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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

D.A.No.1051 OF 1997.

DATE OF ORDER:1-1-1999.

Between:

Y.Yellappa.

.. Applicant

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1. Union of India, Rep. by:
The Chief Postmaster-General,
Andhra Pradesh Circle,
Hyderabad-500 001.
2. The Director of Postal Services,
Kurnool Region, Kurnool-518 005.
3. The Superintendent of Post Offices,
Kurnool Division, Kurnool-518 001.
4. The Sub Divisional Inspector of
Postoffices, Kurnool East Sub Division,
Kurnool-518 001.
5. Lalithamma(Smt.), w/o D.Joseph,
r/o H.No.46/180, Budhavarpetta,
Kurnool, and presently employed
as Private Teacher, Kurnool Mandal,
and District, A.P.

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr.Y.Appala Raju

COUNSEL FOR THE OFFICIAL :: Mr.B.Narasimha Sharma
RESPONDENTS

COUNSEL FOR RESPONDENT No.5:: Mr.K.Venkateshwara Rao

CORAM:

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

A N D

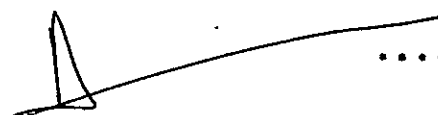
THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: O R D E R :

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

Heard Mr.Y.Appala Raju, learned Counsel for the
Applicant and Mr.Jacob for Mr.B.Narasimha Sharma, learned
Standing Counsel for the Official Respondents 1 to 4, and
Mr.T.V.V.S.Murthy for Mr.K.Vankateshwara Rao, learned
Counsel for Respondent No.5.

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2. The post of E.D.Stamp Vendor, Kurnool Medical College Post Office had fallen vacant with effect from 1-3-1994, consequent on the death of regular incumbent Razia bee. The applicant was appointed on a provisional basis with effect from 1-3-1994 for six months. But it is stated that his provisional appointment was continued for more than three years. Respondent No.4 addressed a letter dated:22-7-1996 to the Employment Exchange to sponsor candidates for filling up that post regularly within 30 days. The Employment Exchange, Kurnool, by letter dated:25-7-1996, sponsored 20 candidates for that post. Out of 20 candidates, 8 candidates were residents of Kurnool Town. Hence, they were addressed by letter of R-4, dated:25-6-1997 to submit their applications in the prescribed form together with xerox copies of Certificates, Employment Card etc., for consideration of ^{their} candidature. One of the letters addressed to one Sri K.Somasunderam was returned back undelivered as there was no such addressee. Respondent No.5 responded to the call letter and she was the only candidate who responded out of the 8 addressed for regularly filling up that post of E.D.Stamp Vendor. She attended the Interview and her Certificates were verified and she was appointed as a regular E.D.Stamp Vendor of that Post Office. The name of the applicant was not sponsored by the Employment Exchange even though he was working as a provisional candidate. The applicant also submits that he was not aware of the letter addressed to ^{the} Employment Exchange for sponsoring the candidates for filling up that post regularly.

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3. This OA is filed to set aside the selection and posting of Respondent No.5 as E.D.Stamp Vendor, Kurnool Medical College, and for a consequential direction to the respondents to hold the selection afresh by declaring the vacancy as reserved for ST Community.

4. The main contention of the applicant in this OA is that, if three candidates are not responding to the call letters then the respondents cannot select any of the candidates as the number is less than three and they should either go in for an open notification or once again approach the Employment Exchange for sponsoring candidates based on which the regular appointment can be made. For this the applicant relies on the DOPT letter No.17-104/91-ED & TRG., dated:18-9-1995 enclosed at Annexure.VII, page.20 to the OA. Para.3 of this letter is relevant. The relevant portion in this para.3 reads as follows:-

"In case the Employment Exchange sponsors the minimum prescribed number of suitable candidates within the stipulated date and upon being addressed by the recruiting authorities, not less than three candidates respond with documentary proof with regard to fulfilment of prescribed eligibility conditions, the question of issue of open advertisement would not arise."

5. From the above extracted portion, it is evident that open notification can be issued only if at least three of the candidates for whom call letters were ^{did not} respond for the selection. If it is less than three then open notification is to be issued. It means

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that if there are less than three candidates then the selection should be made afresh and no selection should be made from amongst the candidates, who are less than three in number, for filling up a E.D. post regularly. The above in our opinion is to ensure that the most meritorious candidate is selected for filling up the E.D.post regularly from amongst a fairly large number of candidates appearing for selection.

6. In the present case, the Respondent No.5 ~~is was~~ the only candidate, who responded to the call letter. Hence, the selection of Respondent No.5 is not in accordance with the rules quoted above.

7. A reply has been filed in this OA. Though some justification has been made in the reply to substantiate appointment of Respondent No.5, the learned Counsel for the Official Respondents has fairly admitted that the selection is not in accordance with the rules. Hence, it is not necessary to further go into the contentions raised by the respondents in the reply.

8. The learned Counsel for the Respondent No.5 though tried to substantiate the retention of Respondent No.5 as a regular E.D.Stamp Vendor, Kurnool Medical College, no satisfactory reason is given. He only states that the letter of the DOPT dated:18-9-1995, is a subsequent letter issued subsequent to the issue of the E.D.Service Rules and hence, this letter may not be taken note of. The letter of 18-9-1995 is in the nature of a clarification. It no way over-rides the E.D.Service Rules prescribed earlier. A clarification which has been issued to better the selection of

E.D.Staff, it cannot be said that this letter should not be taken note of as it was issued after the issue of the brochure of E.D.Service Rules. Hence, this contention is rejected.

9. The learned Counsel for the Private Respondent further submits that the applicant's name is being registered as a thrown out E.D.Agent as he had put in more than three years of service as a provisional candidate and hence, he will get placement in some other Post Office and in that view that OA may not be allowed as the applicant is no way put in/disadvantageous position in not appointing him as a E.D.Staff in the present post.

10. The appointment of the applicant as a thrown out E.D.Agent is a separate issue altogether, and that need not be connected with the challenge to the appointment of Respondent No.5. If the Department desires to post him also elsewhere and a compromise has been achieved by the Department in consultation with the Respondent No.5 and the Applicant, then the case may be dealt with in accordance with the rules. Hence, there is no need to give any further direction or observation in this connection.

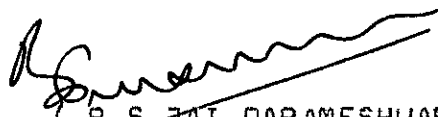
11. The learned Counsel for the applicant submits that there is a shortage of ST candidates in the E.D. cadre and hence, even the notification issued for filling up that post without reserving the post to ST is irregular. As the OA is to be ^{allowed} ~~dismissed~~ due to non-observance of the rules, the respondents have to resort to further notification for filling up that

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post. While issuing a fresh notification if the applicant is of the opinion that it is to be filled by a ST candidate, he may take such legal proceedings as available to him to ensure that proper notification is issued in this connection.

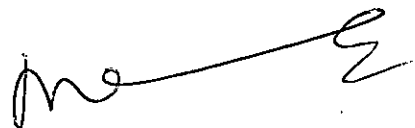
12. In view of what is stated above, we find that the OA has to be allowed and accordingly it is allowed. The appointment of Respondent No.5 is set aside and the respondents are directed to initiate fresh proceedings for filling up the post regularly in accordance with the rules. Till such time the regular appointee is posted, the Respondent No.5 shall be continued as a provisional EDSV of that Post Office.

Time for compliance is three months from the date of receipt of a copy of this Order. No costs.



(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)

1.1.99



(R. RANGARAJAN)
MEMBER (ADMN)

DATED: this the 1st day of January, 1999

Dictated to steno in the Open Court

DSN


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