

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.807/95.

Date of decision: 24th March, 1998.

Between:

B. R. Rahini Rao. .. Applicant.

and

1. The Superintendent of POs ,
Parvatipuram Division,
Parvatipuram 531 501.
2. The Chief Postmaster-General,
A.P.Circle (representing
Union of India), Hyderabad 500 001.
3. M.Sankara Rao. Respondents.

Counsel for the applicant: Sri C.Suryanarayana.

Counsel for the respondents: Sri V.Rajeswara Rao.

CORAM:

Hon'ble Sri R.Rangarajan,Member (A)

Hon'ble Sri B.S.Jai Parameshwar,Member (J) .

JUDGMENT.

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

Heard Sri C.Suryanarayana, the learned counsel for the applicant and Sri V.Rajeswara Rao, the learned counsel for the respondents. None for Respondent No.3. Respondent No.3 called absent.

This O.A., is filed questioning the selection in terms of the Notification No. B ED/V-76 dated 14.12.1994 (Annexure A-6 to the O.A.) and to quash the same declaring the said Notification as illegal as provisionally appointed incumbent is being replaced by another provisional.

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appointee by the Notification dated 14.12.1994. The applicant also prays for a consequential direction to continue him as provisional EDBPM of Mamidivalasa B.O.

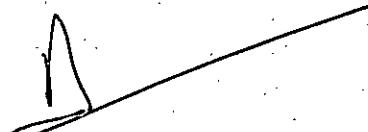
A reply has been filed in this O.A.

The main contention of the respondents in this O.A., is that the applicant is only a provisional candidate posted under exigencies of services. There is nothing to prevent another provisional candidate to be appointed by issuing an open notification as that provisional candidate selected on the basis of the notification will be regularised after completion of the Disciplinary Proceedings against the permanent incumbent who has not been finally removed from service. Hence the respondents submit that there is no irregularity in posting W Respondent No.3 on the basis of the Notification dated 14.12.1994. The respondents also submit that the applicant also is one of the applicants who responded to the open Notification.

The Apex Court in STATE OF HARYANA AND OTHERS Vs. PIARA SINGH AND OTHERS (1992) 21 ATC 403.

observed:

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"An ad hoc or temporary employee (provisional appointee is a temporary employee) should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority".

In the instant case the regular incumbent is not finally removed from service. He has a channel to appeal against the removal order. The case will be deemed to be completed only after his appeal is finalised. Hence, in our opinion, the replacement of the applicant who has been appointed as a provisional appointee by another provisional appointee by issuing an open notification is not in order. Even if the provisionally appointed person on the basis of the Notification is going to be appointed regularly after the permanent incumbent has been finally removed from service, that will not be a reason for appointing him as a provisional appointee replacing a provisional appointee.

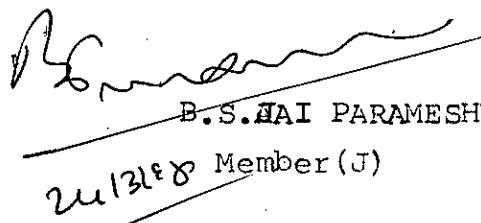
Hence on the facts and circumstances of the case, we are of the opinion that the replacement of the provisionally appointed person by Respondent No. 3 who is ^{be} ~~by~~ ~~also appointed as~~ a provisional appointee as EDBPM,

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Mamidivalasa is irregular. Even though the applicant has applied for the post in response to the open Notification, that will not be a reason to replace the applicant ~~by another provisional appointee on the basis of his merit.~~

In view of what is stated above, we have left with no other alternative except to set aside the provisional appointment of Respondent No.3 and allow the application directing the respondents to post the applicant as a provisional appointee till a regular appointment is made for the post of EDBPM, Mamidivalasa.

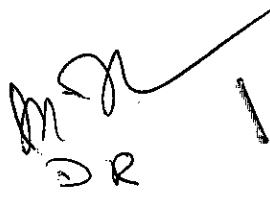
With the above directions, the O.A., is disposed of. No order as to costs.


B.S. AAI PARAMESHWAR
24/3/98 Member (J)


R. RANGARAJAN,
Member (A)

Date: 24-3-1998.

Dictated in open Court.


DR

sss.

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Copy to:

1. The Superintendent of Post Offices,
Parvathipuram Division, Parvathipuram.
2. The Chief Postmaster General, A.P.Circle,
Hyderabad.
3. One copy to Mr.C.Suryanarayana, Advocate, CAT, Hyderabad.
4. One copy to Mr.V.Rajeswara Rao, Addl.CGSC, CAT, Hyderabad.
5. One copy to D.R(A),CAT, Hyderabad.
6. One duplicate copy.

YLR

20/3/98

(b)

II COURT

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (3)

DATED: 24/3/98

ORDER/JUDGMENT

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

in

D.A.NO. 807/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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