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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 305/97

Date of Order : 10.9.98

BETWEEN :

Surakasula Appala Swamy Naidu

.. Applicant.

AND

1. Director of Post Offices,
Visakhapatnam.
2. Superintendent of Post Offices,
Anakapalli Division.
3. Sub Divisional Inspector of
Post Offices, Yalamanchili
Sub Division,
Yalamanchili.
4. S.Nageswara Rao

.. Respondents.

Counsel for the Applicant

.. Mr.K.Venkateswara Rao

Counsel for the Respondents

.. Mr.V.Rajeswara Rao
for R-1 to 3
.. Mr.P.B.Vijaya Kumar
for R-4

CORAM :

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

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

O R D E R

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

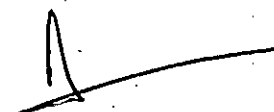
Heard

/Mr.K.Venkateswara Rao, learned counsel for the applicant, and

Mr.V.Rajeswara Rao, learned standing counsel for the respondents

and Mr.P.B.Vijaya Kumar, for R-4.





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2. The post of EDBPM, Kottur Post Office became vacant as the regular incumbent of that post office was put off duty. One Sri Seshu initially was appointed on provisional basis w.e.f. 18.5.95. However the provisional appointment of Sri Seshu was terminated as he was found to be a relative of the ~~earlier~~ regular incumbent who was put off duty. Thereafter the Employment Exchange was approached for making a provisional appointment. The Employment Exchange, Visakhapatnam was notified on 25.4.95 fixing the last date for receipt of applications as 25.5.95. The employment exchange sponsored 20 candidates, out of which only 2 candidates had responded to the notification given by the SPO, Anakapalli Division. As there were less than 3 applications the selection was not finalised and the first general notification dated 6.6.95 was issued fixing the last date of receipt of applications as 7.7.95. 8 applications were received in response to the first general notification and they were considered along with the 2 candidates sponsored by the employment exchange on 10.8.95. It is stated that none of the candidates fulfilled the conditions for appointment. Hence a second general notification was issued on 4.9.95, fixing the last date for receipt of applications as 5.10.95. In the meantime the applicant herein was appointed on provisional basis w.e.f. 5.10.95 after obtaining a declaration from him that he was aware that his appointment is purely temporary and that it did not confer on him any claim for regular appointment and his services were liable for termination at any time without notice and that he would handover the charge to any person selected by the SPOs, Anakapalli Division for appointment on regular basis. In response to the second general notification 8 applications were received. But that notification was also withdrawn due to reasons stated in the reply.



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3. A third general notification was issued on 6.12.96 fixing the last date for receipt of applications as 9.1.97. That notification is enclosed as Annexure-4 to the OA. One Sri Nageswara Rao, who secured highest marks in SSC besides fulfilling other conditions was selected by R-2 for appointment as BPM on regular basis. While the position stood so the enquiry initiated against the regular incumbent who was put off duty under Rule 8 of EDA (C&S) Rules was imposed with the penalty of removal from service vide memo No.F4-1/95-96 dated 24.9.96. It is stated in the reply that the applicant got 258 marks in SSC whereas the selected candidate got 293 marks in all. Hence R-4 was appointed on regular basis as the regular incumbent by whom he was removed from service. It is also stated in the notification dated 6.12.96 that preference will be given to SC candidates. But no SC candidate was posted and R-4 was an OC candidate and he was posted being a meritorious candidate.

4. This OA is filed to set aside the notification dated 6.12.96 and selection of R-4 on a regular basis based on the above notification as the same is irregular, arbitrary and contrary to rules and to continue the applicant in that post.

5. When we questioned the learned counsel for the applicant whether he can ask the above relief of setting aside the notification dated 6.12.96 in view of the fact that he had also responded to the third general notification issued on 6.12.96 without any murmur, the learned counsel for the applicant submitted that his challenge may not be very correct. However he submitted that the legal implications of the selection may be looked into and suitable order may be passed in this connection.

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6. In the reply it is stated that the 3rd general notification dated 6.12.96 was issued for selecting a provisional candidate to be posted as EDBPM in that post office. The learned counsel for the official respondents further stated that the said notification was issued as provisional as the regular incumbent who was put off duty was removed from service w.e.f. 24.9.96 and he has not filed any appeal by then. Thereafter the provisional notification issued was treated as a regular notification for appointing the R-4 as a regular candidate as the regular incumbent removed from service did not file any appeal within the time fixed for filing appeal.

7. As per the DGP&T letter dated 18.5.79 it has been instructed that no regular appointment should be made in ED post when the regular ED who was kept under put off duty is finalised in regard to his continuance in that post till he exhausts the full channel of appealing and disposal of that appeal. The relevant para of that letter is re-produced below:-

"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".



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8. It is very clear from the above rule that no action should be taken to appoint a regular incumbent when a regular ED staff is under disciplinary proceedings. The department should wait till the process is completed including the disposal of the appeal if any of the regular incumbent. Then only the action can be taken to fill up that post on regular post on the basis of the outcome of the disciplinary proceedings including the ^{disposal of} proceedings of the appeal. Till such time, the above instructions clearly states, that the appointment can only be provisional. In view of the above the respondents acted in accordance with the rules by issuing a third general notification dated 6.12.96 for appointment of a provisional candidate only, as the earlier regular incumbent who was removed from service had time upto 24.12.96 for challenging the order of removal. If he had not appealed till 24.12.96 or if any appeal had been disposed of ^{by} then the respondents are at liberty to issue a regular notification for filling up the post of EDBPM. In this case issue of such a regular notification for filling up the post regularly can arise only after 24.12.96. Hence the issue of the provisional notification dated 6.12.96 earlier to 24.12.96 cannot be treated as a notification for filling up of the post of EDBPM on regular basis. Any person appointed against that notification should be treated only as a provisional candidate.

9. The learned counsel for the official respondents submit that by appointing R-4 no prejudice is caused to the applicant as R-4 is more meritorious than the applicant and hence the regularising the services of R-4 even if the third notification is for provisional candidate is in order. We considered the above contention.

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10. The applicant may be of the opinion that the notification issued is only for appointment of provisional candidate. As he was already a provisional candidate he can not be replaced by another provisional candidate. Secondly, though it may not be applicable to the present applicant herein there may be number of people waiting for the regular notification.

As the notification is only for provisional appointment many *eligible candidates* would not have responded to the notification dated 6.12.96..

Unemployment is one of the ills afflicting our country. Hence an appointment should be made in accordance with the rules, so that all unemployed people can utilise that opportunity. As the notification dated 6.12.96 was issued for a provisional appointment and that would have discouraged many of the eligible candidates to apply for that post, treating that notification dated 6.12.96 later as regular is erroneous.

11. In view of what is stated above regularising the services of R-4 on the basis of the notification dated 6.12.96 appears to be irregular and it has to be held that R-4 was posted only as a provisional candidate and that the post is still to be filled on a regular basis. For that a fresh notification has to be issued and on that basis a candidate should be regularly selected and posted. Till such time R-4 should be continued as a provisional candidate. The applicant has no right to be posted as a provisional EDBPM as he had already been discharged from duties. However he can also apply as and when notification for filling up that post regularly is issued.

12. With the above direction, the OA is disposed of.
No costs.

[Signature]
(B.S. JAI PARAMESHWAR)
Member (Judl.)
10.9.98

[Signature]
(R. RANGARAJAN)
Member (Admn.)

Dated : 10th September, 1998
(Dictated in Open Court)

[Signature]
DR

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Copy to:

1. Director of Post Offices, Visakhapatnam.
2. Superintendent of Post Offices, Anakapalli Division, Anakapalli.
3. Sub Divisional Inspector of Post Offices, Yelamanchili Sub Division, Yelamanchili.
4. One copy to Mr. K. Vankateswara Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
6. One copy to Mr. P. B. Vijaya Kumar, Advocate, CAT, Hyderabad.
7. One copy to D. R. (A), CAT, Hyderabad.
8. One duplicate copy.

YLKR

18/10/98

II COURT

TYPED 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 S.S. JAI PARAMESHWAR :
M(J)

DATED: 10/9/98

ORDER/JUDGMENT

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

in

O.A.NO. 305/92

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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