

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD
* * * *

2010-2011

24-10-2011

SC

S. Ranganayakulu

.. Applicant.

Vs

1. The Sub-Divisional Inspector (Postal)
West Sub-Division,
Anantapur - 515 004.
2. The Supdt. of Post Offices,
Sri Krishna Devaraya Sadan,
Anantapur - 515 001.
3. The Director General,
Dept. of Posts,
Dak Bhavan,
Sansad Marg,
New Delhi - 110 001.
4. Sri P. Venkataswamy .. Respondents.

Counsel for the Applicant : Mr. Krishna Devan

Counsel for the Respondents : Mr. N.V.Raghava Reddy,
Addl. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE S.K. DHAON : VICE CHAIRMAN

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

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

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OA. 452/93

JUDGEMENT

JUSTICE S.K. DHAON:

One Sri A.Jaffar Basha, Extra Departmental Messenger/Delivery Agent was subjected to disciplinary proceedings. Pending those proceedings, the petitioner was appointed provisionally to the post held by Sri Jaffar Basha. The letter of appointment issued to the petitioner made it clear that he was being appointed to look after the work of Sri Jaffar Basha. Thus, it is evident that the tenure of the appointment of the petitioner was till the completion of the departmental proceedings against said Sri Jaffar Basha.

2. In the departmental proceedings, Sri Jaffar Basha was found guilty and he was dismissed from service with effect from 29.3.1992. To fill up the vacancy created by the exit of Sri Jaffar Basha on regular basis, steps were taken by the Department. A requisition was sent to the Employment Exchange concerned on 12.1.1993. That Exchange sponsored three persons but not the petitioner. One of the sponsored was the 4th respondent, Sri P.Venkataswamy. By an order dated 30.3.1993, the services of the petitioner were terminated and on 31.3.1993, the 4th respondent took charge of the office vacated by the petitioner. Feeling aggrieved the petitioner came to this Tribunal by means of this OA. However, no interim order was granted.

3. This OA came up for hearing before one of us(Hon'ble Mr.Justice V.Neeladri Rao) and Hon'ble Mr.R.Rangarajan, Member(Admn.). The petitioner relied on a decision of the Ernakulam Bench of this Tribunal in the case of P.SURESH BABU vs. HEAD POSTMASTER AND OTHERS(1990(6) SLR 304). In that case, it was laid down, in substance, that the appointment of a person on provisional basis conferred upon him an indefeasible right to be considered for regular appointment even if he had not been sponsored by the Employment Exchange at all. The learned members doubted the accuracy of the said judgement in view of the decision of the Supreme Court in the case of UNION OF INDIA AND ORS. Vs. N.HARAGOPAL AND ORS. (1987 SCC (L&S) 227). They, therefore, referred the matter to a larger Bench.

That is how this matter is before us.

4. In the counter-affidavit filed on behalf of the respondents, it is averred that the sole reason for not considering the petitioner at all for being given a regular appointment was that he had not been sponsored by the Employment Exchange. Therefore, by necessary implication the respondents admitted that he was otherwise qualified.

5. It appears to be an admitted position that there are no statutory rules governing the situation. However, there are definite instructions to be followed. The instructions are printed at page 67 in Swamy's Compilation of Service Rules for ED Staff in Postal Department. They are based upon the letter dated 4.9.1982 of the DG P&T vide No.45-22/71-SPB.1/Pen. Their subject is: "the recruitment of ED agents through Employment Exchange". The material recitals in them are these. The question of recruitment of ED Agents through Employment Exchange has been under consideration of the Government for some time past. It has now been decided that the employment of ED Agents should be made through Employment Exchanges. The concerned recruiting authority should send a requisition to the Local Employment Exchange, having jurisdiction over the area, requesting nomination of suitable candidates for the post having prescribed qualifications (Instruction No.12).

6. It is nobody's case that the respondents had not sent the requisition to the Employment Exchange in accordance with the aforementioned requirements. We may also note that vide letter dated 14.12.1987 instructions of the DG P&T were issued. It is inter-alia stated in this letter that a decision had been taken that provisional appointments of the EDA which are expected to continue for a long period should be made in the light of the instructions in the aforesaid letter dated 4.9.1982. Thus, it was emphasised that even for the purpose of a provisional appointment, the sponsoring of a particular candidate by the Employment Exchange was a must.

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7. The original record has been placed for our perusal by the learned counsel for the respondents. We are satisfied that the petitioner was not sponsored by the Employment Exchange when he was given a provisional appointment. Indeed, there is no such averment in the OA.

8. It is a trite proposition that, in the absence of statutory rules, executive instructions, if issued, by the competent authority, will have full play. In service jurisprudence, there is a distinction between "Rules of Recruitment" and "Conditions of Service". Non-fulfilment of any requirement of the "Rules of Recruitment" renders a candidate ineligible or disqualified to enter the arena of either competition or selection. Such a defect is incurable. It is fatal to the candidature. Unlike the conditions of service, the conditions of recruitment are rigid and inflexible.

9. Instruction No.12, aforementioned, falls under the canopy of "Rules of Recruitment". Therefore, the sponsoring of a candidate by an Employment Exchange is an essential attribute of eligibility. The petitioner having not fulfilled that requirement was not entitled to be considered at all alongwith others, including the 4th respondent.

10. In HARAGOPAL's case (supra), a question arose as to whether the instructions issued by the Government that the field of choice should in the first instance be restricted to the candidate sponsored by the Employment Exchange offend Articles 14 and 16 of the Constitution. The answer was in the negative. Their Lordships observed:

"In the absence of a better method of recruitment, we think that any restriction that employment in Government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution."

11. In STATE OF HARYANA AND ORS. vs. PIARA SINGH AND ORS. (1992(4) SLR 770), a question arose as to whether there was an infringement of Articles 14 and 16 of the Constitution when a Government servant, not sponsored by an Employment Exchange, was not considered for being regularised in service. Their Lordships held that in such a situation, the question of infringement of Articles 14 and 16 did not arise. It was also held that the requirement that a person should be sponsored through the Employment Exchange is in the public interest as such a practice checked

back-door entry and also minimised the possibility of favouritism and nepotism. In substance, their Lordships emphasised that such a practice is just and fair. Obviously, the view taken in Piara Singh is in line with the view taken in N.Haragopal.

12. We will now consider the cases cited by the learned counsel for the petitioner. We shall first take up the decision of the Ernakulam Bench in Suresh Babu(supra). The relevant facts of that case are these. A permanent incumbent to the post of ED Messenger was put off from duty in connection with the disciplinary proceedings initiated against him and later on he was removed from service. Suresh Babu was provisionally appointed in that vacancy on 3.8.1985 and that was before 14.12.1987. Therefore, no infirmity existed in his initial appointment on provisional basis. Paragraph 16 of the judgement in Suresh Babu's case is relevant and, therefore, its contents are being extracted:

" We are, therefore, of the view that the incumbent for the time being holding the post of an ED Agent on the basis of an order of provisional appointment issued by a competent authority in the Department (and not on any other basis eg, substitute of the normal incumbent) is entitled to be considered as a candidate when the question of selecting ,on a regular basis, a candidate for the post, is considered,even though his name is not sponsored by the Employment Exchange, provided he has all the necessary qualifications. Accordingly, we hold that the applicant should be deemed to have been interviewed as he is considered to have a right to be interviewed and not in pursuance of any interim order passed by us. The Respondents are granted permission to declare the result of the interview held select the candidate to be appointed as ED Messenger at Palai Head Post Office and appoint him to that post. The application is allowed to this extent and there will be no order as to costs."

It is noteworthy that in paragraph 5 of the judgement, there is a reference to the contents of the aforementioned letter of DG P&T dated 4.9.1982 and in paragraph 8, the learned members have quoted the contents of paragraph 10 of Haragopal(supra). However, the import of para 12 of the instructions aforementioned escaped attention of the learned members. We have already indicated that, in the absence of any statutory rule, instruction No.12 had to be adhered to as it was an integral part of the "Rules of Recruitment". With respect, we are unable to agree with the view taken in paragraph 16 for more than one reasons.

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13. First, the thrust of Instruction No.12 has not been appreciated at all. Secondly, the fact that the said instruction contained an important element of the "Rules of Recruitment" has not been taken into account. Thirdly, the factor that sponsoring by the Employment Exchange was an essential requirement of eligibility for consideration has been overlooked. Fourthly, the view of the learned members runs counter to the view taken by the Supreme Court in Haranandan and Piara Singh.

14. In G.S.PARVATHY vs. SUB DIVISIONAL INSPECTOR(POSTAL) GURUVAYOOR (1992(21) ATC 13), a three-member Full Bench decision of the Ernakulam Bench of this Tribunal two points were considered

- (i) Whether previous experience gained by a candidate due to his working as provisional ED Agent should be considered by giving him due weightage in the regular selection?
- (ii) Whether a person having gained such an experience should also be given preference under Section 25-H of the Industrial Disputes Act in the regular selection?

15. The second question need not detain us as it is not relevant to the present controversy. In the first question, it is implicit that an Extra Departmental Agent, who had been provisionally appointed, was fully qualified to be considered for a regular appointment on merits. To put it differently, he fulfilled all the conditions of eligibility. The question of his being given weightage could arise only if he was otherwise qualified in all other respects and other things were equal in comparison to the other competing candidates. This case does not advance the case of the petitioner.

16. In EJ EDWIN VS. ASSISTANT SUPERINTENDENT OF POST OFFICES & ORS.(ATR 1993(1) CAT 786), it was held that an Extra Departmental Agent working in the post on provisional basis is eligible to be considered in the regular selection notwithstanding non-sponsoring of his name by the Employment Exchange. It is noteworthy that in this case, Instruction No.12 contained in the letter dated 4.9.1982 of the DGP&T has not been considered at all. On the contrary, it is implicit in the judgement that the Department had initiated proceedings for filling up the regular post keeping in view the terms of the aforesaid letter. The controversy, inter alia, was as to whether the Employment Exchange while sponsoring candidates

was justified in fixing a cut-off date on the basis of the date of registration. It was held that such an action was not justifiable. The basis of this view appears to be that the employee in that case acquired a right to be considered for regular appointment on account of the fact that he had been provisionally appointed. In paragraph 12, it was held:

"The applicant's rights to consider for the regular selection is protected by the repeated decisions of this Tribunal. Consistently we are taking the view that an ED Agent, who has some prior service, is eligible to be considered in the regular selection notwithstanding the non sponsoring of his name by the Employment Exchange. On this issue when a difference of opinion arose, the matter came up before the Full Bench and in G.S.PARVATHY VS.SUB-DIVISIONAL INSPECTOR(POSTAL) GURUVAYUR SUB-DIVISION,GURUVAYUR, it categorically held that a working ED Agent is eligible to be considered in the regular selection and he/she is also entitled for some weightage for the prior service. The applicant in this case comes squarely within the dictum laid down by the Full Bench of this Tribunal and his limited relief of considering in the regular selection cannot be denied by the respondents 1 to 3." Lis

17. We have referred to the judgement of the Full Bench in Parvathy's case(supra). We have taken the view that Paravathy's case does not touch the controversy. We have emphasised that in that case the fulfilment of the necessary requirement of eligibility was implicit. The only other case to which a reference was made by the learned counsel is Suresh Babu's case (supra). We have already made our comments on that case.

18. The learned counsel for the petitioner has made a statement at the Bar that apart from the contention, that the stand taken by the respondents that the petitioner could not be considered for a regular appointment as he had not been sponsored by the Employment Exchange, is illegal and without any justification, no other point is being pressed in support of this OA.

19. In the result, our conclusions are as follows:-

- (i) The decision of the Ernakulam Bench in Suresh Babu's case (supra) is not correct and is overruled.

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(ii) The decision of the Ernakulam Bench in E.J.Edwin's case to the extent it holds that an Extra Departmental Agent working on provisional basis is eligible to be considered for a regular selection notwithstanding non-sponsoring of his name by the Employment Exchange, is not correct and is overruled.

(iii) Instruction No.12 as contained in the letter dated 4.9.1982 of DG P&T lays down the term of eligibility and, therefore, forms Articles 14 and 16 of the Constitution.

20. We clarify that we are not expressing any opinion on the question as to whether a person appointed on provisional basis on being sponsored by the Employment Exchange should be responsored by the Employment Exchange to be eligible for a regular appointment.

21. This application fails and is dismissed without any order as to costs.

transcript
(A.B.GORITHI)
MEMBER(A)

Wuzar
(V.NEELADRI RAO)
VICE-CHAIRMAN(J)

S.K.D
(S.K.DHAON)
VICE-CHAIRMAN(J)

Dated: October 24, 1994
(Dictated in Open Court)

Arb/23-11-94
Deputy Registrar(J)CC

To

1. The Sub Divisional Inspector (Postal)
West Sub Division, Anantapur-4.
2. The Superintendent of Post Offices,
Sri Krishna Devaraya Sadan, Anantapur-1.
3. The Director General, Dept.of Posts,
Dak Bhavan, Sansad Marg, New Delhi-1.
4. One copy to Mr.Krishna Devan, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.
8. Copy to P.S.t.e Hon'ble Vice-Chairman,CAT,Hyd.Bench,Hyd.
9. One copy to P.S.t.e Hon'ble Member(A),CAT.Hyd.Bench,Hyd
10. One copy to P.S.t.e Hon'ble Vice-Chairman,CAT,Principal Bench,
Faridkot House,Copernicus Marg,New Delhi-110 001.
11. Copy to All Reporters.

For filing *Received* *On 23/11/94*
TYPED BY *Rejat off the Case* *checked by*
COMPARED BY *25/11/94* *Approved by*
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND
S. K. Dhaan, V. C. Pr. *Secy*
THE HON'BLE MR. P. RANGARAJAN : M(A)
The Hon'ble Mr. A. B. Gorathi : M(A)

DATED: 24-10-1994

ORDER/JUDGEMTN:

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

in

O.A.No. 652/93

T.A.No. (w.p.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

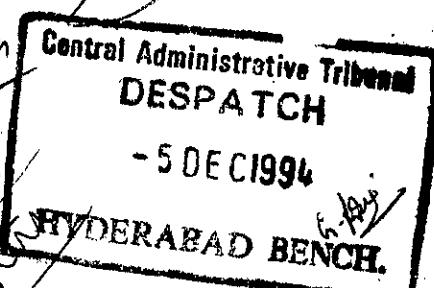
Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

One copy
copy handover
to PL to HVC
on 24/11/94



Copy sent to
All Reps
on 24/11/94