

(26)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: :HYDERABAD BENCH: :

O.A.No.422/1993.

Date: 28-6-93

Between:

G. Srinivasa Reddy

.. Applicant

And

1. Asst. Superintendent of Post Offices,
South Sub-Division, Hyderabad.

2. Senior Superintendent of Post Offices,
Hyderabad South East Division,
Hyderabad.

3. B. Ramulu .. Respondents

APPEARANCE:

Counsel for the Applicant : Sri S.Ramakrishna Rao, Advocate

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

CORAM:

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

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

(JUDGMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SRI
P.T. THIRUVENGADAM, MEMBER(A))

....

The applicant herein was appointed as Extra-Departmental Mail Carrier-cum-Delivery Agent at Branch Post office, Gungal with effect from 16.6.1992 on provisional basis in pursuance of the orders issued by 1st respondents dt. 16.6.1992, against

...2/-

17/10/93



the vacancy caused due to regular appointment of the incumbent as Postman. While so, action was initiated by the respondents to fill up the said post on regular basis by issuing a notification. In response to the said notification the applicant also responded seeking regular appointment. The applicant contends that he fulfills all the requisite qualifications for the said post and ^{is} eligible to be appointed on regular basis. It is alleged by the applicant that 1st respondent appointed one Sri B.Ramulu, 3rd respondent herein vide orders dt. 27.4.1993 who had not even applied for the post in response to the notification issued by the respondents. The applicant further submits that he had represented in the matter to 1st respondent on 27.4.1993, but alleges that the said respondent threatened that he will be removed from service. The applicant contends that he has filed this O.A. for quashing the impugned orders dt. 27.4.1993, as he has no other alternative remedy. The applicant raised following grounds in support of his claim.

- (a) He fulfills all the requisite qualifications for the post of Extra-Departmental Mail Carrier/Delivery Agent and therefore he was appointed on provisional basis. The applicant also claims that he is equally qualified for the said post and alleges that the 3rd respondent who is appointed herein is in no way better qualified than him.
- (b) The respondents having notified the vacancy should have considered only those candidates who have applied in response to the said notification and that they have no authority to induct another candidate who had not at all applied.
- (c) The applicant is a permanent resident of the delivery jurisdiction of the post office and alleges that the respondents ought to have considered him to appoint on regular basis instead of appointing ~~him~~ 3rd respondent who is not the permanent



resident of the said post office and stays 16 Kms. away from the said village. The applicant alleges that the action of 1st respondent is against the Method of Recruitment Rules of ED staff.

(d) The applicant should have given priority as he was already working on provisional basis as per the instructions issued by the Department in this regard.

2. On behalf of Respondents No.1 & 2 reply affidavit is filed countering the allegations of the applicant. The respondents admit the facts with regard to appointment of applicant as EDMC on provisional basis, ^{and} issue of notification calling the eligible candidates for appointment to the said post on regular basis.

3. It is the case of the respondents that in response to the notification, the application of the applicant herein along with other applicants for appointment of EDMC/DA. Gungal on regular basis. At this stage 3rd respondent had requested for regular appointment on the ground that he his services were dispensed with consequent on abolition of the post of EDMC, Raipole Sub-office on 1.6.1989 and was not offered alternate appointment as per the instructions issued by the department in this case. The respondents contend that as per the DG, P&T Letter No.27-3/77(pt) dt. 19.8.1978 the ED Agents thrown out of their jobs are required to be offered alternate appointment on regular basis and therefore his case was referred to 2nd respondent for clarification, who had clarified to consider 3rd respondent for appointment.

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Accordingly, orders were issued on 27-4-1993 appointing 3rd respondent for the post of EDMC, Gungal while cancelling the recruitment process initiated for filling the said vacancy. The respondents allege that the applicant has not acquired any right for the said post as he was holding the post on provisional basis pending regular selection. The respondents justify their action on the ground that certain amount of flexibility in the appointment of the surplus ED Agents is necessary with reference to the conditions prescribed for appointment to the said post. The respondents deny the contention of the applicant that working candidates are to be given priority over other categories in the matter of recruitment. The relevant instructions in para-15 in the Chapter on "Method of Recruitment" (Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department - 1991 Edition) reads as under:-

"Para-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 DGP&T Letters No. SPB 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.

(D.G., P&T, Letter No. 27-3-77 (Pt.) dt. 19th Aug., 1978)

K. G. X

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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.

(D.G., P&T, Lr.No.295-4/53, dt. 8th Aug., 1953)

2. The matter has been examined and it has further been decided that if at the time of departmentalisation of a particular office, it is not possible to provide the discharged ED Agents 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.
3. It may also be mentioned in this connection that while the policy should be to provide discharged ED Agents with alternative employment near their original office, it should be ascertained from them if they would be prepared to accept a job at some distance from their place of residence rather than waiting for a vacancy to occur near their home station."

(D.G., P&T Lr.No.43-24/64-Pen. dt. 12th April, 1965)"

According to the above provisions the appointment of 3rd respondent, a thrown out ED Agent consequent to the abolition of the post he was holding should be treated as valid.

4. The learned counsel for the applicant, at this stage, referred to para-17(3) of the above said Rules and mentioned that the displaced agents could be kept in the waiting list for re-appointment only for a period of one year. In this case, the services of 3rd respondent were displaced on 1-6-1989 and he had been provided alternative job during 6-6-1989 to 28-10-1991 and 29-10-1991 to 15-1-1993 against certain put off vacancy. By 27-4-1993 3rd respondent had ^{complied} rendered more than one year service after being originally displaced in 1989 and hence his name should be deemed to have

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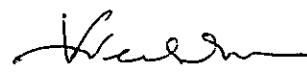
(31)

been struck-off from the waiting list. The learned counsel for official respondents mentioned that 3rd respondent had been accommodated against only stop-gap vacancies and that cannot absolve the department of its responsibility to find a regular alternative job. It was conceded by both sides that regular vacancies keep arising periodically, so-much-so by 1-6-1989, ¹⁹⁹⁰ ^{would} 3rd respondent should have been accommodated against a regular vacancy. But for his having been adjusted against stop-gap arrangements, we are not able to agree that the name of 3rd respondent should have been struck-off from the waiting list, since in principle, all efforts have to be made within a year to find a regular post. Just because the department allowed him to continue in stop-gap arrangements eventhough regular vacancies would have been arising cannot be held against him.

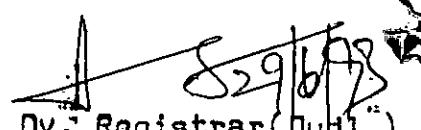
5. In view of the above, there is no necessity to advert to the other grounds advanced by the learned counsel for the applicant. The O.A. is liable to be dismissed and accordingly dismissed. No costs.

I.J.T.R

(P.T.Thiruvengadam)
Member (A)


(V.Neeladri Rao)
Vice-Chairman

Date 28/June, 1993.


Dy. Registrar (Duplic.)

grh.

Copy to:-

1. Asst. Superintendent of Post Offices, South Sub-Division, Hyd.
2. Senior Superintendent of Post Offices, Hyderabad South East Division, Hyderabad.
3. One copy to Sri. S. Ram Krishnan Rao, advocate, CAT, Hyd.
4. One copy to Sri. N.V.Ramana, Addl. CGSO, CAT, Hyd.
5. One space copy.

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O.A.422/93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO : V.C.

AND

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

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
: MEMBER (J)

AND

THE HON'BLE MR. .

DATED: 28/6/1993

ORDER/JUDGMENT:

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

C.A. No.

in
422/93

T.A. No.

(W.P. No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

NO order as to costs.

pvm

