

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

D.A.No.585 OF 1997.

DATE OF ORDER:20-1-1999.

BETWEEN:

Smt.P.Vani.

.. Applicant

a n d

1. The Superintendent of Post Offices,
Hanamkonda Division,
Hanamkonda-506 001.
2. The Asst.Superintendent of Post
Offices, Hanamkonda Sub Division,
Hanamkonda-506 001.
3. A.Venkataswamy,s-o late Sammaiah,
r/o Taralapalli Village,
Hanamkonda Mandal, Warangal District
of Andhra Pradesh.

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr.V.Venkateshwar Rao

COUNSEL FOR THE RESPONDENTS:: Mr.B.Narasimha Sharma
Mrs. P.A. Kamleshwari.

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

A N D

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

: O R D E R :

ORAL ORDER(PER HON'BLE SRI R.RANGARAJAN, MEMBER(A))

Heard Mr.V.Venkateshwar Rao, learned Counsel
for the Applicant and Mr.Jacob for Mr.B.Narasimha-
Sharma, learned Standing Counsel for the Respondents,
and Mr.V.Suryanarayana Sastry for Smt.P.A.Kamalesh-
wari, learned Counsel for the Respondent No.3.

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2. A notification was issued to the Employment Exchange for sponsoring candidates for filling up the post of EDBPM, Thalarapally Branch Office. From the record, it is seen that the letter addressed to the Employment Officer, Warangal dated:6-11-1996, clearly states that, preference will be given to SC Community. It is stated that the Employment Exchange did not sponsor candidates. Hence, the first ^{open} notification was issued on 30-1-1997 for filling up that post. It has been seen from the record that as per notification the post is reserved for SC/ST Community. However, that notification was not carried to the logical conclusion and a second notification was issued dated:27-3-1997, for filling up that post once again stating clearly that the post is reserved for SC Community. The applicant submits that she was provisionally appointed as EDBPM in that Post Office with effect from 1-10-1996. She had applied for that post in response to the first notification dated: 30-1-1997. Without posting her as EDBPM regularly, the respondents ~~irregularly~~ issued the second notification dated:27-3-1997.

3. This OA was filed challenging the second notification and for grant of stay of all proceedings in pursuance of the notification dated:27-3-1997 by holding the same as illegal, arbitrary and unconstitutional, and for a consequential direction to the respondents to post the applicant regularly in that post with all consequential benefits.

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4. An Interim Order was passed in this OA dated: 7-5-1997, whereby the second notification dated: 27-3-1997 was stayed. But before the receipt of the Interim Order dated: 7-5-1997, a third notification was also issued on 5-5-1997. That notification was also stayed by the Interim Order dated: 5-6-1997.

5. The contention of the applicant in this OA is that, if sufficient number of SC/ST candidates is not available even if that post is reserved for reserved community candidates then others belonging to the OC Community should be considered and posted in accordance with Law. For that the applicant relies on the Full Bench Judgment of this Tribunal in OA.No.1551 of 1997, decided on 12-11-1998.

6. We have gone through the Full Bench Judgment referred to above. The Full Bench Judgment is in regard to the question of giving preference if a notification is issued indicating preference to SC/ST candidates and on the basis of the notification both SC/ST and OC candidates ^{had} responded. In that connection the Full Bench has said that if it is stated that preference will be given to SC/ST candidates, even if they are not equal to OC candidates, ^{SC/ST Candidates} should be appointed first. Nothing ~~further~~ more than that can be read in that Judgment. Hence, we do not find any reason to accept the contention of the applicant that ~~her~~ case is squarely covered by the Judgment in OA.No.1551 of 1997, decided on 12-11-1998.

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7. The Calcutta Bench of this Tribunal in SHIVANATH DHARA Vs UNION OF INDIA (reported in 1997(36) ATC Page.41), had directed that, if a post is reserved for SC/ST, then the candidates belonging to that category only should be posted. Without mentioning reservation for SC/ST, the respondents cannot prefer less meritorious SC/ST candidates when meritorious OC candidates are available. Hence, it has to be observed that the Calcutta Bench of this Tribunal, held the view that if the reservation is stipulated then ^{none} ~~nothing~~ else other than SC/ST should be posted. In this case on the basis of the reading of the records, it is evident that the respondents wanted to fill up the said post of EDBPM only by a reserved candidate. When there was no proper response from the SC/ST candidates to the first notification dated:30-1-1997, they issued second notification dated:27-3-1997. Such an action on the part of the respondents in issuing the second notification cannot be held to be untenable. But it is stated that even for the second notification there was no response from the reserved candidates. Hence, the 3rd notification dated:5-5-1997 was issued. The respondents could have easily cancelled the first notification before issuing the second notification stating the reasons for cancellation, and such a cancellation is within the rights of the Department if the specified candidates in the notification are not available. But unfortunately, the respondents failed to do so. But that action of the

respondents in not cancelling the first notification cannot give a reason to ^{appoint} allow the OC candidate~~s~~ when it is reserved for SC/ST candidates, ^{that will be} ~~is~~ a violation of the Constitutional provisions. Hence, even if the first notification was not cancelled, issuance of the second notification to fill up that post of EDBPM from amongst SC/ST candidates cannot be construed as ^{an} irregularity. If the second notification also fails to get the appropriate reserved community candidates then the respondents are at liberty to cancel that notification and going ⁱⁿ for the third notification, as the respondents submit that they do not get the enough response for filling up the post of EDBPM by reserved candidates by issuance ^{of} the first and second notifications, They are at liberty to issue the third notification.

8. In view of what is stated above, the following direction is given:-

The respondents should revive the third notification dated:5-5-1997 and obtain the applications from the reserved community candidates. They should reject all the candidates, who do not belong to reserved community which were received in response to the third notification. On that basis a final selection should be made. The respondents are also directed that in the body of the notification, ^{in future} it should be clearly stated, whether the post is to be filled by

reserved or unreserved candidates so as to avoid any unnecessary litigation in future. The CPMG will issue necessary instructions in this connection to all the concerned Units for strict observance. The applicant shall be continued as a Provisional EDBPM of that post office till a regular candidate is posted.

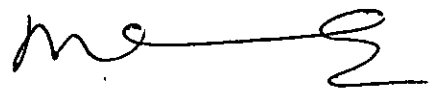
9. With the above direction, the DA is ordered accordingly. No costs.



(B.S. JAI PARAMESHWAR)

MEMBER (JUDL)

20.1.99

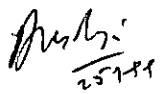


(R. RANGARAJAN)

MEMBER (ADMN)

DATED: this the 20th day of January, 1999

Dictated to steno in the Open Court


25/1/99

DSN

A
4/2/99

1ST AND 11ND COURT

COPY TO:-

1. HDHND
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE CHAIRMAN

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

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

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 20/1/99

ORDER/JUDGMENT

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

In

O.A.

585/97

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

