

146

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1057/94.

DATE OF ORDER : 10-09-1997.

Between :-

P.Rajamouli

... Applicant

And

1. The Post Master General,
Hyderabad Region, Hyderabad.

2. The Superintendent of Post
Offices, Peddapally-505 172.

3. S.Linga Rao

... Respondents

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Counsel for the Applicant : Shri K.Vasudeva Reddy

Counsel for the Respondents : Shri N.V.Raghava Reddy for RR 1 & 2.
Shri KSR Anjaneyulu for R-3.

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CDRAM:

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

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

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri K.Vasu Deva Reddy, counsel for the applicant,
Sri N.V.Raghava Reddy, standing counsel for Respondents 1
and 2 and Sri D.Subramanyam for Sri K.S.R.Anjaneyulu for Res-
pondent No.3.

2. The Superintendent of Post Office, Peddapally invited
applications through open notification dt.31-7-90 for filling up
the post of EDBPM, Shanagunda Village. The applicant as well as
Respondent No.3 had submitted their applications for the said post.
At the first instance the applicant was selected for the said post.
Then the Respondent No.3 had filed OA 1117/91 challenging the
selection and appointment of the applicant. In the said OA it was
~~stated~~ that the Respondent No.3 secured higher marks than the
in this OA ~~and that~~
applicant/xxx the appointing authorities have not considered the
case of Respondent No.3 case properly. Accordingly OA 1117/91 ~~was~~
disposed of with the following directions :-

"As we are satisfied that the rejection of the
candidature of the applicant was made for reason
which is untenable, we set aside the selection
made by the official respondents in response to
their notification dt.31-7-90. To this extent
we allow the OA. The respondents are now direc-
ted to re-scrutinise the relative merits of the
candidates who responded to the notification
dt.31-7-90 and select a suitable candidate
in accordance with the extant rules. The res-
pondents shall comply with this direction within
one month from the date of communication
of this order."

As per the directions contained in OA 1117/91, the Superintendent
of Post Offices re-scrutinised the applications and selected Res-

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pondent No.3 in the present OA. Now the applicant who was ~~also~~
Respondent No.4 in OA 1117/91 has filed this OA challenging the
scrutiny and appointment of Respondent No.3 herein to the said post.

3. A counter has been filed by the Respondents 1 and 2 stating
that the applicant had not submitted proof in respect of landed
property stated to have been owned by him with his application. Hence
he was not preferred. Further it is stated that non-owning of landed
property is a dis-qualification for the said post. They
further state that Respondent No.3 was selected as per the directions
made in OA 1117/91.

~~stating that he has secured higher marks in SSC exam.~~
4. Respondent No.3 has filed his counter. The main contentions
of the Respondent No.3 are (i) that his selection is in accordance
with the directions in OA 1117/91. As per the directions in OA 1117/91
there is no necessity to produce property certificate in his own name.
At that time he had produced property certificate in the name of his
father, which ^{was} ~~is~~ sufficient to consider his case as if he possessed
property on that day; (ii) the instructions of Director General to
produce the property certificate in the name of the applicant did not
exist when the vacancy of EDBPM arose in 1990. The same was also
the view of earlier judgements of this Bench. The learned counsel for
Respondent No.3 states that the requirement of adequate means of
livelihood does not mean that candidate should possess immovable
property in his own name ~~and in support of this contention he relies on~~
~~the decision rendered in Kailesh Chandra Sharma Vs. Union of India.~~

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41

5. It is further submitted by Respondent No.3 that even though he (Respondent No.3) had not produced property certificate, he has produced income certificate to show that he had income of Rs.7,000/- per annum and he has secured more marks than the applicant in the present OA. The applicant has not placed any material on record that the selection of Respondent No.3 in the present OA was not proper or irregular.

6. We have considered the contentions raised by the official respondents as well as Respondent No.3. The main point to be noted here is that the respondents took different stand while issuing the selection list in the first instance earlier to the re-scrutiny and took a different view when the re-scrutiny was ordered by this Tribunal. The view expressed by the Respondents in para-8 page-2 of the reply was also available at that time when the selection was made initially. Hence we do not agree with the reasons given by the respondents for selecting Respondent No.3 in this OA on the basis of the explanation given by them.

7. The respondent No.3 has submitted that the view taken by the respondents in the reply is in accordance with the judgement in OA 1117/91. The Tribunal in OA 1117/91 has expressed some views. It is not stated that Respondent No.3 should not be selected as he is not in possession of any property certificate. If there are alienable rights available to him then it should be treated as property belonging to him. For that he has quoted the decision in OA 294/93 dt.14-9-95 rendered in Kailash Chandra Sharma Vs. Union of India & Others (1996)

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8. The judgement in the citation was delivered in the year 1995, when the letter of DGs dt.6-12-93 was very much available. Hence taking a contrary view may not be proper when specific instructions are available. A contrary view can be taken only for proper reasons which should be recorded. Probably the letter of DGs dt.6-12-93 was not brought to the notice of that Bench. Hence that citation cannot be taken as one to come to the help and aid in the case of Respondent No.3. As can be seen from the earlier notification, the applicant should produce both income and property certificates. The notification insists for income and property certificate and if any of the candidates do not produce these certificates, it cannot be held that those applications are complete in all respects. In that view it cannot be held that the selection of Respondent No.3 was done according to rules. If the property certificate in the name of the applicant is not produced along with the application/^{on} the last date of notification then it has to be concluded that the applicant has not submitted a proper application for the post of BPM. Under the circumstances as brought out as above, it is to be held that the applicant has not made out a full case to decide that he is eligible to be posted against that post.

9. The whole issue of selection has been done by the respondents ^{out fully} ~~with~~/adhering to rules and appreciating the facts. In such a situation it will be an endless litigation if we give any direction in this connection, either to select one of the candidates or reconsider the issue once again by considering all the applications received in pursuance of the notification dt.31-7-90. So the best way to resolve the issue is to cancel the selection and direct the respondents to

43

issue a fresh notification in which case Respondent No.3 and applicant and all other candidates eligible may apply and compete in the selection for the said post.

10. The learned counsel for the applicant in this OA submits that the Respondent No.3 has not submitted qualification certificate along with the application. This point should have been agitated when the previous OA was filed. IF there is no mention about that in the previous judgement, the applicant should have got it included by filing a review application. But such an action was not taken by the applicant herein.

11. The next contention of the applicant is that the 3rd respondent cannot be preferred on the pretext that he possesses^d more marks than the applicant, particularly in view of the fact that giving weightage to the marks in Secondary School Certificate examination was introduced only with effect from 1-4-93 and the selection was made in pursuance to the notification dt.31-7-90 earlier to 1-4-93. It is not necessary to go into this contention now in view of the opinion expressed by us earlier that fresh selection has to be conducted in filling up this post.

12. The post of BPM is an important one and cannot be kept vacant. Hence the present incumbent may be allowed to continue on provisional basis until finalisation of fresh selection. It is essential for the respondents to issue fresh notification quickly and finalise the process very expeditiously.

13. In the result, the notification dt.31-7-90 and the selection

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made on the basis of that notification for the post of EDBPM, Shanagunda are set aside. The Respondents are directed to hold a fresh selection for filling up the post of EDBPM, Shanagunda by issuing a fresh notification. The process of selection on the basis of fresh notification should be finalised as quickly as possible and till such time the selected candidate is posted, the present incumbent shall be continued as a provisional EDBPM.

14. OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J)


(R. RANGARAJAN)
Member (A)

Dated: 10th September, 1997.
Dictated in Open Court.

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URGENT
7/10/97
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

Dated: 10.9.97

ORDER/JUDGMENT

M.A./R.A./C.A.NO.

in

O.A.NO. 1057/94.

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLKR

II Court

