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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD  
W.W

O.A.887/96.

Dt. of Decision : 24-08-98.

Kethapalli Malyadri

..Applicant.

vs

1. The Union of India rep. by  
the Chief Postmaster General,  
A.P. Postal Circle, Hyderabad.

2. The Postmaster General,  
Vijayawada Postal Regions,  
Vijayawada.

3. The Sr. Supdt. of Post offices,  
Nellore Postal Division,  
Nellore.

4. The Asst. Supdt. of Post Offices,  
Kavali Sub-Division, Kavali,  
Nellore District.

..Respondents.

Counsel for the applicant : Mr.D.Subramanyam

Counsel for the respondents : Mr.N.R.Devaraj,Sr.CGSC.

CORAM:-

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

GRAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

Heard Mr. D. Subramanyam, learned counsel for the applicant and Mr. N. R. Devaraj, learned counsel for the respondents.

2. The applicant in this OA while working as EDBPM, Saipet Branch Post office in A/W Nellore H.O. was put off duty by the impugned order No. BO/SPT/95 dt. 22-7-95 (Annexure-2). It is stated that no further proceedings had taken place after the issue of the memo putting him off duty. Notification No. B3/BPM/ Saipet dated 8-7-96 (Annexure-1) was issued for regular selection to the post of EDBPM, Saipet.

3. The applicant submits that in view of the D.G., P&T. letter No. 43-4/77-Pen., dated 18-5-79 his post should not be filled till the disciplinary proceedings are completed fully including the disposal of his appeal if any filed by him. The relevant portion of that letter is re-produced below:-

"Provisional appointment of ED Agents.- It has come to the notice of this office that provisional appointments made to ED posts are being allowed to continue for indefinite periods and when regular appointments are made, the provisionally appointed persons do not readily hand over the charge. The following instructions are issued in his regard:-

- (i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.
- (ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. Where a new post office is opened or where a new post is created or where

an ED Agent dies while in service or resigns from his post and it is not possible to make regular appointment immediately, a provisional appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure-A).

(iii) Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent the provisional appointment will be terminated and that he shall have no claim to any appointment.

Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional. The offer for appointment should be in the form annexed (Annexure-B).

2.      x x x x x x x x x x x x x x....

3. These instructions may be brought to the notice of all Appointing Authorities.

(.D.G., P&T., Letter No.43-4/77-Pen., dated 18-5-79)."

4.6 This OA is filed to set aside the memo No. B3/BPM/Saipet dated 8-7-96 (Annexure-1) and for a consequential direction to the respondents to desist from filling up the post on regular basis till the case against the applicant is finally disposed of.

5. An interim order was passed in this OA on 5-8-96 to the effect that "any appointment made in pursuance of the notification dated 8-7-96 shall be made as provisional subject to further orders of this Tribunal in the OA."

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6. A reply has been filed in this OA. It is not necessary to go into the various details given in the reply. It has been clearly stated that the notification dated 8-7-96 was issued to fill up the posts provisionally to the vacancy which was caused due to putting the regular BPM off duty.

7. When it is a provisional appointment the provisional appointee can be discharged from service if the applicant is exonerated and posted back to his original post. But the department has to discharge its duties. The post cannot be kept vacant as it is a EDBPM post. Hence, issuing of notification for provisional appointment cannot be questioned. But it is to be noted that the respondents could have clearly indicated in the notification that the said notification <sup>was</sup> for provisional appointment and not for ~~.....~~ appointment. The respondents <sup>had</sup> failed miserably in not mentioning that the notification <sup>was</sup> meant for provisional appointment. Had they indicated so in the notification then the filing of this OA would not have arisen. Hence, even though we are of the opinion that the respondents should be given cost to the applicant for their failure, we do not take recourse to that except advising the respondents to avoid such errors/mistakes in future. The applicant should be appointed back to the original post if he is exonerated of the charges for which he was put off duty.

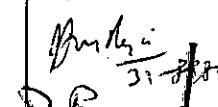
8. With the above observation, the OA is disposed of.  
No costs.

  
B.S.JAI PARAMESHWAR  
MEMBER(JUDL.)

24/8/98

Dated : The 24th August, 1998.  
(Dictated in the Open Court)

  
(R. RANGARAJAN)  
MEMBER(ADMIN.)

  
D.R.

SPR

Copy to:

1. The Chief Postmaster General, A.P. Postal Circle, Hyderabad.
2. The Postmaster General, Vijayawada Postal Region, Vijayawada.
3. The Senior Superintendent of Post Offices, Nellore Postal Division, Nellore.
4. The Asst. Superintendent of Post Offices, Kavali Sub Division, Kavali, Nellore District.
5. One copy to Mr. D. Subrahmanyam, Advocate, CAT, Hyderabad.
6. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.
7. One copy to D.R(A), CAT, Hyderabad.
8. One duplicate copy.

YLKR

8/9/98 (2)

II COURT

TYED BY  
COMPARED 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: 24/8/98

ORDER/JUDGMENT

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

in

C.A.NO. 887/96

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
संवेदन / DESPATCH

-7 SEP 1998

हैदराबाद न्यायपीठ  
HYDERABAD BENCH