

34  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO.452/97

DATE OF ORDER : 04-09-1998.

Between :-

C.Divakar Reddy

... Applicant

And

1. Union of India rep. by  
The Chief Postmaster General,  
AP Circle, Hyd-1.
2. The Postmaster General,  
Hyderabad Region, Hyd-1.
3. The Superintendent of Post Offices,  
Wanaparthy Division, Wanaparthy-509103.
4. C.Indramma

... Respondents

-- -- --

Counsel for the Applicant : Shri Y.Appala Raju

Counsel for the Respondents : Shri N.R.Dewaraj, Sr.CGSC for  
RR 1 to 3  
Shri KSR Anganeyulu for R-4

-- -- --

CORAM:

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

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

(Order per Hon'ble Shri R.Rangarajan, Member (A) ).

Dr

-- -- --

✓

... 2.

(Order per Hon'ble Shri R.Rangarajan, Member (A) ).

-- -- --

Heard Sri Y.Appala Raju, counsel for the applicant and Sri D.Subramanyam for Sri K.S.R.Anjaneyulu, counsel for respondent No.4, Sri N.R.Devaraj, standing counsel for respondents 1 to 3.

2. The brief facts of this case are as follows :-

The post of EOBPM, Gattu Nellikudur 80 in Wanaparthy <sup>law</sup> Division, fallen vacant with effect from 15-7-94 consequent on retirement of regular incumbent. Respondent No.4 was appointed provisionally with effect from 22-7-94. As the District Employment Exchange did not sponsor the candidates, an open notification was issued on 27-9-94 fixing the last date for receipt of applications as 27-10-94. In response to that notification, 7 candidates including respondent No.4 and applicant applied. Out of the seven applications 3 candidates including the applicant and respondent No.4 were found eligible for consideration. Respondent No.4 was selected.

3. This OA is filed challenging the selection of Respondent No.4 and/or a consequential direction to the respondents to appoint the applicant herein as he is more meritorious than respondent No.4.

4. A reply has been filed in this OA by the official respondents. They admit that the respondent No.4 was appointed on <sup>✓ Cases of the</sup> provisional basis and respondent No.4 and applicant were considered for appointment on regular basis. Official respondents also admit that the applicant had secured more marks than respondent No.4 to the extent of four marks. However as respondent No.4 had put in provisional service, some weightage was given to that service and

*R*

*D*

here she was appointed.

5. Respondent No.4 has not filed any reply. However Sri D.Subrahmanyam argued the case of Respondent No.4 elaborately relying on some of the judgements of the Ernakulam Bench of the Central Administrative Tribunal.

6. We have heard all sides. The learned counsel for the respondent No.4 submitted that (i) the respondent No.4 was a provisional candidate and hence she gained experience in the post of EDSPM and hence she ~~had to~~ <sup>was</sup> given preference over the applicant. For this ~~she~~ he relies on the judgement of the Ernakulam Bench of this Tribunal reported in 1992 (21) ATC 13(G.S.Parvathi Vs. Sub Divisional Inspector (Postal), Guruvayoor & 2 others). Respondent No.4 further submits that she was short of four marks only compared to the applicant and hence that four marks easily can be compensated by giving ~~not~~ weightage to the provisional service as she worked in that capacity right from July, 1994 to November, 1996 and she is entitled for extra marks which when added will become equivalent to the marks obtained by the applicant in SSC examination. The learned counsel for Respondent No.4 also submits that the Chief Post Master <sup>General</sup> of Kerala had issued instructions to give weightage for the provisional appointee on the basis of certain norms. If those norms are followed, then the selection of Respondent No.4 is in order; (ii) learned counsel for respondent No.4 submits that the nativity certificate enclosed to the application by the applicant is dated later than the last date prescribed in the notification. Hence on that score also the application is liable to be dismissed;



....4.

(iii) counsel for respondent No.4 submits that the Hon'ble Tribunal can interfere with the selection only if selection is arbitrary and perverse.

7. We have perused the judgement of the Ernakulam Bench of judgement the Tribunal referred to above. That / gives no right for upgrading marks of the candidate on the basis of the provisional experience. The rules also do not provide for any such extra marks to be awarded to the provisional candidates. The judgement of the Ernakulam Bench in our opinion clearly indicates that everything being equal, then the provisional candidate should be given preference. That means that all the documents submitted by the applicant and respondent No.4 and the marks obtained by both 'were the' of them are same, then preference should be given to respondent No.4 due to her earlier experience on having worked on provisional present basis. In the / case respondent No.4 is not placed equally with the applicant as she had secured less marks than the applicant. Hence her earlier experience will not entitle / to get more marks over and above that of the applicant herein. Hence we reject this contention. The reliance on the executive order issued by chief Post Master General, Kerala cannot be a reason for allowing respondent No.4 to continue. If such a letter had been issued by the Directorate of Postal Services, then some credence <sup>could have been</sup> can be given to that letter. It is very clearly stated that these matters were left to the zonal authorities to decide. The Chief Post Master General, Kerala had decided the issue in a way he thought fit. The Chief Post Master General, AP Circle has not issued any instructions in this connection. Hence the instructions issued





42

by Chief Post Master General, Kerala is not applicable to Hyderabad region. Hence reliance placed on the instructions issued by Chief Post Master General, Kerala is not warranted. In regard to the nativity certificate, the nativity certificate is not essential for filling up the EDBPM post. But the EDBPMs selected should only change <sup>their</sup> place of residence to the area in which are posted after <sup>of</sup> they/selection. Hence submission <sup>of</sup> /the nativity certificate before selection is not considered necessary.

8. Delay in appointing the regular candidate has unnecessarily resulted in filing this OA and the official respondents are directed to avoid such delay in future cases.

9. The last contention of the Respondent No.4 in this OA has to be rejected outright. A judicial forum has full powers to review and question the decision taken by the departmental authorities. If such a review is prohibited, then the need for Tribunal does not arise. Hence we reject this contention.

10. Considering the above, we feel that the appointment of respondent No.4 regularly as EDBPM of that post Office is irregular. Hence we set aside the regular appointment of respondent No.4 as EDBPM of Gattu Nellikudur BO. However the EDBPM is an important post which has interface with public. Hence it should not be kept vacant. Hence Respondent No.4 should be allowed to continue on provisional basis till the selection is finalised by the Respondents. The respondents are directed to consider all the applications received in response to the notification issued by the respondents and

select the most meritorious candidate as per rules.

11. Time for compliance is three months from the date of receipt of a copy of this order.
12. Original Application is ordered accordingly. No order as to costs.

*RS*  
\_\_\_\_\_  
(B.S.JAI PARAMESHWAR)  
Member (J)  
*u.9. 98*

*Me E*  
\_\_\_\_\_  
(R.RANGARAJAN)  
Member (A)

Dated: 4th September, 1998.  
Dictated in Open Court.

*Dharm  
11998  
9/6/*

*av1/*

788

**Copy to:**

1. The Chief Postmaster General, A.P.Circle, Hyderabad.
2. The Postmaster General, Hyderabad Region, Hyderabad.
3. The Superintendent of Post Offices, Wanaparthy Division, Wanaparthy.
4. One copy to Mr. Y. Appala Raju, Advocate, CAT, Hyderabad.
5. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

YLKR

28/9/98  
7

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 S.S. JAI PARAMESHWAR :  
M(J)

DATED: 4/8/88

ORDER/JUDGMENT

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

in

C.A.NO. 452/87

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO

YLKR

