

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

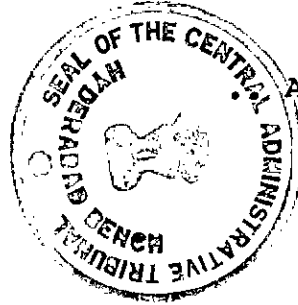
O.A.1219/94.

Dt- of Decision : 27-6-97.

Kum. S.Vijaya Jyothi

Vs

1. The Postmaster General
Vijayawada Region,
Vijayawada.
2. The Supdt. of Post Offices,
Khammam Division, Khammam.
3. The Postmaster,
Kothagudem Collieries HO,
Kothagudem, Khammam District



Applicant.

.. Respondents.

Counsel for the applicant : Mr.P.Krishna Reddy

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

CORAM:

THE HONIBLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI A.M. SIVA DAS : MEMBER (JUDL.)

selection of the candidates with D.C.C.P. qualification. The SFC, Khammam invoking the provision of Rule 5 (1) of CCS (Temporary Service) Rules, 1965 issued the impugned order terminating the service of the applicant. As the applicant has not acquired basic educational qualification i.e., 10+2 standard (Senior Secondary) her services are liable to be terminated as her selection is irregular.

5. Annexure-1 impugned order dated 7-9-94 says that the same is issued in pursuance of sub-rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965. The stand taken by the respondents is that the applicant does not possess the requisite qualification for the post to which she is appointed and hence services are terminated. It is not known in such circumstances how CCS (Temporary Services) Rules, 1965 are applicable. The learned counsel appearing for the respondents could not cite any authority in support of the position that the CCS (Temporary Services) Rules will apply in the case of the applicant. According to the learned counsel for the respondents in the absence of any other rules applicable to the applicant CCS (Temporary Service) Rules, 1965 were relied on. The learned counsel for the respondents also submitted that in the appointment order it is stated that the appointment is temporary. Even if it is so stated we are unable to subscribe to the view that in the case of the applicant in the said circumstances the CCS (Temporary Services) Rules, 1965 could be applied. We do not think it is necessary to go in detail to the provisions contained in the CCS (Temporary Services) Rules, 1965. It is suffice to say that the said rules do not apply in the circumstances of the case at hand.

6. There is no case for the respondents that the applicant obtained appointment by misrepresentation. There is also no case for the respondents that the applicant has committed fraud or there was any mistake committed by the applicant with regard to her selection and appointment.

training for 15 days from the date of her joining at Kothagudem
Kothagudem.
Colls.H.O/. She accordingly joined on 17-11-93. As per the
impugned order her services are terminated w.e.f., the date of
expiry of ~~the~~ a period of one month from the date of the notice
issued to her. The said order was served her on 12-9-94.

4. The respondents say that as per application submitted by the applicant/she has passed SSC and Diploma in Commercial Computer Course (A 2 year course) offered by the ~~State~~ Board of Technical Education and Training, A.P. Hyderabad in various Polytechnic Colleges in the state. She got 89% of marks in the 2nd year of D.C.C.P. Course. She produced a certificate dt. 3-9-91 issued by the Principal, Government Polytechnic for Women, Suryapet to the effect that pass in Diploma examination in 2 year D.C.C.P course is equivalent to pass in Intermediate examination. On the basis of marks obtained by her in the 10+2 (Diploma Course) her candidature was provisionally considered for the post by the DPC held on 29-1-93 and her name was kept at Sl.No.8 of the waiting list. As some of the candidates in the selection list above her did not turn up ~~for~~ she was asked to attend the office of the SPO vide letter No.B2-Rectt./II HY-92 dated 6-7-93 for verification of documents. After verification of documents she was directed to undergo induction training at PTC, Mysore. Thereafter she was appointed on temporary basis. It is clarified by the D.G., Posts in his letter No.64-8/92-SPB I dated 11-2-94 that the candidates who have completed the minimum educational qualification of ~~12~~ 10+2 standard (senior Secondary) in vocational stream are not eligible for consideration for appointment to the cadre of Postal Assistants in the department. In view of the above clarification ~~by D.O. 12/2/94 to the effect that the SPOs who have completed the~~ the ~~XXXX~~ ~~12/PMG, Vijaywada directed to SPOs, Khammam to cancel the~~

higher authority, got the clarification and then only should have considered the question of appointing the applicant. Instead of doing so the applicant was given appointment. It is also submitted by the learned counsel for the respondents that the applicant was given appointment inspite of the doubt by the appointing authority entertained in order to see that if she was to be given appointment as per the clarification issued by the higher authority the reversion of the juniormost could be avoided. If that was the intention it could have been solved in a better way. One post could have been kept unfilled and the problem could have been easily solved or it could have been solved also by appointing the junior most on the definite ground that the appointment is subject to the availability of the continued vacancy. As both these courses are not adopted we are unable to agree with the submission made by the learned counsel for the respondents.

8. The question to be considered is whether the applicant has secured the appointment by making any misrepresentation or committing fraud. As there is no case for the respondents that the applicant has committed any fraud or ^{made} any misrepresentation, the applicant cannot be found fault. Even if it is a fact that the appointing authority had a doubt at the time of appointing the applicant whether she was possessed of the requisite qualification, we cannot find the applicant guilty on that count. There is no reason to find the applicant guilty of any sort of misconduct much less fraud or misrepresentation. If the appointing authority was not in a position to be on sure or possitive or definite or concrete ground as to a particular necessary qualification for a particular post the applicant is not to be found fault. The fault such a case can only be that of the appointing authority. The learned counsel appearing for the respondents submitted that the applicant should not have applied for this post since she does not have the

7. The point pressed in to service by the learned counsel for the respondents is that since the applicant does not possess the requisite qualification/^{her} appointment is liable to be terminated. There cannot be any dispute that it is for the administration to prescribe the qualification for a particular post. The administration that prescribed the qualification cannot plead ignorance of the qualification prescribed and having selected a candidate, as it could only be, being convinced that candidate is possessed of the qualification, the administration cannot turn round and say that it was done under a mistake and now having found out mistake the services can be terminated by issuing an order like Annexure-A-1 dated 7-9-94. The learned counsel appearing for the respondents relied on the order of the Bangalore Bench of this Tribunal in OA.158/93 and connected OAs, wherein it has been stated that the Postal Department ignoring the vocational diploma holder from consideration in the matter of appointment to Postal Assistant and Sorting Assistant cannot be said guilty of some kind of discrimination. Here it is not a case identical as in the rule cited and could well be distinguished on facts. The authority concerned on the basis of the scrutiny of testimonials of the applicant appointed her. She was sent both for practical and theoretical training. It is stated in the reply statement that the applicant was in the waiting list and as other candidates were not available the applicant was given appointment. It was submitted by the learned counsel for the respondents that the authority who appointed the applicant was entertaining a doubt whether the applicant is possessed of the requisite qualification and the matter was referred to higher authority. We are unable to follow the procedure followed by the appointing authority. If the appointing authority had any doubt as to the qualification of the applicant for appointment to the post instead of appointing her and then referring the matter to the higher authority, the appointing authority should have first referred the matter to the

11. Accordingly, the CA is allowed and Annexure-1 order dated 07-09-94 is quashed. No costs.

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न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

किस मसला	CASE NUMBER	0A1219/94
मसला का विवरण	Document	27/6/92
प्रत तय्यार करवा रखा दिनांक	Copy Made Run y on	25/7/92
अनुभाग अधिकारी (न्य बिक) Section Officer (J)		

requisite qualification. It cannot be forgotten at this juncture the submission made by the learned counsel for the respondents that the appointing authority admittedly was not quite sure or definite that the applicant did not possess the requisite qualification but was only entertaining a doubt and referred to the higher authority for clarification. We do not find any force in the submission made by the learned counsel for the respondents that the applicant was not qualified and hence should not have applied for the post at all. It is the duty of the appointing authority to verify and get convinced that only those candidates possessing the prescribed qualifications are selected and appointed. If the appointing authority could not do it either due to his ignorance or due to his doubt or for whatever other reason cannot turn round after a lapse of time and say that the selection and appointment are bad on the ground that the applicant did not possess the requisite qualification.

9. It can only be said that the respondents have acquiesced in the infirmities which they allege in this case. If there are infirmities and allowed the applicant to undergo the theoretical and practical training after having been appointed, it is a case where acquiescence writ large. That being the position we do not find any ground to accept the contentions put forward by the respondents and not to accept the case of the applicant.

10. The learned counsel appearing for the respondents submitted that there is no estoppel against statute and therefore Annexure-1 order dt. 7-9-94 is perfectly in order and is not liable to be quashed. The question of estoppel against statute does not arise here. The admitted case of respondents is that the termination is effected on the basis of the clarification issued by D.G. Posts. This submission that Annexure-1 is not liable to be quashed we are unable to accept on the face of acquiescence of the respondents.