copy to Mr. N. v. Ramana, Addl. CGSC. CAT. Hyd.

5. One copy to Library, CAT. Hyd.

6. One spare copy.

pvm

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

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

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADMN)

Dated: 27-3-1994

~~ORDER~~ JUDGMENT

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

O.A.No. 237/93. ⁱⁿ

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.

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