

1971

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH
AT HYDERABAD

O.A. No. 541/96

Between :

S. Satyanarayana Murthy .. Applicant

and

The Supdt. of Post Offices,
Vizianagaram & 2 Others .. Respondents

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS

I, H. Seshagiri Rao, s/o H. Narasimha Murthy, aged about 55 years, do hereby solemnly affirm and sincerely state on oath as follows :

1. I am the responsible officer in the office of the Chief Postmaster-General, A.P. Circle, Hyderabad; and as such I am fully acquainted with the facts of the case.

2. I have read the copy of the above original application and submit that there are no valid or reasonable grounds in the O.A. The various averments made in the O.A. are hereby denied save those that have been specifically admitted herein under. The applicant is put to strict proof of such averments that are not been traversed herein under.

3. The averments in paragraphs 1 to 4 need not be replied as they are formal and procedural in nature.

4. It is submitted that the contention of the applicant that the issue of termination notice dated 18.4.96 is illegal/improper is not correct. The applicant was appointed as B.P.M., Chodavaram B.O. only on Provisional

M. G. Rao
ATTESTOR

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Assistant Accounts Officer (Budget)
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Asst. Postmaster General (S. & V.)
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basis as a stop-gap arrangement till the selection for appointment on regular basis is made according to the Rules prescribed for recruitment of E.D. Agents. In the appointment order issued vide Memo. No. 142 dated 18.12.95 it was specifically mentioned that the appointment was only on Provisional basis till a regular arrangement is made in the post; that the provisional appointment would be terminated when regular appointment is made and that he had no claim ~~from~~ for appointment to any post and that the S.P.Os., Vizianagaram Division reserved the right to terminate the provisional appointment at any time without assigning any reason. The order was issued in the proforma prescribed for the purpose and the applicant had signed on the duplicate copy of the order in token of having accepted the conditions for appointment on provisional basis. Accordingly, one month's termination notice dated 18.4.96 was issued when the selection for appointment on regular basis was finalised and hence there is no illegality in issuing the termination notice dated 18.4.96. The applicant has also submitted his application for the post in response to the Notification dated 2.2.96. This itself is a proof to show that he knows clearly that his appointment was only on provisional basis. He filed this O.A. when he could not get selection on merit basis.

5. It is submitted that the applicant's claim that he should have been absorbed as B.P.M., Chodavaram on permanent basis by giving preference to his past service does not stand to the reason as it was specifically mentioned in the appointment order that the appointment was only on provisional basis and that ~~the~~ he had no claim for any post


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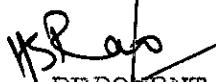
and he had accepted the condition by signing on the duplicate copy of the appointment order. The candidate who was appointed on provisional basis cannot be absorbed on regular basis as claimed by the applicant as it would be violation of the rules prescribed for recruitment of E.D.As.

6. In respect of the averments in para 6(a), it is not true that the applicant was appointed by the R-1 to officiate in the leave vacancy of regular (BPM/EDDAs etc) have to appoint their substitutes, on their own responsibility, in the leave vacancies and the Department has nothing to do with the arrangements made by the EDAs. The Divisional Head / S.D.I (P) concerned will issue leave orders indicating the name of the substitute appointed by the E.D.A. as substitute for the number of days he worked. Therefore, it cannot be said that the applicant was appointed by the Department to work in the leave vacancy of the regular B.P.M. since 4.5.95 onwards and the period will not also count as service for any purpose. He was appointed on provisional basis by the Department only with effect from 17.11.95. Therefore, it is not correct to say that the applicant is in continuous service with effect from 4.5.95.

7. As regards the averments in para 6(b), it is to state that the Memo. dated 12.12.95 is only a provisional appointment order in which it was specifically mentioned that the services of the applicant would be terminated when appointment on regular basis is made in the post. Nowhere in the Memo. it was mentioned that the appointment was in continuation of the period he worked in leave vacancies as contended by the applicant.


ATTESTOR

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Assistant Accounts Officer (Budget)
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8. With regard to the averments in para 6(c), it is to submit that the fidelity and guarantee bond is to be executed even for provisional appointments also. Signatures in attendance register and daily accounts and other official records are the regular features in discharging his duties as Branch Postmaster on provisional basis, which he cannot claim to be his right for absorption on permanent basis.

9. In reply to the averments in para 6(d), it is submitted that as discussed in para 5 above, one month's termination notice was issued on 18.4.96 by the R-1 after the selection for appointment on regular basis was finalised in accordance with the method of recruitment.

10. The averments in para 6(e) are not true and correct. It is not correct that the applicant was continuously working as B.P.M. for the last about one year as he was appointed as B.P.M. on provisional basis, by the Department only with effect from 17.11.95. Prior to 17.11.95, he was appointed by the regular incumbent on her own responsibility to work in her absence, which will not count as service for any purpose. Appointment to the post of B.P.M. on regular basis is to be made according to the procedure / guidelines prescribed by the E.D.As (C & S) Rules 1964. As it would take some time to select a candidate after observing the rules and procedures such as placing a requisition on Employment Exchange, review of applications etc., a candidate will be appointed on provisional basis whenever an unforeseen vacancy arises with a view to provide un-interrupted Postal facilities to the public, which has to be terminated when the selection for appointment on regular basis is made according to rules.


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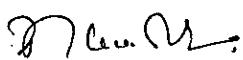
11. It is submitted that according to the method of recruitment, E.D.As (C & S) Rules 1964, the norms for selection would be to offer an E.D. post to the candidate who secure the highest marks in the examination which made him eligible for the post. Therefore, the R-3 (V.R.S. Sastry) who got highest percentage of marks (320 + 35) in Xth standard besides having independent source of income and property in his name was selected by the R-1 for appointment as Branch Postmaster on regular basis. The applicant who got only 243 + 23 marks could not stand to the merit.

Giving weightage for the service rendered on provisional basis arises only when other things are equal. The applicant has lesser marks in the qualifying examination than the Respondent No. 3.

12. In reply to the averments in para 6(f), it is submitted that as the time limit of one month's notice expired by 19.4.96, the applicant has been replaced by the selected candidate. Therefore, it is not correct that the applicant is still continuing in service.

13. The averments in paragraphs 7 and 8 need no comments.

14. It is submitted that it is not true that the applicant worked continuously for about one year. He was appointed on provisional basis only with effect from 17.11.95. As the applicant was appointed on provisional basis till such time, the selection for appointment on regular basis is finalised, his services were terminated on appointment


ATTESTOR

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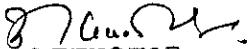
of the regular candidate. Therefore, there is no arbitrariness in terminating his services.

The Respondent No. 3 was selected by issuing a local notification and on merit basis as per the method of recruitment prescribed by the Government and it would be violative of fundamental rules if the applicant who was appointed arbitrarily on provisional basis is absorbed on permanent basis deviating the service rules prescribed for recruitment ignoring the meritorious candidates.

15. In reply to the averments in para 10, it is submitted that the selection/appointment of Respondent No. 3 was done strictly in accordance with rules on the subject. The applicant did not compete on merit and hence he was not selected for the post.

16. The averments in para 11 to 13 need no comments.

For the submission made in the above paragraphs it is prayed that this Hon'ble Tribunal may be pleased to dismiss the O.A. as there are no merits in the case of the applicant and pass such further order or orders as deemed fit and proper.


ATTESTOR


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Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General,
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VERIFICATION

I, H. Seshgiri Rao, s/o H. Narasimha Murthy, aged about 55 years, do hereby verify that the contents in the above paras are true to my personal knowledge and according to the legal advice of my Counsel and that I have not suppressed any material facts.

ATTESTOR

H. Rao
DEPONENT

Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.

Solemnly sworn and signed his name
on this 3rd day of September '96
before me.

D. C. M.
ATTESTOR

एकाउंट लेना अधिकारी (बजट)
Assistant Accounts Officer (Budget)
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BRM*

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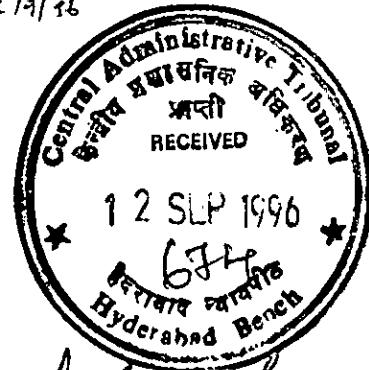
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Reply statement filed on behalf
of the Respondents

Post office
Post Box No. 129
12/9/96

Filed on : 12/1/96



Filed by

Sri K. R. Bhatkhande
Adv. Ch. Sc.

Key be held
S. P. M.