

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

D.A.No.1220 OF 1996.

DATE OF ORDER:23-9-1998.

Between:

D.Chandra Rao. .. Applicant

a n d

1. ~~Senior~~ Superintendent of Post
Offices, Srikakulam Division,
Srikakulam.
2. Sub Divisional Officer(Posts),
Sompeta Sub Division, Sompeta-284,
Srikakulam District.
3. K.Tata Rao, s/o K.Bhima Rao,
Working as ED/BPM, Killoyi BO,
A/w Mandasa SO, Srikakulam
(Selected candidate).

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr.S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS: Mr.V.Rajeshwara Rao

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

A N D

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: O R D E R :

ORAL ORDER (AS PER HON'BLE SRIR.RANGARAJAN, MEMBER (A))

Heard Mr.S.Ramakrishna Rao for the Applicant
and Mr.V.Rajeshwara Rao for the Official Respondents.
Notice has been served on R-3. Called absent.



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2. The applicant in this OA submits that he was working as a provisional EDMC with effect from 31-10-1989 for about three or four years. Subsequently, he was posted as a provisional EDMC with effect from 17-6-1993 in the Killoyi ^{Colony} Branch Office. He further states that he worked in that post office upto 17-4-1996 for a period of a little less than three years. Respondent No.2 issued a notification on 16-1-1996 for regular appointment of EDMC at Killoyi ^{Colony} Branch Office, fixing the last date for receipt of application as 31-1-1996. The applicant alongwith some others applied for the same. The applicant submits that the notification was not finalised but Respondent No.3 was initially posted^r as provisional appointee by Order No.PF/EDMC-DA/Killoyi Bo, dated:17-4-96 (Annexure.I to the OA) and later his provisional appointment was confirmed as regular one.

3. This OA is filed to set aside the impugned Order dated:17-4-1996 appointing Respondent No.3 on provisional basis as EDMC/DA, Killoyi Branch Office by holding the same as arbitrary, illegal, and for a consequential direction to the respondents to appoint the applicant on regular basis as EDMC/DA, Killoyi Branch Office keeping in view his continuous service put in by him and experience gained thereby and also because of the fact that he fulfilled all the conditions prescribed in the notification dated:16-1-1996 with all consequential benefits.

4. It is a settled rule that, a provisional EDMC cannot be ~~refused~~ ^{replaced} by another provisional ED Staff. The Respondent No.3 was appointed on transfer basis when

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the applicant was working as EDMC/DA on provisional basis in Killoyi ^{Calony} Branch Office. Though the respondents themselves state that the termination of one provisional appointee by another provisional appointee is irregular, they add that this appointment was made because the Respondent No.3 was considered for regular appointment against the compassionate ground quota relaxing the normal rules and as that proposal was pending with the Circle Selection Committee, he was initially appointed on a provisional basis as he would be regularised in due course after obtaining the approval from the Competent Authority on the basis of the recommendations of the Circle Selection Committee. If so, there is no need for the respondents to issue the notification dated: 16-1-1996 for regular appointment of EDMC/DA ^{Calony} for filling up the post of Killoyi Branch Office. It is stated by the learned Counsel for the Respondents that after the notification dated: 16-1-1996 was issued, Respondent No.3 represented his case for regular appointment and hence the notification dated: 16-1-1996 was not progressed further as the Respondent No.3 was deemed to have been appointed regularly as EDMC/DA of the said Post Office. If that is so, the proper course of action for the respondents is to cancel the notification dated: 16-1-1996 and regularise the services of the Respondent No.3 in accordance with the Law. But unfortunately, the respondents did not cancel the notification dated: 16-1-1996 and allowed the applications received from the Employment Exchange pend ~~for~~ without any further action. This in our opinion is not a regular action on the part of the respondents. They failed to take action in accordance

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with law for appointing Respondent No.3 against the post if Respondent No.3 has been approved for appointment on compassionate ground quota after issue of the notification dated:16-1-1996 and before the finalisation of the said notification. Hence, it ^{has to} ~~might~~ be held that the notification dated:16-1-1996 is still alive and it cannot be treated as cancelled since Respondent No.3 was appointment in that post.

5. It is seen from the reply that the case of Respondent No.3 was pending for consideration for appointment against compassionate ground appointment quota. When the case is not finalised fully and the Competent Authority had ^{not} approved of the compassionate ground appointment of Respondent No.3 in accordance with law, the question of cancelling the notification dated:16-1-1996 does not arise. It is stated that the compassionate ground appointment of Respondent No.3 was approved later on 28-2-1997, that is, over a year ^{after the} ~~of~~ issue of the notification dated: 16-1-1996. Hence, we see no reason for pending the notification dated:16-1-1996 without processing it. Even if the post of EDMC/DA of the Killoyi ^{Branch} Office is filled by the selected candidates who applied for in response to the notification dated:16-1-1996, the appointment of Respondent No.3 will not be Jeopardised. The Respondent No.3 can be posted elsewhere after the ^{order} ~~transfer~~ is received from the Competent Authority for compassionate ground appointment.

6. Hence, we feel that the appointment of Respondent No.3 as a regular EDMC/DA of Killoyi Branch Office cannot be treated as a regular appointment and the regul

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appointment has to be made on the basis of the notification. If the appointment of Respondent No.3 as EDMC/DA is terminated because of this Order, the Respondent No.3 has got every right for appointment on compassionate grounds in any other post office in accordance with law, which arises in future or vacancies which are existing now and no notification for filling up that post has been issued.

7. In view of the above, the following directions are given:-

- i) The appointment of Respondent No.3 as a regular EDMC/DA of Killoyi ^{Canj} Branch Office is hereby set aside;
- ii) For filling up of the post EDMC/DA for which notification was issued on 16-1-1996 should be filled from amongst those who applied in response to the notification dated: 16-1-1996. Till such time the selected candidate is posted in pursuance of the above direction, the Respondent No.3 should be continued as a provisional candidate;
- iii) Respondent No.3 having been selected for appointment as a ED Staff against the compassionate ground quota, he should be posted regularly in a vacant post ^{available} ~~presently~~ for which no notification has been issued or against new vacancies as and when it arise;
- iv) Time for compliance is three months from the ^{date of} receipt of a copy of this Order.

8. With the above directions, the DA is disposed of. No cost


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL) 23/9/98


(R. RANGARAJAN)
MEMBER (ADMN)

Dated: this the 23rd day of September, 1998

*** Dictated to steno in the Open Court

DSN

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Copy to:

1. Senior Superintendent of Post Offices,
Srikakulam Division, Srikakulam.
2. Sub Divisional Officer (Postal), Sompeta Sub Division,
Sompeta - 284, Srikakulam District.
3. One copy to Mr. S. Ramakrishna Rao, 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 copy for duplicate.

YLKR

23/10/98

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II COURT

TYPED BY
COMPALED BY

CHECKED BY
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(J)

DATED: 23/10/98

ORDER/JUDGMENT

M.A/R.A/C.P.NC.

in

G.A.NO. 1220/86

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अवकाश / DESPATCH
09 OCT 1998
HYDERABAD BENCH