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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1126/96

DATE OF ORDER : 18-11-1996.

Between :-

K.Shaik Shahwali

... Applicant
And

1. The Chief Post Master General,
AP Circle, Abids, Hyderabad, AP.
2. The Post Master General, Southern Region,
Kurnool, AP.
3. The Superintendent of Post Offices,
Guntakal Division, Guntakal, AP.
4. The Asst.Superintendent of Post Offices,
Guntakal Sub-Division, Guntakal, Anantapur Dist.
5. Smt.A.Venkata Laxmi

... Respondents

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Counsel for the Applicant : Shri K.Venkata Ramaiah

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC

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CORAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

(Order per Hon'ble Justice Shri M.G.Chaudhari, VC).

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The O.A. which was dismissed for default earlier was restored on 8-11-96. Pursuant to the interim ~~directions~~ given earlier to dismissal, the respondents filed show cause reply on 13-11-96. Today the learned counsel for the applicant tendered

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MASR 3564/96 seeking amendment of the O.A. for challenging the order issued on 2-11-96 terminating the provisional appointment of the applicant. He has also tendered MASR 3565/96 seeking suspension of the said order.

2. The O.A. is yet to be admitted. In our minutes dt. 23-9-96 we had noted that the O.A. was filed on the basis of some unspecified apprehension. Thus the O.A. by itself did not arise out of any cause of action disclosed. Realising ^{the} ~~that~~ possibility of ^{may have been} some order of termination ^{of} ~~which~~ the applicant may not be aware we had passed an interim order that in the event of no order of termination of service was served upon the applicant ^{then} ~~the~~ ^{same} effect shall not be given to the ~~applicant~~ ^{subsequently} for a period of one week from the date of that order, ~~on the applicant~~. That direction was given on 23-9-96. The order was intended to operate till 7-10-96. It was for that purpose that the respondents were directed to file a reply.

3. The show cause reply of the respondents states that C.Naga Mallaiah was finally removed from service on 13-3-96 and he has not carried those proceedings in appeal. Steps were taken to fill up the post in question on regular basis. Application of Respondent No.5 was approved on compassionate grounds for the said appointment on 6-9-96. She conveyed her acceptance but according to official records she assumed charge on 2-11-96. On the same date i.e. 2-11-96 according to the official respondents the order of terminating the provisional appointment of the applicant had been passed. That order admittedly was served upon the applicant on 6-11-96. Undoubtedly it is not made clear by the official

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respondents as to how respondent No.5 ~~had~~ assumed charge if the service of the applicant was terminated to his knowledge only on 6-11-96. ~~unless~~ ofcourse the applicant was not factually working in the post between 2-11-96 and 6-11-96. For that matter both the applications which are tendered today are silent.

4. Even assuming that there may be some irregularity in the process of giving charge to Respondent No.5 the fact that Respondent No.5 has been appointed by memo dt.6-9-96 cannot be disputed. The question then is whether the applicant discloses even ~~prima facie~~ even any right to maintain his case even after the proposed amendment.

5. Now the order of provisional appointment of the applicant dt.27-11-94 clearly stipulated that the appointment was provisional until the disciplinary proceedings against C.Naga Mallaiah were finalised and in the event of his not being continued in service then thereafter till regular appointment ^{was} made. It also stipulates that the Asst.Superintendent of Post Offices reserves the right of terminating the provisional appointment without assigning any reason before the aforesaid eventuality occurred. The appointment thus ^{was} purely provisional and unless it is seen that the official respondents acted illegally or malafidely it would not confer any right on the applicant to continue in the post as stated earlier. The Respondent No.5 has been appointed on a regular basis after the case against C.Naga Mallaiah is finalised. In so far as the official respondents are concerned he was removed from service. On the terms of the appointment order itself thus the applicant has no right acquired thereunder to object to the appointment of

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duly selected candidate by the competent authority. The order of termination of the services of the applicant dt.2-11-96 which is sought to be challenged by the applicant by seeking amendment is of no material purpose since no relief can be granted to the applicant consequent upon its quashing because he has not acquired any legal right to continue in the post by virtue of provisional appointment.

6. In so far as the amendment is concerned since the O.A. did not disclose any cause of action strictly speaking there cannot be any amendment there ~~is~~. If a fresh cause of action ^{has} arisen then proper course should be to file a proper substantive ~~procedure~~ proceeding.

Although we express ^{ed} ~~that~~ view at the out ^{set} ~~standing~~, the matter was fully argued by the learned counsel for the applicant for one hour. We ~~have~~ therefore taken ~~that~~ the proposed amendment into account as ~~it was allowed~~. Since we find ~~it~~ that there is no *prima facie* case disclosed ~~that~~ of any legal right of the applicant being ~~violated~~ deprived we find that there is no merit in the O.A. and it is liable to be rejected. For the sake of record we mention here that in para-4 of the reply although it is stated that charge memo was issued to C.Naga Malliah on 13-3-96 and at the same time in para-5 it is stated that he was removed from service on 13-3-96 which cannot be possible. The learned standing counsel for the respondents has clarified from the record that there is a mistake in mentioning the ~~date of~~ issuance of the charge memo which in fact was issued in the year 1994.

7. The application ~~after~~ ^{for} suspension of impugned order also would not be of any efficacy because as per the reply the Respondent No.5 has already taken over the charge and even otherwise the applicant has not been able to disclose any right in him to continue in the

post since for the reasons already indicated it cannot be held that the termination of his services is illegal or that on the basis of the provisional appointment he has acquired any legal right to hold the post. In the result the following order is passed :

- (i) MASR 3564/96 filed for amendment of the OA is disposed of with no order in as much as the contents of the application have been taken into consideration while considering the merits of the OA and passing the order on the O.A. It stands disposed of;
- (ii) No order on MASR 3565/96 for suspension as it does not survive;
- (iii) OA 1126/96 dismissed for the reasons indicated above. No costs. All interim orders stand vacated.

H.Rajendra Prasad
(H.RAJENDRA PRASAD)
Member (A)

M.G.Chaudhary
(M.G.CHAUDHARI)
Vice-Chairman

Dated: 18th November, 1996.

Dictated in Open Court.

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*Amrit
18/11/96.*
Deputy Registrar (CC)

O.A. 1126/96

TO

1. The Chief Postmaster General,
A.P.Circle, Abids, Hyderabad A.P.
2. The Postmaster General, Southern Region,
Kurnool A.P.
3. The Superintendent of Post Offices,
Guntakal Division, Guntakal, A.P.
4. The Assistant Superintendent of Post Offices,
Guntakal Sub Division, Guntakal, Anantapur Dist.
5. One copy to Mr. K.Venkata Ramaiah, Advocate, CAT.Hyd.
6. One copy to Mr.V.Rajeswar Rao, Addl.CGSC. CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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17/12/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 18-11-1996

ORDER / JUDGMENT

M.A/R.A./C.A. No.

in

O.A.No. 1726/96

T.A.No.

(w.p.)

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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