

(600)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 1419/94.

Dt. of Decision : 24.11.94.

V.V. Babu

.. Applicant.

Vs

1. The Senior Superintendent
of Post Offices,
Nellore Division,
Nellore-524 001.
2. The Postmaster General,
Vijayawada Region,
Vijayawada-520 002.
3. The Chief Postmaster General,
Andhra Pradesh Circle,
Hyderabad-500 001.
4. The Union of India
rep. by the Director General,
Department of Posts,
Dak Bhavan, New Delhi-110 001.

.. Respondents.

Counsel for the Applicant : Mr. T. Jayant

Counsel for the Respondents : Mr. V. Bhimanna, Addl. CGSC.

CORAM:

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

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

(Handwritten initials)

OA 1419/94.

JUDGMENT

Dt:24.11.94

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri T.Jayant, learned counsel for the applicant and Shri V.Bhimanna, learned standing counsel for the respondents.

2. The applicant is now working as Extra Departmental Branch Post Master, Annareddypalem on provisional basis. He applied for the ^{said} ~~same~~ post on ~~regular~~ basis in pursuance of the notification dated 11.10.1992, ^{issued for filling up on regular basis.} On 12.3.1993, there was an amendment of the relevant rule whereby the minimum educational qualification was raised to SSC from 8th Standard. A second notification for the said post was issued on 22.9.1993. The applicant had not applied in pursuance of the said site educational qualification. It is stated for the applicant that he submitted a representation on 16.10.1993 to R-I requesting for consideration of his case as he was eligible in pursuance of the first notification which was issued prior to the amendment. It is also the case of the applicant that no reply was received in regard to the same. A third notification dated 15.12.1993 and 4th notification was issued on 8.8.94

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and 5th notification was issued on 4.10.1994 ~~xx~~ wherein the last date for receiving applications was specified as 4.11.1994. This OA was filed on 14.11.94 praying for quashing the notifications dated 22.9.93, 15.12.1993, 8.8.1994 and 4.10.1994 and for directing R-I to consider the case of the applicant as EDBPM with reference to the application submitted by him in response to the 1st notification dated 11.10.1992 and for further direction to R-I to give weightage for his previous experience of 3 years and 9 months ~~as~~ ~~PROVISIONAL EDBPM.~~

3. The applicant ~~relied~~ relied upon the judgment of the Supreme Court in 1990(1) SLR 307 (P.Mahendran and others Vs. State of Karnataka ~~and others~~) wherein it was held that the amended provision which had come into existence subsequent to the date of notification calling for applications for appointment should not be taken into consideration unless it is specifically mentioned that the said amendment is retrospective.

It is urged on the basis of the above judgment that as the amendment raising minimum educational qualification to SSC had come into existence subsequent to the 1st notification in pursuance of which the applicant applied, for and as the applicant was eligible ~~at the time of application, he should be considered.~~ It is further stated for the applicant that there is no justification for issual of the later 4 notifications in regard to the very same post.

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4. When once a second notification is issued in regard to the very post form which there was earlier notification, it has to be stated that the 1st notification stood cancelled on the issual of the 2nd notification. Similarly whenever later notification was issued, earlier notification ^{will stand} stood cancelled ^{later notification is issued calling for} if ~~thereby~~ applications are called for in regard to the very same post. Hence, in view of the later notifications, it has to be stated that the first notification ~~is~~ no longer stands.

5. Then, it has to be considered as to whether ~~the~~ ^{issues} on the part of the applicant when he is ^{now} challenging the 2nd and later notifications by alleging that there is no justification for issual of those notifications. It is not a case where the applicant ^{was not} ~~herein~~ notification. In fact, the applicant stated that he submitted a representation to R-I requesting him to consider his case though he is a non-matric, after the 2nd notification was ~~issued~~ ^{not} ~~not~~ chosen to move this Tribunal even when ~~the~~ the 3rd notification was issued whereby the 2nd notification was impliedly cancelled. In fact, the applicant approached this Tribunal only after the

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5th notification was issued. So, we feel that on the ground of laches, the case of the applicant has to be rejected and hence there is no need to consider as to whether there was any justification for cancelling the earlier notifications in calling for applications for the post of EDBPM, Annareddypalem.

6. Their Lordships of Supreme Court held in 1994 SCC(L&S) 968 (Union of India and another Vs. Yogenera Singh) that the extant rules as on date of notification calling for applications for appointment by way of direct recruitment and not the extant rules as on the date of vacancy are applicable for appointment for that post. As the present selection has to be made on the basis of the 5th notification and as the 5th notification was issued long after the amendment as the applicant is not having the requisite educational qualification as per the said amended provision, no direction can be given to R-I to consider the case of the applicant on the basis of his application in pursuance of the 1st notification.

7. It is not necessary to consider for the disposal of this OA as to whether the applicant has to be treated as surplus candidate on being replaced on the ground that he completed 3 years of service

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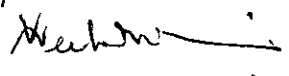
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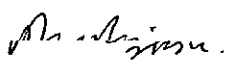
on provisional basis. This order of dismissal does not deprive the applicant to make representation to the concerned authority if as per rules or decisions of Courts/Tribunal, he has to be considered as surplus candidate on the basis of more than 3 years of provisional service. We will make it clear that the applicant should not be replaced by another provisional appointee.

8. In the result, the OA is dismissed at the admission stage. The status-quo which was ordered


(R. RANGARAJAN)
MEMBER (ADMN.)

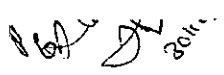

(V. NEELADRI RAO)
VICE CHAIRMAN

Open court dictation.


Deputy Registrar(J)CC

- To vsn
1. The Senior Superintendent of Post Offices,
 2. The Postmaster General, Vijayawada Region, Vijayawada-2.
 3. The Chief Postmaster General, A.P.Circle, Hyderabad-1.
 4. The Director General, Union of India, Dept. of Posts, Dak Bhavan, New Delhi-1.
 5. One copy to Mr. T. Jayana, Advocate, CAT. Hyd.
 6. One copy to Mr. V. Bhimanna, Addl. CGSC CAT. Hyd.
 7. One copy to Library, CAT. Hyd.
 8. One spare copy.

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

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

..... 20/11-1994

ORDER/JUDGEMTN:

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

in

O.A.No.

1419/94

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

No order as to costs.

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Mr. Spine 2/11
[Signature]
30/11/94

Central Administrative Tribunal
DESPATCH
730611994
HYDERABAD BENCH

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