

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1426/94.

Dt. of Decision : 28.8.97

Abdul Razaak

.. Applicant.

Vs

1. The Post Master General,
A.P.Circle, Hyderabad.
2. The Supdt. of Post Offices,
Sangareddy Division,
Sangareddy, Medak District.
3. N.Nagaiah

.. Respondents.



COUNSEL FOR THE APPLICANT : Mr.S.Lakshma Reddy

COUNSEL FOR THE RESPONDENTS : Mr.N.R.Devaraj, Sri.CGSC.

CORAM:-

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.S.Lakshma Reddy, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents. Though notice has been received by R-3 neither R-3 nor his counsel was present. R-3 was called absent.

2. The applicant in this OA was appointed as a provisional EDBPM, Rudrur post office, Narayanakhed Mandal, Medak District on 4-4-89. A notification calling for application for the selection of BPM, Rudrur was issued on 26-9-90. Four applications including that of the applicant were received. One Mr.M.A.Razak was selected on the basis of that notification. The applicant was not selected, states that the learned counsel for the respondents. The applicant filed OA. No.

644/90 on the file of this Bench. An interim order was given in that OA to the effect that the applicant should not be replaced by another provisional employee. However there is no bar to replace the applicant by a regular candidate.

3. One Mr.M.A.Razak was reported to have been selected on the basis of the notification dated 26-9-90. The applicant submits that he was continued as EDBPM and his services were utilized from 1-8-90 to 8-9-92. It is stated by the applicant that on 8-9-92 the post office was closed without assigning any reasons by the respondents with a view to deprive the applicant the benefit of regularisation and to defeat the claim of the applicant for regularising him when the above referred OA was pending in the Tribunal. The applicant made representation to the respondents on 22-2-94 for release of salary from 1-8-90 to 8-9-92. But that representation was rejected by proceedings dated 8-3-94 on the ground that he was unauthorisedly continuing in the post and did not hand over the charge to the regularly selected BPM. The applicant contests that proceedings by saying that it ^{is} not based on correct factual position and he was informed by R-2 by letter No.B.III/18-A/NRD dated 26-10-90 to the effect that the applicant may act as per CAT orders. The order is interpreted by him to the effect that respondents had authorised him to continue as BPM in view of the orders of the CAT. Hence the submission --
~~he~~ continued unauthorisedly without being appointed by the competent authority is not based on any facts, submits the applicant. The applicant also submits that the respondents have closed the post office with a malafide intention. He is fully eligible for being posted as ^{the} BPM of that post office on regular basis and belongs to BC community.

4. A decision was taken by R-1 to reopen the Branch office on 7-4-94. The employment exchange was addressed on 13-4-94 to sponsor the candidates. But there was no response from the

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employment exchange. Hence an open notification was issued on 23-5-94. Only two candidates viz., the applicant and R-3 were found eligible for selection. R-3 was selected and he was posted.

5. This OA is filed to set aside the appointment ^{and} ~~order of~~ ~~selection of~~ R-3 as EDBPM, Rudrur (v), Narayankhed Mandal, Medak District by holding it as illegal, malafide and violative of Article 14 and 16 of the Constitution of India and for a consequential direction to the respondents to appoint the applicant herein by regularising his services as EDBPM w.e.f., 4-7-89 with all consequential benefits.

6. A reply has been filed in this OA. It is an admitted fact that the applicant was appointed ^{as} ~~as~~ provisional ^{transi} ~~transi~~ ^{as} EDBPM on 4-4-89 pending completion of the process of regular selection. A notification calling for application for the selection of the BPM, Rudrur was issued on 26-9-90. The case of the applicant was considered but he was not selected as he did not produce the income certificate. One Mr.M.A.Razak who fulfilled all the required conditions was selected. The applicant refused to hand over the charge to the selected candidate and filed OA.644/90 on the file of this Bench. The Tribunal did not grant any interim order to continue the applicant even when the selected candidate was posted. Due to involvement of some political groups the post ~~was to be transferred to the selected candidate.~~ R-2 approached the Superintendent of Police, Medak for handing over of the post office by the applicant to the selected candidate. The SP, Medak directed the Sub-Inspector of Police at Narayankhed to render the required assistance in getting the charge transferred from the applicant. The applicant resisted that move and all efforts made to get the charge of the BPM transferred from the applicant were proved to be futile. Hence the Branch Office was temporarily closed on 8-2-92. A decision was taken by R-1 to reopen the branch office on 7-4-94.

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7. In view of the decision to reopen the branch office employment exchange was addressed on 13-4-94 to sponsor the candidates for regular posting of the EDBPM, Rudrur. There was no response from the employment exchange. Hence open notification was issued on 23-5-94. 8 applicants responded to that open notification. Out of 8 only 2 candidates were found eligible for consideration. The two candidates were the applicant and R-3. As the representation of the SC community candidate was below the prescribed minimum level in Sangareddy Postal Division in ED Agents Cadre R-3 who belongs to SC community was selected. The Branch post office was opened on 27-8-94 appointing the selected candidate as BPM. Even though the applicant had secured more marks than R-3 the applicant could not be posted, as the Sangareddy postal division was not having the requisite percentage of SC candidates to fulfill the constitutional obligations. Hence R-3 who is an SC candidate was necessarily to be considered against the SC quota. Hence he was selected and posted. The applicant cannot have any complaint because of the selection of R-3 as the same was done as per extant rules. Hence the respondents prayed for dismissal of the OA.

8. There were two main contentions raised by the applicant seriatum below:

9. The first contention of the applicant is that he is a B.Com., Graduate and also had obtained more marks in SSC compared to R-3 which is the minimum educational qualification required for posting as regular EDBPM. Hence the rejection of his case is against the rule and is not tenable. Further the notification dated 23-5-94 does not indicate that the post ^{was to} be filled by SC candidate. When there is no such indication reserving the post for SC candidate in the notification, the respondents are prevented from posting an SC candidate who is less meritorious

than him. He relies on the judgement of the Calcutta Bench of this Tribunal in OA.No.712/95 decided on 15-11-96 (Shibnath Dhara vs. UOI & Ors) to state that the appointment of a reserved candidate can be resorted to only if such a condition exists in the notification. In the absence of any such condition the respondents should select the meritorious candidate who has submitted the required documents and fulfilled the necessary conditions as per the notification.

10. The D.G., P&T letter No.43-117/80-Pen., dated 8-10-80 provides for "representation of SC/ST candidates in the employment of ED Staff to the prescribed minimum limits as in the Group C&D posts in the department." The respondents in their reply submit that in Sangareddy Postal Division there are 532 ED Posts. Out of that strength only 22 posts are manned by ED agents belonging to SC community. Thus the representation of SC community ED Agents works out to only 4.1% against the prescribed minimum limit.

below the prescribed percentage, R-2 selected R-3 who belongs to SC community giving preference over the applicant. Even if the applicant had obtained higher marks in SSC he cannot be considered as the representation of the SC community in the ED posts should be brought up to the required level in view of the P&T letter referred to above. As R-3 belongs to the SC community and otherwise eligible for posting as EDBPM he was preferred and

11. We have perused the judgement of the Calcutta Bench. That judgement was delivered on 15-11-96. The thrust of the judgement is to ensure that OC candidates are not deprived of their chances for posting in ED posts even if they are more meritorious, compared to SC/ST candidates on the pretext of reservation even if the cadre possesses sufficient number of

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held by the Calcutta Bench of this Tribunal that the SC/ST candidates should be posted only if the notification is issued for appointment in favour of SC/ST candidate. If there is no indication in the notification in regard to the preference to be given to the SC/ST candidate then the meritorious candidates amongst those who applied should be selected. Earlier the position was not made clear by any of the judicial forum. The letter dt.8-10-80 referred to above provides for selection of reserved candidates if the representation of the reserved candidates in the ED cadre is less than the minimum prescribed. As per the statistics given by the respondents the representation of the SC candidates in the ED cadre was only 4.1% much less to the minimum requirement. Hence the rule as was existing on the day of selection in 1994 was followed. Even though there was no

notification dated 23-5-94, posting of R-3 had not resulted in exceeding the minimum prescribed ^{against} for SC quota and hence no harm is caused to the unreserved candidates by posting the reserved candidate, namely, R-3. It has to be held that the direction given by the Calcutta Bench of this Tribunal to state the preference after 15-11-96, the date when the judgement was delivered. Hence we do not subscribe to the view that the respondents had failed to follow the rule laid down by the Calcutta Bench of this Tribunal.

12. As R-3 was selected and posted as EDBPM, Rudrur as per the existing rules on the date of selection and that was to accordance with the rule for adhhereing to the prescribed limit of reservation for reserved community candidates. Hence we do not see any reason to uphold the contention now raised by the applicant as above. In that view this contention fails.



13. The second contention of the applicant in this OA is that the applicant was not selected due to contumacious conduct on the part of the respondents especially R-2 as he did not hand over the charge earlier to Mr.M.A.Razak who was the selected candidate on the basis of the notification issued on 26-9-90. In the selection conducted on the basis of the notification dt. 25-3-94 the appointing authority viz., R-2 acted against his interest and disqualified him on one pretext or other. The malafides on the part of R-2 is clearly writ large on his face and there is no need to further produce any document to prove his malafide intentions.

14. To examine the above contention we called the file containing the selection proceedings for our perusal. We have gone through the various proceedings kept in file No.B3/18-A/NKD/Rudrur. This file contains the applications received from R-2 and others in response to the notification dt.23-5-94. It also contains the office note containing the final decision on this selection dt.13-8-94 of R-2 which is based on appreciation given by the Sub-Divisional Inspector (Postal) dated 10/11/94 Zaheerabad sub-division, Zaheerabad. This file also contains the earlier correspondence by which the police authorities were approached by ^{the} Superintendent of Post offices to take action for ensuring the applicant to hand over the post to the earlier selected candidate viz., M.A.Razak. The applicant submits that since he did not hand over the charge even though the police authorities tried to force him to hand over, that incident was in the memory of R-2 to reject his case.

15. The correspondence with the police authorities took place in the year 1991 i.e., 3 years earlier to the completion of the selection proceedings initiated on the basis of the notification issued on 23-5-94. We have seen the signature of R-2 on the selection proceedings dt. 13-8-94. One Mr.C.V.Prasad



who worked as Supdt. of Post office, Sangareddy division had finalised the selection in the year 1994. That signature does not tally with the signature of the Supdt. of Post office earlier when a complaint was made to the police authority. When two different Superintendent of Post Offices dealt his case at different times, it is too much to presume that R-2 was biased against the applicant while finalising the selection and that bias had culminated in rejecting the candidature of the applicant in the selection held on the basis of the notification dt. 23-5-94. In the office note dt. 13-8-94 signed by R-2 whereby the selection proceedings for selecting the candidate for the EDBPM was decided there is no mention in regard to the earlier incident. It only states that both the applicant and R-3 are equally placed as far as submission of the necessary certificate including income and property certificates. The note clearly states that the applicant had secured 305 marks in SSC whereas R-3 had secured 277 marks. The communal representation of SCs in the cadre of ED is far below the required percentage. Hence in view of the DG letter No.43-84/80-pen dt. 13-3-84 the reserved community candidate should be given preference in appointment and hence R-3 who hails from SC community and who fulfilled all the requisite qualifications required for appointment of EDBPM is selected as EDBPM, Rudrur post office, Narayankhed sub-office.

In Conclusion
This noting cannot be lead as having been written with a biased motive of R-2.

16. As stated earlier the proceedings dt.13-8-94 of R-2 was based on the note dated 10/11-7-94 submitted in this connection by the Sub-Divisional Inspector (Posts), Zaheerabad sub-division,

was provisionally appointed as BPM since the opening of the branch office and upto the suspension of the branch office during which period his work and conduct as far as the branch

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office work ^{WMS} concerned has been proved satisfactory." Hence the note of the SDI(P) is to certain extent complementary to the applicant. This note also does not mention anything regarding the earlier correspondence with police. When the final selection was made based on the note of the SDI(P), it cannot be said that the appointing authority viz., R-2 took a biased view in rejecting the candidature of the applicant. Hence it has to be held that the malafides made out are not ^{an above} ~~proved~~ ^{substantiated} by record. Hence the second contention also has to fail.

17. In view of what is stated above we find that there is no reason to set aside the selection of R-3 and give the consequential direction as prayed for by the applicant in this OA. In that view the application has to be dismissed as having no merits. Accordingly it is dismissed. No costs.

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17-11-72

नोटराल अधिकारी

COURT OFFICER.

केन्द्रीय न्यायालय अधिकारी

(Central Administrative Tribunal)

केन्द्रीय न्यायालय

HYDERABAD BENCH