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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.26 of 1992

DATE OF JUDGMENT: 25th August, 1993

BETWEEN:

Mr. V.V.Lakshmana Babu

..

Applicant

AND

1. The Superintendent of Post Offices,
Narasaraopet Division,
Narasaraopet,
Guntur District.

2. The Divisional Inspector (Postal),
Vinukonda,
Guntur District.

3. Shri V.Musalaiah

..

Respondents

HEARD:

COUNSEL FOR THE APPLICANT: Mr. K.V.Subrahmanya Narsu,
Advocate

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Raghava Reddy, Addl.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER (ADMN.)

JUDGMENT

(As per Hon'ble Shri Justice V.Neeladri Rao, Vice Chairman)

The father of the applicant who worked as Extra Departmental Branch Post Master of Gokanakonda Branch Post Office in Vinukonda Mandal, Guntur District expired on 22.10.1991. Then the applicant who is fully qualified for the post of EDBPM was provisionally appointed as per the proceedings dated 23.10.1991. The 1st respondent issued

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a notification dated 31.1.1992 calling for applications for the post of EDBPM of this village when no one was sponsored by the Employment Exchange. Last date for receipt of the applications was 3.3.1992. By the stipulated date, the application of the applicant alone was received. But the 1st respondent again issued notification dated 3.4.1992 calling for applications for the said post. Again, the applicant applied for the said post. The 3rd respondent and some others also applied for the said post. The applicant was informed by the memo of the 1st respondent dated 2.11.1992 that he was deemed to have been relieved with effect from 27.10.1992. He was further required to handover the records forthwith to the 3rd respondent. Then this OA was filed praying ~~for cancellation of the appointment~~ to declare the appointment of the 3rd respondent as EDBPM at Gokanakonda Branch Post Office is illegal and to further direct the 1st respondent to appoint the applicant herein as EDBPM, Gokanakonda BPO.

2. It is further stated for the applicant that the 3rd respondent is nephew of Shri Ghosh and the 1st respondent was prevailed upon to issue the second notification dated 3.4.1992 and thus malafides are attributed to the 1st respondent in appointing the 3rd respondent.

3. The 3rd respondent remained absent even though he received the notice in this OA. In the counter that was filed on behalf of the 1st and 2nd respondents, the allegations in regard to the malafides were not traversed. It is stated therein that the second notification was issued in pursuance of the DGP&T letter No.43-233/84-Pen., dated 1.5.1986. It is necessary to read the said letter for consideration of this OA and it is as under:-

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It was ordered above that ED Agents should be appointed through the Employment exchange of the area. Several instances of nomination of only one candidate by the employment exchange have come to the notice of this Directorate. In such cases, the resultant selection process gets totally devoid of any element of competition. It has, therefore, been decided that in future sponsoring of atleast three candidates by the employment exchange should be insisted upon. In case of any difficulty in this regard, the matter may be taken up with the Director of Employment Exchanges of the State Government concerned. Normally they have instruction to send a panel of candidates not less than thrice the number of posts notified to them. In the event of the employment exchange failing to sponsor the minimum number of candidates, the vacancy should be notified through public advertisements and while making the final selection, the comparative merit of all the candidates, ie., those who respond to the notification as also those sponsored by the employment exchange should be taken into consideration.

Heads of Circles will please issue suitable instructions in this regard to their subordinate formations and ensure compliance of the above procedure for recruitment to different categories of ED Agents."

4. The said letter only shows that if less than 3 candidates are nominated by the employment exchange, then the concerned authority has to issue notification calling for applications. But it does not state that when only one

application is received in pursuance of the notification, fresh notification has to be issued even when the said applicant is suitable for the post for which notification was issued. It is well established that no application ~~was~~ received beyond the last date stipulated in the notification, ^{need be considered} It means that only the case of the applicant who applied in time has to be considered. Unless there is provision or some irregularity or illegality in issual of the notification, it is not open to the concerned authority to cancel the notification already issued and issue a fresh notification. Thus, even the DGP&T letter dated 1.5.1986 does not support ~~the~~ the case of the respondents that as only one application was received in pursuance of the notification dated 31.1.1992, the same was cancelled and a fresh notification was issued ~~xxx~~ calling for applications for the post of EDBPM of this village. On this ground alone, the appointment of the 3rd respondent has to be set-aside, and hence there is no need to consider about the malafides attributed to the 1st respondent especially when the latter had not filed any counter affidavit ~~denying those malafides~~.

5. The learned counsel for the 1st and 2nd respondents submitted that the 3rd respondent was thrown out of the job in view of the abolition of the post of Extra Departmental Delivery Agent in October 1992 and hence he was appointed in pursuance of the Para 15 of Section-III (Method of Recruitment) at Page-70 of Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department (5th Edition). ^{The same need not be considered for} ~~For~~ determination of the point in this OA, as it is a case where the 3rd respondent was appointed on consideration of his application filed in pursuance of the notification dated 3.4.1992, ^{the} ~~when the~~ said notification had to be set-aside on

To

1. The Superintendent of Post Offices,
Narasaraopet Division, Narasaraopet, Guntur Dist..
2. The Divisional Inspector (Postal) Vinukonda, Guntur Dist.
3. One copy to Mr. K. V. Subrahmanya Narsu, Advocate
Flat No. 002, Manohar Apartments, Vidyanagar, Hyd.
4. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

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the ground that the 1st respondent had no right to issue the fresh notification in the circumstances of the case, it has to be held that his case cannot be considered as he had not applied in pursuance of the notification dated 31.1.1992.

6. It is next contended for the 1st and 2nd respondents that as no appointment of EDBPM for this village was made by the time the 3rd respondent was thrown out of the job, when he was appointed and hence his appointment cannot be challenged. But if the 1st respondent had not issued the notification dated 3.4.1992, the case of the applicant who filed the application in pursuance of the notification dated 31.1.1992 would have been considered in a reasonable time ~~and then he would have been appointed in October 1992~~ and hence the question of considering the 3rd respondent would not have been arisen even assuming that the 3rd respondent is entitled to claim as per Para-15 of the said rules. For the above reason, we do not want to advert to the question as to whether the 3rd respondent is entitled to ^{have} any claim for appointment in view of Para-15 of the said rules. For the reasons stated above, ^{the} appointment of the 3rd respondent is set-aside. Then the direction that has to be given is to consider the case of the applicant for the post of EDBPM of this village as it is stated that his application alone was received in pursuance of the ~~xxxxx~~ notification dated 31.1.1992.

7. The OA is ordered accordingly. No costs.
(Dictated in the open Court).

P. T. Thiruvengadam
(P.T. THIRUVENGADAM)
MEMBER (ADMN.)

V. Neeladri Rao
(V. NEELADRI RAO)
VICE CHAIRMAN

Dated: 25th August, 1993.

Deputy Registrar (J)

TYPED BY

COMPARED BY

CHECKED BY

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 (A)

AND

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

AND

THE HON'BLE MR. P. T. EIRUVENGADAM : M(A)

Dated: 25-8 -1993

~~ORDER~~/JUDGMENT:

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

in

O.A.No.

26/93

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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3.16.93

