

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::

HYDERABAD BENCH AT HYDERABAD

O.A. NO. 1573 OF 1997

Date of Order : 21.8.1998

BETWEEN:

Gundladeertha Gangi Reddy ...Applicant

AND

Union of India represented by:

1. Chief Post Master General, A.P.
Postal Circle, Hyderabad
2. Post Master General, Kurnool
Region, Kurnool.
3. Superintendent of Post officers,
Cuddapah Division, Cuddapah.
4. Dasabandam Maheswar,
S/o Siddiah,
Aged 22 years, working as EDBPM,
Kondavandlapalli, A/WB, Lakkareddy palli,
Cuddapah District. ...Respondents

Counsel for the Applicant .. C.V. Malla Reddy

Counsel for the Respondents .. K. Ramulu

CORAM:

HON'BLE SHRI H. RAJDENDRA PRASAD, MEMBER (ADMN.)

AND

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

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ORDER:

ORDER (AS PER HON'BLE SRI. H. RAJENDRA PRASAD,
MEMBER (A))

Heard Shri C.V. Malla Reddy for the applicant and Ms. Shama for Mr. K. Ramulu for the respondents.

The applicant was a candidate for the post of EDBPM, Kondavandlapalli EDBO. In response to a notification issued by Respondent No. 3 on 27-3-1996, altogether 6 candidates applied for the job, including the applicant and Respondent No. 4. One R. Padmanabaiah was selected initially but the same was cancelled when enquiries revealed that he had submitted a bogus Marks certificate. Respondent NO.4, D., Maheswar, passed the SSC Examination compartmentally and secured 280 marks whereas the applicant passed the same examination in the second division with 309 marks. It is the applicant's assertion, therefore, that he is better qualified than Respondent No. 4 who was selected for the job ignoring the merits of his own candidature. The candidate of the Applicant was rejected on the ground that he was not a permanent resident of the BO village. This, according to the Applicant, was a totally incorrect ground for rejection, since DG (posts) had clarified as long back as December, 1993, that permanent residence in the BO village/delivery jurisdiction of the BO need not be insisted upon

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as a pre-condition for selection and appointment, and that it was enough if the selected candidate takes up residence in the village before appointment.

The applicant submitted a representation to R-1, R-2 and R-3. He has not received reply to any of them. The applicant states that he is a resident of the revenue village of which the Bo village is a hamlet. In any case, the rejection of his candidature on the ground that he did not belong to the village was wrong both on facts as well as on rules and instructions of the Department.

The official Respondents confirm the above facts. On receipt of a complaint of corrupt practices on the part of Sub Divisional Inspector (Postal) concerned, Respondent No.2 (PMG, Kurnool) had reviewed the case of selection of EDBPM of this office and directed Respondent NO.3 to review the selection already made in the light of the Directorate's instructions, after issuing a notice to the selected candidate. When, however, the show-cause notice was served to the selected candidate, i.e., Respondent No.4, he filled an OA (889/97) which has been disposed of by this Tribunal by setting aside the impugned notice on the ground that the review carried out, and instructions issued, by the Postmaster-General amounted to interference on the part of the Regional Office.

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This was based on a full-bench Judgement in OA. NO. 57/91 (AMBUJAKSHI Vs. UNION OF INDIA).

The Respondent admit in their counter that the condition of permanent residence of the village was faulty inasmuch as the instructions of the Directorate regarding the inessentiality of a candidate's permanent residence in the village were ignored, or lost sight of, by Respondent No.3 who had failed to score-out the said condition which was printed on the form. Be that as it may, Respondent No. 4 was selected on the precise ground that he was a permanent resident of the village and also because he fulfilled other conditions and qualifications and the applicant's candidature was rejected on the only ground that he was not a permanent resident of the village although he too possessed the requisite qualifications and fulfilled other conditions. It is admitted by the respondents that the

better qualified, and, but for the fact that the condition of nativity was wrongly insisted upon, the applicant was a better candidate than Respondent No. 4 and would have been automatically selected. It is mentioned clearly, and conceded, that the selection of Respondent No.4 was made by Respondent No.3 on an incorrect application of the condition regarding nativity. It is also freely admitted that the

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selection of respondent No.4 was violation of instructions contained in DG, Posts letter No. 17/104.83/ED&T dated 6-12-1993.

Respondent No. 4 in his counter-affidavit submits that the applicant was asked by the Inspector of Post Officers whether he (the applicant) would be in a position to provide accommodation for the post office since he did not happen to have a house of his own in the village and, according to the same respondent, the applicant had expressed his inability to do so. It is asserted by R-4 that after his selection he has been working in the post on a regular basis from July, 1996, and that he has been appointed by a competent authority and that therefore, his appointment is legal, valid and final. The applicant had, moreover, failed to assail his (R-4's) appointment within a reasonable period (say six months) and chose to do so only after an year. The respondent asserts that he has acquired a vested right by continuing in the post after due selection, and the same could not be questioned at this distance of time. It is also asserted that merely obtaining higher marks in the qualifying examination was not the sole criterion but a candidate's ability to provide proper accommodation was also equally important and decisive. It is for the department authorities to decide, on proper enquiry, on the suitability of accommodation offered.

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The facts have been carefully considered.

The earlier show-cause notice issued to Respondent No.4 was quashed on the ground that it was the result of 'interference' by a superior authority, which had earlier been held to be bad in O.A. 57/91. There was scope to hold that the P.M.G. Kurnool, had 'interfered' in the matter. The issue involved in the present O.A., is not one of 'interference' by any higher authority, or any action resulting therefrom. The grievance is projected by one of the candidates for the post and his plea have to be taken note of. This O.A. is being dealt with and disposed of purely on the basis of the applicant's arguments without any reference to any action that may have been initiated or dealt with by the higher authorities which had been impugned in the earlier O.A., and held to be amounting to 'interference'.

It has been clearly and openly admitted by the Respondents that the selection of Respondents No.4 was based on a wrong premise and wrong application of defunct condition governing such appointments. Since this is clearly urged by the applicant, and fully admitted by the official respondents, it becomes necessary for this Tribunal to fully take notice of the total mis-application of departmental instructions as seen and admitted have occurred in the selection of Respondents No.4. Notwithstanding what

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Respondent No. 2 (Post Master General, kurnool) may or not have done in the past, the allegation of the applicant, and the admission of the official Respondents in the present O.A., cannot be ignored. If this incorrect selection, based on wrong premises and inapplicable conditions, is allowed to stand unaltered, the same would amount to miscarriage of fair play and justice.

As regards the arguments regarding the reported inability of the applicant to provide a suitable accommodation for the post office, there is only Respondent NO.4's statement to that effect which is not supported by any one.

This so-called inability was neither expressed nor admitted by the applicant, nor is not endorsed or corroborated by the official respondents. Not much credence can, therefore, be attached to this evidently self-serving statement. The argument of Respondent No.4 regarding the marks scored at the SSC not being the sole criterion but the provisions of a suitable accommodation being the crucial factor in the selection, it can only be said that the applicant was never confronted with any need or opportunity of having to provide accommodation for the post office, unless this had been done, it could not be said with any certainty that he was not in a position to take up residence in the village or to offer adequate accommodation for the Post office. All these would

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arise only if and when a proper selection was finalised and an offer of appointment were to be made to the applicant. Only then, if the applicant was proved to have been not in a position to provide adequate or satisfactory accommodation, this particular line of argument could be accepted. In the present instance neither any selection was made nor any appointment offered to the applicant despite the fact that he has secured higher marks between the two (i.e. the applicant and Respondent No.4). Therefore, all arguments on this score are more in the nature of academic theorizing unrelated to rules, facts or accepted procedures.

In short, the fact of 'interference' by Respondent No.2 is not a matter of concern or relevance anymore in the present O.A. This aspect had already been taken note of in the earlier O.A. (889/97) disposed of on 20-8-1997. The present O.A. is concerned entirely with the facts of the case as presented by the applicant herein-facts which are virtually supported all the way by the official respondents. Regarding the assertion of the Respondent No.4 regarding his having acquired a vested right on account of his selection by a competent authority, the same has to be rejected because.

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- i) any vested right can possibly accrue only when the selection was ab initio correct and based on correct application of rules and instructions; and
 - ii) the decision of the competent authority cannot be patently incorrect resulting in the impermissible rejection of a more qualified and better-suited candidate.

In the result, it is held that the applicant was unduly denied selection and appointment as EDBPM, Kondavandlapalli, and that his candidature was rejected on inapplicable consideration and conditions which were no longer valid or relevant. It is declared that the applicant was better qualified for the post as per rules, and therefore deserved primary consideration before the post was offered to anyone else. Conversely, the selection of Respondent No.4 cannot be held to have been done correctly and the same is hereby set aside.

Necessary follow-up action may be taken as per law and rules and completed within sixty days of the date of receipt of a copy of this order.

Thus the O.A., is disposed of. No costs.

Sd/-

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