

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

C.A. 1617/95.

Dt. of Decision : 12-04-96.

P. Baswaish

.. Applicant.

Vs

1. The Postmaster General,
Vijayawada.
2. The Supdt., of Post offices,
Khammam Division, Khammam.
3. The Shri P.Venkateswarulu

.. Respondents:

Counsel for the Applicant : Mr. S.Ramakrishna Rao

Counsel for the Respondents : Mr. V.Rajeswara Rao,
Addl.CGSC.

KCRAM:

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

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O.A. 1617/95.

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ORDER

As per Hon'ble Shri R. Rangarajan, Member (Admn.)

Shri S. Ramakrishna Rao, learned counsel for the applicant and Shri V.Rajeswara Rao, learned counsel for the respondents ~~were~~ present. R-3 was called absent. Set ex parte.

2. Open notification for the post of EDBPM, Nagiligena was issued by notification No. B3/414 dated 8-6-94 (Annexure-I) as the regular incumbent of the post ~~had~~ retired on 5-7-94 on superannuation. This open notification was necessitated as there was no response from the employment exchange when application was called for ~~the~~ employment exchange. None of the applicant in response to ~~this~~ notification ~~(was)~~ found eligible. Hence the vacancy was renotified on 29-07-94 fixing last date for receipt of applications as 28-08-1994. After verification only three candidates were found eligible ^{against} ~~for~~ this renotification namely, the applicant, R-3 and one another. The selection committee after going through the ~~xxxxxx~~ in-come certificate, ~~xxx~~ property certificate and the marks obtained in the SSC selected R-3 for that post who was working on provisional basis in that post earlier. The appeal ^{against the selection} ~~of~~ the selection of R-3 by his representation dated 21-03-95 ~~xxxxx~~ is yet to be disposed of.

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3. This OA is filed for setting aside the selection of R-3 by R-2 as EDBPM, Nagiligonda and for further direction to R-2 to make selection strictly as per merits.

4. R-3 was not present on 8-4-96 when this OA came up for hearing even though notice had been served ^{on} him. On that date this OA was adjourned to today to give time for R-3 to be present in the Court or atleast plead his case through his counsel. But R-3 did not care to come even today. In view of the above the OA is disposed of in his absence.

5. The main contention of the applicant in this OA is that he is the eligible candidate for appointment as EDBPM/Nagiligonda as he had secured more marks i.e., 319 marks including Hindi compared to R-3 who had secured 291 marks. The respondents further submit that the applicant is to be selected on the basis of the higher marks obtained by him compared to R-3 when both of them fulfilled the other requisite. They further submit that the marks obtained in Hindi are not to be taken into account for consideration of selection on the basis of marks. They further submit that excluding the marks obtained in Hindi, the applicant had got only 277 marks whereas R-3 had obtained 291 marks and hence he is more meritorious than the applicant and on that basis R-3 was selected.

6. The respondents relied on the D.G., Posts, letter No. 17-497/90 ED & Trg, dated the 10-05-91 extracted under section III of Method of Recruitment ^{at} Page-60 of Service Rule for Extra-Departmental Staff, 5th Edition, 1992 to state that exclusion of Hindi

marks is in order. The contents of the letter reads as follows:-

"The deciding factor for the selection of ED BPMs/ED SPMs should be the income and property and not the marks, has been examined ~~threadbare~~ but cannot be agreed to as this will introduce an element of competitiveness in the matter of possession of property and earning of income for determining the merit of candidates for appointment as ED Agents. Proof of financial status is not only subject to manipulation but is also detrimental to merit. When the Constitution of India guarantees equal opportunity to all for their advancement, the reasonable course would be to offer ED appointments to the person who secured maximum ~~marks in~~ the examination which made him eligible for the appointment provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED Allowance".

As per this letter, ~~the~~ D.G., had conveyed that ED appointment should be offered to the persons who ~~had~~ secured more marks in the examination which made ~~him~~ eligible for appointment provided the candidate ~~has~~ has the prescribed minimum level of ~~adequate means of livelihood~~ instruction apart from the ED Allowance. The ~~above~~ does not indicate that the marks in Hindi should be excluded. It only says that the candidate who secured more marks in the examination should be offered the ED posts. Hence ~~reliance on~~ this rule for exclusion of Hindi marks ~~is not in order.~~

7. The respondents themselves, having doubt in this regard to exclude Hindi marks for appointment to the post of EDBPM, had made a reference to the Ministry of Communication, Dept. of Posts. That reference had been replied by the Ministry by its letter No. 17-34/96-ED&Trg dated 2-4-96. The page 2 of the letter is relevant which is extracted below for clarity:-

"The point on which clarification of this office has been sought has been examined in this office. It is clarified that the marks obtained in the compulsory elective subjects in Matriculation or equivalent examination should only form the basis for the selection of EDBPM/EDSPM. In the other words, the marks obtained in second language should not be taken into account for purpose of determining merit. However this practice may differ from circle to circle. You may decide uniform practice in your circle as you deem fit under intimation to this effect."

8. The above instruction empowers the CPMG, AP Circle to take a decision in regard to the exclusion or inclusion of the Hindi marks for determining of eligibility of the candidates for regular appointment to the post of EDBPM. It is further stated that no decision has been taken so far by the CPMG on the basis of the clarification given by the Min. of Communication. But the learned standing counsel further submitted that the circle follows the rule of exclusion of Hindi marks previously also and that precedence is followed in the present election.

When there is no rule in regard to the exclusion or inclusion of Hindi marks and when a clarification asked for from the Min. of Communication in regard to the above issue, it is for the CPMG to take a decision, inform all concerned and then follow that rule ~~so~~ as to be transparent in ~~public~~ ^{open market} ^{and appointment} selection. Mere precedence should not be a guiding factor in this connection. Of course, the CPMG can be guided by the precedences while issuing any order in this connection. Unless an order has been issued the question of rejecting the candidature by excluding Hindi marks is not in order. If the CPMG feels that precedences has to be followed I see no necessity for making a reference to communication Ministry and he could have taken a decision at his level. Having obtained a clarification from the Min. of Communication it is incumbent ~~... ...~~ to follow the direction by issuing a suitable order based on the precedences and other factors governing the issue. As no written instruction has been issued, ~~the~~ exclusion of Hindi marks is not in order while processing the notification in the instant case. In view of the above appreciation the selection in question has to be set aside.

9. It is also seen from the reply statement filed by the respondents that "R-3 is not ~~... ...~~ in accordance with the rules for appointment to the post of BPMs" and it is also stated that "R-2 should not have been selected for the post of BPMs and therefore the selection is found to be not in order". When the authorities themselves are convinced of incorrect selection it is not understood how R-2 selected him on the basis of the income certificates submitted by R-3. On this score also the present selection is liable to be set aside.

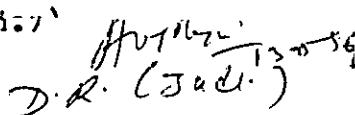
10. The post of EDBPM cannot be kept vacant as it is required to deal with public. Hence the candidate who worked on a provisional basis earlier to the regular appointment should be posted on a provisional basis ~~in that post~~ till the selection for the post is finalised. R-2 should issue a fresh notification for selection to the post of EDBPM, Nagiligonda. If any order has been issued by CPMG by the time the notification is issued in regard to exclusion/inclusion of marks in Hindi the same will be followed in processing the notification issued after that date.

11. In the result, the selection of R-3 as EDBPM, Nagiligonda is set aside. R-2 is directed to issue a fresh notification for the selection of EDBPM, Nagiligonda. Till such time the fresh selection to be notified is finalised the candidate who worked on provisional basis earlier to the regular appointment of R-3 should be posted as EDBPM, Nagiligonda on a provisional basis.

12. The OA is ordered accordingly at the admission stage itself. No costs.



'Member (Adm.)'


D.R. (Judge)

Dated : The 12th April 1996.
(Dictated in Open Court)

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1. The Postmaster General, Vijayawada.
2. The Supdt of Post Offices, Khammam Division, Khammam.
3. One copy to Sri. S.Ramakrishna Rao, advocate, CAT, Hyd.
4. One copy to Sri. V.Rajeshwar Rao, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 12/4/96

ORDER/JUDGEMENT

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

IN
D.A.NO. 1617/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

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