

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.939/96

DATE OF ORDER : 03-07-1997.

Between :-

Smt.P.Prameela

... Applicant

And

1. The Postmaster General,
Vijayawada Region, Vijayawada.
2. The Superintendent of Post Offices,
Gudur Postal Division, Gudur, Nellore Dist.
3. Sub Divisional Inspector (Postal),
Gudur South Sub-Division, Gudur,
Nellore Dist.
4. M.Srinivasulu

... Respondents

Counsel for the Applicant : Shri S.Ramakrishna Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

CORAM:

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

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

... 2.

Judgement

(Oral order per Hon. Mr. H. Rajendra Prasad, Member (Admn))

Heard Sri S. Ramakrishna Rao, counsel for the applicant and Sri N.R. Devaraj, standing counsel for the respondents.

1. The applicant in this OA is aggrieved by the re-notification of a vacancy issued by Superintendent of Post Offices, Gudur Division, on 23-11-1995 for filling up the post of EDBPM, Vallikallu B.O. and the subsequent selection of R-4 to the said post in pursuance of the same renotification.

2. The facts leading to this OA are :

The permanent EDBPM of Valikallu EDBO was due to retire on superannuation on attaining the age of sixty-five on 14th January, 1995. Advance action was initiated more than 2 months prior to the ensuing retirement of the incumbent BPM and a notice announcing the vacancy was duly issued well in time on 2-11-1994. In response to this, three applicants, including the applicant, offered their candidature for the post. Of these one was found to be ineligible, a second was stated to be unwilling to take the job, and the only remaining candidate i.e., the applicant, seems to have been selected since she fulfilled all the qualification requirements for the job. It has been stated on behalf of the applicant that a formal appointment order was not issued in her favour for want of verification of antecedents and other essential departmental formalities prior to regularisation, but her appointment was for all intents an outcome of a regular selection made in pursuance of a valid notification and after a due and proper verification of her certificates and other related documents etc. concerning income, property and education. It would seem that she was either asked or allowed to take charge of the B.O. on 14-1-1995, as could be seen from Annexure-5 to the

OA which is a copy of the charge report duly attested by SDIP concerned.

4. For some reasons a second notification, called 're-notification' was decided to be issued by Respondent-2 on 23-11-1995. As a consequence of this, Respondent-4, who had earlier offered his candidature in response to the first notification, and was not found eligible due to non-possession of income and property in his own name, was now found to be eligible, selected for the post on 6-4-96, and assumed charge on 5-8-1996.

5. The main grievance of the applicant is that she had been regularly selected for the post consequent to the due process set in motion by the issue of a valid (first) notification. She was neither given a notice of termination, nor was she, even otherwise thereafter at any point of time, ^{given} any inkling of the adverse and precipitate action which came to be taken against her by selecting afresh someone else in her place. While she was continuing to discharge her functions in the normal course, a second notification was issued abruptly and without any apparent reason or justification. She avers that this may have been done merely to facilitate the selection of Respondent-4 whose candidature had earlier been rejected but who was subsequently held to have earned eligibility by the time of subsequent selection by virtue of having acquired certain landed property on 27-12-1994. Incidentally, this date, 27-12-1994, on which Respondent No.4 came into possession of property in his own name, was a full 25 days after the last date fixed for receipt of applications in response to the first notification. The applicant, therefore, alleges that, only in order to enable the selection of the 4th respondent to become a fact, a second notification was

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needlessly issued even where it was uncalled for or warranted by the circumstances of the original selection made by the same respondents.

6. On the strength of these pleas, the applicant prays for setting aside the re-notification of 23-11-1995 on the ground that she had in any case been already working regularly against the post on that date. She further prays for a declaration that she is deemed to have been selected and appointed on regular basis with effect from 13-1-1995 in view of the events and circumstances already explained.

7. The record concerning the selection to this post was called for and perused on 29-8-1996. It was noted and recorded that Respondent No.4 had scored 290 marks whereas the applicant had scored only 249. It was also seen and noted that two certificates of property issued by the concerned Mandal Revenue Officer in favour to Respondent-4 were on record, as also an agreement of sale dated 20-2-94 in favour of the said respondent. The Bench also took note of the income certificate issued by the Mandal Revenue Officer. No findings were recorded beyond this and the matter was left open for hearing on merits of the case.

8. The respondents have chosen not to file any counter affidavit despite an opportunity provided to them for the purpose on 27-2-1997. However, the learned senior standing counsel, Mr. N.R. Devaraj, was heard at length and made very elaborate submissions.

9. The version set up by the respondents is that, consequent on the retirement of the regular EDBPM and assumption of charge of the Branch Office by the applicant, certain complaints were received from some of the villagers to the effect that the first notification had not been

adequately publicised. It was submitted that this complaint was thereupon got investigated by Respondent No.3 and it was found that the tom-tom regarding the availability of vacancy, which was required to be made in such situations, was not properly or adequately done, that the village Sarpanch and Village Administrative Officer were not available when the concerned Mail Overseer visited the village for the purpose of "arranging" publicity, and that the help of the village Headmaster was therefore sought in organising the tom-tom. This publicity was, however, considered inadequate by R-2 and he decided subsequently to re-notify the vacancy. On being asked to amplify how this impression came to be entertained, it was explained by the Standing Counsel that the drum-beaters had probably bypassed or missed one street during their publicity-pergrination in the village which led to the belief that insufficient publicity was given to the whole of this essential exercise. To say the least, this particular argument is far from convincing. It is stated that on this (second) occasion 'adequate' publicity was given. As a proof of the 'heightened' publicity on the second occasion it was pointed out that, whereas only 3 candidates had applied on the earlier occasion, six candidates applied in response to the second notification. Asked if this could not be a mere coincidence not related in any way either to the alleged lack of initial publicity or greater effectiveness of the subsequent 'upgraded' publicity, the standing counsel merely reiterated the number of applications on both occasions as a proof of effective publicity. And R-4, who was now eligible in every way, was selected and had also since assumed charge.

10. It was pointed out further by the Senior CGSC that there are laches on the part of the applicant inasmuch as

she chose to file this OA only on 7-8-96 whereas the renotification was issued as early as on 23-11-1995. Between these two dates, applications from intending candidates had been received; - the applicant too, by way of precaution, applied along with others, - selection of R-4 was made and the charge transferred from the applicant to the selected candidate on 5-8-1996. The learned senior CGSC submitted that the whole case of the applicant is an after-thought resulting from her failure to get selected for the post on her own merit and does not therefore deserve any relief.

11. A number of arguments were advanced on both sides in support of their respective stand-points. The only question which, however, needs to be addressed is as to whether the issue of the second notification was necessary in the circumstances of this case. The reasons advanced by the Senior Standing Counsel on behalf of the respondents do not convince us that such a step, i.e., issue of the second notification, was at all necessary under the circumstances as brought out by them. It was stated, for example, that certain complaints were received against the first notification. It may not be all that uncommon for the interested parties to make, or orchestrate, complaints on valid or imaginary grounds. The receipt of a complaint by itself ought not to be regarded an adequate ground for reversing the process of selection which had apparently been commenced and completed, unless such complaints were inquired into and found to be largely true. No such inquiry seems to have been held in this instance except a cursory investigation by R-3. It is also noteworthy that the complaints were not received immediately after the issue of the first notification or even upto the selection of a suitable candidate in consequence of that notification, but only after the applicant was actually

allowed to assume charge of the B.O. The timing of the so-called complaint itself gives rise to doubts as to its motivation and credibility. Then, it has been stated that the first notification did not receive adequate publicity. This particular argument is not understandable. According to the departmental instructions issued by the Directorate in this regard (DGP&T's letter No.43-40/65-EM dated 19th January 1968) brought to our notice by the Sr. CGSC, 'due publicity' is to be given to any arising vacancy and the selection proposed thereto through display of appropriate notices, furnishing the particulars of appointment to be made, and conditions attached to it, in the concerned Post Office, Police Station, Panchayat Office and any other public place considered suitable. Although the DG's letter does not go beyond this, the Circle authorities considered it prudent, for apparently valid reasons, to make the procedure even tighter by issuing very detailed instructions in the matter, evidently to ensure that widest publicity is given to each such appointment to be made. According to the local instructions prevalent in the Circle, publicity through drum-beating was to be arranged in the B.O. village and its hamlets by utilising the services of village drum-beaters in addition to other approved or prescribed modes of publicity. According to these instructions copies of the relevant notification had ^{also} to be addressed to all important local institutions by Registered Post Acknowledgement Due.

12. It is seen that the copies of the first notification were duly despatched by RPAD to EDBPM, SPM, ASPs and SDISP concerned, the Sarpanch, Mandal Revenue Officer, Mandal Development Officer, Village Administrative Officer, Headmaster of the local school and SHO of the concerned Police station. These offices/officers were requested to display

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the notice on their office notice-boards, wherever possible. This was entirely in keeping with the instructions of DG(Posts). It is clear that publicity through the medium of drum-beaters was to be made in addition to other prescribed, recommended and approved measures and had to be resorted to specially where it was genuinely felt, after thorough investigations, that the original notification had not received adequate publicity for some reason by these other approved means. In this case there was normally no reason to conclude that the notification had not received due publicity since all the prescribed offices/officers had been duly notified about the vacancy and the contemplated selection. Nevertheless, even in this instance a tom-tom was indeed arranged which is unobjectionable. But as the same was got done through the local Headmaster, and not through the village Sarpanch, it seem to have been erroneously thought, without sufficient reason, that adequate publicity through this particular method was not given. We do not find sufficient ground for this particular conclusion, nor do we find the reason given by the learned senior Standing Counsel as sufficiently acceptable.

13. Regarding the delay in the filing of this OA pointed out by the Sr.CGSC, it is explained by the learned counsel for the applicant that she had duly submitted an appeal against the impugned re-notification, on 9-1-1996 itself, to the 1st respondent, and that she was awaiting response or corrective action before approaching the Tribunal. It is submitted on behalf of the applicant that R-2 was indeed aware of this too, since a copy of the appeal was duly sent to him as well. The correct course available to R-2 under the circumstances was to wait for the decision of R-1, or

atleast to seek further instructions from him in the matter, before recommencing the process of selection which had already been completed once before and when a controversy had already arisen as regards the correctness of renotification.

14. While this is so, it is also noted that a candidate, who was earlier considered ineligible for selection owing to non-fulfilment of one essential condition, was subsequently enabled to come into the eligibility zone by virtue of acquisition of certain property. While we are not prepared to go so far as to agree with the applicant that the re-notification was issued merely in order to help the said candidate (R-4), there is reason, nevertheless, to infer that the acquisition of property by the said candidate between the last date for submission of applications in response to the first notification and the date of submission of application in response to the second notification, is not entirely fortuitous. The series of these developments cast a pall of doubt regarding the whole process and, for that very reason, certainly merit our attention and scrutiny.

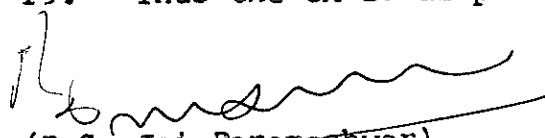
15. It is our considered view that after the candidature of the applicant had been duly examined in the first instance, including the verification of her qualifications and eligibility-related documents, and once she had been duly permitted to take charge of the BO, the process of selection had to be regarded as completed, although her appointment may itself have been termed 'Provisional' for some other reason(s). We see no reason why such provisional selection could not be regularised as per normal procedures without unnecessarily resorting to the issue of a second notification on the ground of some ill-founded complaints or unconvincingly-demonstrated and thinly-alleged lack of publicity preceding the original selection.

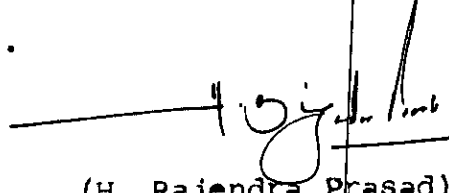
16. In the circumstances we hold that the issue of the impugned re-notification dated 23-11-1995 was uncalled for and impermissible. Consequently, any selection and appointment made in response to the impugned re-notification cannot be sustained. The revised notification issued by Respondent No.2 on 23-11-1995 is therefore quashed and the selection made on the basis of this notification is set aside.

17. In the light of what has been discussed above, it is directed that R-2 shall take action to select the most suitable person from among candidates who had responded to the first notification if there is no objection or impediment other than what has been stated by the respondents in this OA. Any consequential order as a result of this action should be taken after due notice to any person or party if he is likely thereby to be adversely affected.

18. This process should be completed within 60 days from the receipt of a copy of this order. Until then, the selected candidate (R-4) should be allowed to continue in the post.

19. Thus the OA is disposed of.


(B.S. Jai Parameshwar)
Member (Judl.)


(H. Rajendra Prasad)
Member (Admn.)

3/7/97

Dated : 3rd July, 1997


Deputy Registrar (Dce)

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O.A.939/96

To

1. The Postmaster General,
Vijayawada Region, Vijayawada.
2. The Superintendent of post Offices,
Gudur Postal Division, Gudur, Nellore Dist.
3. The Sub Divisional Inspector (Postal)
Gudur South Sub Division, Gudur, Nellore Dist.
4. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
6. One copy to MMRP.(Member.Admn.) CAT.Hyd.
7. One copy to D.R.(A) CAT.Hyd.
8. One spare copy,

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Self
18/97

1 COURT

IN

TYPED BY _____ CHECKED BY _____

COMPARED BY _____ APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE
VICE-CHAIRMAN
and

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

The Hon'ble Mr. B.S. Jaiparameswar: M (G)

Dated: 3 - 7 - 1997

ORDER/JUDGMENT

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

in

O.A.No. 939/96

T.A.No. (w.p.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected. - 1 Aug 1997

No order as to costs.

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RECEIVED
1 AUG 1997
MUR/RECEIVED
CUT ROOM/RECEIVED SECTION