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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

C.A. 658/95.

Dt. of Decision : 09-12-97.

Pragada Narasimha Moerty

.. Applicant.

vs

1. The Union of India, rep. by the Sr. Supdt. of Post Offices, Srikakulam Division, Srikakulam.
2. The Asst. Supdt. of Post offices, Srikakulam Division, Tekkali.

.. Respondents.

Counsel for the applicant

: Mr. S. Suryaprakasa Rao

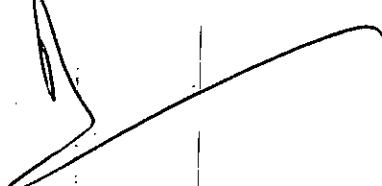
Counsel for the respondents

: Mr. K. Bhaskara Rao, Addl. CGSC.

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

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

Jr



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ORDER

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

Heard Mr. S. Suryaprakasa Rao, learned counsel for the applicant and Mr. K. Bhaskara Rao, learned counsel for the respondents. Notice had been served on R-3. R-3 called absent.

2. The applicant while working as a provisional EDBPM, Nandigam Mandal, notifications were issued on 29-11-94, 5-1-95 and 20-2-95 for filling up that post regularly of that post office. It is stated that the issue of the notification had arisen in view of the fact that the regular EDBPM of that post office was issued with a charge sheet and was under disciplinary proceedings. In response to the notifications dated 29-11-94 and 5-1-95 no adequate applications were received. Hence the last notification dated 20-2-95 was issued. In response to the last notification, 5 applications were received including that of the applicant as well as R-3. R-3 was selected and posted on the basis of that notification. In para-6 of the reply it is seen that R-3 was posted only on provisional basis, but not on regular basis as contended by the applicant.

3. This OA is filed praying for a declaration that the action of R-1 in appointing R-3 as EDBPM of Nandigam Village is illegal and void and to direct the respondents No. 1 and 2 to consider and appoint the applicant as EDBPM, Nandigam on regular basis with all consequential benefits.

4. The main point for consideration is whether a regular appointment can be made when the regular appointee is under disciplinary proceedings. Rule in this connection is very clear. The relevant portion of the Rules ^{is} as follows:-

"Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional".

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Hence the recruitment procedure initiated for regularly filling up the post of EDBPM is irregular as the regular appointee who was facing the disciplinary charges was not removed/dismissed from that post. The regular appointee who was facing the disciplinary charges was removed from service ^{only} on 20-12-95 whereas R-3 was posted as provisional candidate w.e.f., 10-05-95 much earlier to the date of removal of the regular appointee. Hence the posting of R-3 is not a regular appointment and is only a provisional appointment.

5. Time and again, the postal department has been informed that no provisional candidate can be replaced by another provisional candidate as directed by the Apex Court. In this case the applicant while he was working as a provisional EDBPM was replaced by R-3 and posted once again as a provisional EDBPM. Hence the provisional appointment of the R-3 is irregular in view of the direction of the Apex Court. In any case, the provisional appointment had taken place in May, 1995. Hence at this juncture it is not necessary for us to further go into this aspect as R-3 had already completed more than 2½ years of service as provisional EDBPM. R-3 could have been posted as regular EDBPM in that post office only after the regular EDBPM was removed from service. The proceedings for regular appointment initiated earlier to 20-12-95 is against the Rules as envisaged in the Service Rules for ED Staff as extracted above. Hence the issue of the notification issued for regular appointment dated 20-2-95 has to be construed as only a notification for provisional appointment, even though such notification is also not warranted in view of what is stated above.

6. In the circumstances quoted above the only direction that can be given to the respondents is to ~~not~~ notify afresh for regularly filling up the post of EDBPM, Nandigam. If such a notification is issued both the applicant and R-3 are at liberty to apply for the same and on the basis of the fresh selection, a regular appointment can be made.

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7. In the result, the following direction is given:-

R-1 is directed to issue a fresh notification for regularly filling up the post of EDBPM, Nandigam forthwith. Till such time the regular appointee is posted the present incumbent who is working as provisional EDBPM should be continued only as a provisional EDBPM, Nandigam as one time exemption to the rule of not replacing a provisional candidate by another provisional candidate. Time for compliance for filling up the post regularly is four months from the date of receipt of a copy of this order.

8. The OA is ordered accordingly. No costs.

(B.S.JAI PARAMESHWAR)
9.12.97 MEMBER (JUDD.)

(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 9th Dec. 1997.
(Dictated in the Open Court)

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OA.658/95

Copy to :-

1. The Senior Superintendent of Post Offices, Srikakulam Division, Srikakulam.
2. The Asstt. Supdt. of Post Offices, Srikakulam Division, Tekkali.
3. One copy to Mr. S. Suryaprakasa Rao, Advocate, CAT., Hyd.
4. One copy to Mr. K. Bhaskara Rao, Addl. CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate.

srr

12/12/97
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

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

Dated: 9/12/97

ORDER/JUDGMENT

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

in
O.A.NO. 658/95

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

