

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA 615/88.

Date of Judgment: 29-4-91

B.S.Maheswara Rao

....Applicant

Vs.

1. Director of Postal Services, AP,
North Eastern Region, Visakhapatnam-530 020.
2. Superintendent, Post Offices,
Vizianagaram.
3. Anivireddy Penta Papayya,
S/o Narayana, Godiyadu Village,
Gantykola Mandal ~~XXXXXX~~ District.

....Respondents

Counsel for the Applicant : Mr.K.V.Subrahmanyam Narsu

Counsel for the Respondents : Shri N.R.Dev Raj, Addl.CGSC

CORAM:

THE HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (J)

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

(Judgment of the Bench delivered by Hon'ble
Shri R.Balasubramanian, Member (A)).

This application is filed by Sri B.S.Maheswara Rao
against the Director of Postal Services and two others. The
third Respondent is a private Respondent. The applicant
was working on provisional basis as Extra Departmental
Branch Post Master at Godiyada Village, Vizianagaram
District. A selection was held for filling-up the post
on regular basis and the 3rd Respondent was selected. The
applicant was aggrieved and made a representation. The re-
presentation was rejected by the 1st Respondent simply

contd...?

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To

1. The Director of Postal Services, A.P.
North Eastern Region, Visakhapatnam- 20.
2. The Superintendent of Post Offices, Vizianagaram.
3. The copy to Mr. K. V. Subrahmanya Narsu, Advocate, CAT.Hyd.
4. One copy to Mr. N. R. Devraj, SC for Rlys, CAT.Hyd.
5. One copy to Hon'ble Mr. J. Narasimha Murty, Member (J) CAT.Hyd.
6. One copy to Hon'ble Mr. R. Palasubramanian : Member (A) CAT.Hyd.
7. One spare copy.

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File Number: 615-188

Date of Judgement: 9-4-91

Copy made ready on: 6-5-91

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Section Officer (1)

ference to Terraced House owners. Employment of family members has also no relevance. The rule is equally silent on the question of distinction between the candidates on the grounds of past experience in E.D. Working. In the case before us the applicant had an experience of six months and this is a fortuitous one. When distinction according to rules, between two persons becomes difficult, what is it that can tilt the balance? In a similar case OA 29/90 confirmed in Review Petition 4/91 decided by the Madras Bench, this Tribunal held that although there is no specific provision in rules to give preference to experience, where it is otherwise difficult to make a distinction, past experience could be the deciding factor to decide the question in favour of one or the other. Applying the same principle in this case also, since the applicant had past experience of six months, albeit fortuitous, we feel that he should be given preference over the 3rd Respondent. In the result the application is allowed and parties are directed to bear their own costs. The order in this Judgment will be implemented within a period of three months from the date of receipt of the order copy.

CERTIFIED TO BE TRUE COPY
..... 15.5.91

.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1396 of 1997

Between :

Bhogapurapu Vanikumari ... Applicant

And

The Superintendent of
Post Offices,
Vizianagaram Division
Vizianagaram; & another ... Respondents

REPLY STATEMENT FILED ON BEHALF OF RESPONDENTS

I, H. Seshagiri Rao, s/o Narasimha Murthy, aged about 56 years, occupation : Government service; resident of Hyderabad; do hereby solemnly and sincerely affirm and state as follows :

1. I am working as Assistant Postmaster-General (S & V) in the office of the Chief Postmaster-General, A.P. Circle, Hyderabad. As such I am well acquainted with the facts of the case. I am authorised to give this Reply Statement on behalf of the Respondents.
2. I have read the Original Application filed by the above named Applicant ~~and~~ ^{concerning} I deny the several material allegations made therein except those that are specifically admitted herein.
3. Traversing in detail the several material allegations, averments and contentions made therein, I beg to submit as follows :

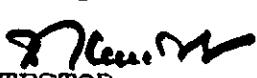

ATTESTOR

सहायक लेखा अधिकारी (बजेट)
Assistant Accounts Officer (Budget)
भूत्य विभाग क्रमाल का कार्यालय
Office of the Chief Postmaster General,
आ.प. विभाग, हैदराबाद-500 001.
A.P. CIRCLE, HYDERABAD-500 001.

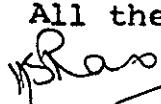

DEPONENT
Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.

4. The post of EDBPM, Jammu BO a/w Vizianagaram Cantt. S.O. arose due to resignation of Sri B.A. Venkateswara Rao, the regular BPM. Sri B.A. Venkateswara Rao was on leave on medical grounds for more than 180 days and ultimately submitted his resignation on 22.3.97. The vacancy was notified to the Employment Exchange, Vizianagaram on 10.4.97 and also Sub Employment Exchange, ITDA, Parvatipuram to sponsor candidates for the above post. In the meantime, the resignation of Sri B.A. Venkateswara Rao was accepted by the undersigned vide this office Memo. No. B/ED-3/1192A, dated 20.5.97 as it is not possible to grant further leave to him. The Sub Divisional Inspector (Postal), Vizianagaram West Sub Division was directed to make provisional arrangement for the post of EDBPM, Jammu till the regular arrangement is made. The SDI (P) has provisionally appointed Kum. B. Vanikumari, the sister of the regular incumbent with effect from 24.5.97. Kum. B. Vanikumari, provisional BPM has given a declaration dated 24.5.97 to the SDI (P), Vizianagaram West Sub Division to the effect that her appointment is purely temporary, that she can be terminated at any time without showing any reason and that she has no claim for regular appointment to the post of BPM, Jammu and that she is abiding by the E. D. Agents Conduct & Service Rules 1964. A copy of the Declaration is enclosed (Annexure R-1).

It is further submitted that the Employment Exchange Vizianagaram has sponsored 20 candidates vide his letter dated 9.5.97 and the Sub Employment Exchange, ITDA, Parvatipuram has sponsored 5 ST candidates on 13.5.97. All the 25


ATTESTOR

सहाय्य नेत्रा अधिकारी (बजट)
Assistant Account Officer (Budget)
मुख्य पोस्टमैन नं. १०८, कृष्णगढ़
Office of the Chief Postmaster General,
आ.प. सर्कार, ४४, बैंगलोर, ५६०००१.
A.P. CIRCLE, MYSORE, 560001.


DEPONENT

Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.

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candidates have been supplied with application forms on 30.5.97 with instructions to submit applications with all relevant documents and certificates so as to reach this office on or before 30.6.97.

Of the 25 candidates sponsored by Employment Exchange 12 candidates have responded. Out of 12 candidates, the applications of 10 candidates have been rejected. As the No. of candidates sponsored by Employment Exchange who have submitted all documentary evidence and certificates is less than 3, the vacancy was locally notified on 23.7.97 with last date for receipt of applications as 22.8.97 as per the instructions contained in D.G (P) letter No. 17-104/91-ED & TRG., dated 18.9.95 (Annexure R-II). In response to the local notification 7 applications, 5 have been received. Out of these 5 applications have been rejected for the reasons noted in Statement-2. The reasons for rejection of the applications have also been intimated to the candidates.

It is further submitted that as per the instructions contained in R.O. letter No. ST/1-32/Dlgs/96, dated 29.5.97 a Committee consisting of the following Officers has been formed for selection of BPM posts in Vizianagaram Division.

1. SPOS, Vizianagaram Division as Chairman
2. SPOS, Parvatipuram Division as Member

In accordance with the above instructions, the Committee consisting of the above Officers met on 28.9.97 at Vizianagaram in connection with the screening/scrutiny of applications received for the selection to the post of BPM, Jammu a/w Vizianagaram Cantt. S.O.

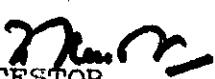
21/10/97
ATTESTOR
राज्यपाल विजयनगर कार्यालय (बजेट)
Assistants Accounts Officer (Budget)
राज्य पोस्टमास्टर नगरम कार्यालय
Office of the Chief Post master General,
पोस्ट अधिकारी, नियमन-500 001.
A.P. CIRCLE, HYDERABAD-500 001.

Yash
DEPONENT
Asst. Postmaster General (S. & V.)
Q/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.

Two candidates sponsored by Employment Exchange and 2 candidates as a result of local notification have come within the purview of the BPM selection. All the above 4 applicants were asked to attend Divisional Office for verification of original certificates and documents by the Committee on 4.10.97. The Applicant is one among them. On 4.10.97, all the 4 candidates have attended the office with original certificates and documents.

It is further submitted that of the 4 candidates, Sri B. Krishna Murthy, who ~~have~~ ^{has} possessed landed property in his name produced pattadar pass book in proof of the properties held by him and who is having independent source of income on landed property and who got higher marks (284 + 21) among the four candidates was selected as B.P.M., Jammu, by the Selection Committee. Kum. B. Vani Kumari secured only 251 + 24 marks. Since Sri B. Krishna Murthy got higher marks (284 + 21) Kum. B. Vanikumari besides fulfilling the other eligibility criteria Sri N. Krishna Murthy was selected as B.P.M., Jammu. After the selection of Sri B. Krishna Murthy secured a house in Jammu village offered by Sri Althi Chinamarayya, s/o late Rajappadu of Jammu village. The charge of the B.O. was handed over to Sri B. Krishna Murthy selected B.P.M. on 20.10.1997 afternoon and he is residing in the house of Sri Althi Chinamarayya and located the B.O. in that house.

5. In reply to Paras 1 to 3 (iii) : Needs no comments.
6. In reply to para 3(iv) : It is submitted that the applicant is an unsuccessful candidate in the selection of


ATTESTOR

सहायक लेखा अधिकारी (बजट)
Assistant Accountant Officer (Budget)
मुख्य पोस्टमार्ट नं. २८८ कार्यालय
Office of the Chief Post Master General
आ.प. पर्सनल, हैदराबाद-५०० ००१.
A.P. CIRCLE, HYDERABAD-500 001.


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Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General
A.P. Circle, Hyderabad-500 001.

E.D.B.P.M., Jammu B.O. The selection was based on the merit by a selection committee consisting of two Divisional Superintendents and the applicant has no right to claim the post of B.P.M., Jammu over the meritorious candidates.

7. In reply to paras 4 and 5 : Needs no comments.
8. In reply to Para-6(a) : It is submitted that the applicant was provisionally appointed on the afternoon of 24.5.97 consequent on the acceptance of resignation of her brother, Sri B.A. Venkateswara Rao, and as no regular arrangement could be made by the time the resignation is ~~was accepted~~ accepted. Smt. B. Vanikumari gave a declaration before the S.D.I (P), Vizianagaram West Sub Division on 24.5.97 to the effect that her appointment as B.P.M. is purely temporary that she can be terminated by the Department at any time without showing any reasons and that she had no claim for regular appointment as B.P.M., Jammu and that she would abide by the conditions laid down in E.D. Agents Conduct and Service Rules 1964. ~~A copy of the Declaration given by the Applicant is enclosed (Annexure R-II).~~
9. In reply to Para-6(b) : It is submitted that the original certificates and documents have been verified on 4.10.1997 by the Selection Committee by calling the candidates to Divisional Office but it is not an Interview.
10. In reply to Para-6(c) : It is submitted that it is not correct that the applicant is a better qualified candidate. Respondent - 2 is the better candidate among all the 4 candidates who have attended this office for verification

Neetu
ATTESTOR

सहायक लेखा अधिकारी (बजट)
Assistant Account Officer (Budget)
मुख्य पोस्टमास्टर और चीफ कार्यालय
Office of the Chief Post Master General,
आ.प. पोस्टमास्टर, बी.पी.एस. 500 001.
A.P. CIRCLE, HYDERABAD-500 001.

Yash
DEPONENT

Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General
A.P. Circle, Hyderabad-500 001.

of certificates. Sri Bh. Satyam offered his house Dr. No. 2-109 in Jammu to the selected candidate to locate the Post Office. But the applicant influenced him and made him to withdraw the consent. However, the Respondent - 2 secured a house in the B.O. village offered by one Sri Althi Chinamarayya, s/o Rajapadu of Jammu village. The charge of the B.O. was handed over to the Respondent-2 on 20.10.1997. The applicant has created all hurdles in taking over the charge of the B.O. and she refused to sign the charge reports and the Department had to seek Police assistance to handover the charge to the selected candidate.

11. In reply to Para-6(d) : It is submitted that the Memo. dated 10.10.1997 of the First Respondent appointing the second respondent as B.P.M., Jammu, was issued according to the law for the following reasons.

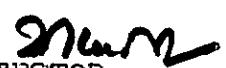
12. In reply to Para-6(e) : It is submitted that there is no provision in any of the rules to give reasons to all the unsuccessful candidates as to how a particular candidate is selected. Therefore, the applicant's plea that it is the duty of the Selection Committee or Appointing Authority to give reasons as to why a particular candidate is selected in a particular post in preference to other candidates is not tenable and does not stand to reason. The order need not disclose the reasons for preferring the second respondent to the applicant and it is not a defect as per recruitment rules. This is not prescribed in any of the recruitment rules and therefore, the plea of the applicant has no legs to stand.

M. Basu
ATTESTOR

मुख्यमंत्री निवास अधिकारी (बजट)
Assistant Account Officer (Budget)
मुख्यमंत्री निवास वा अधिकारी
Office of the Finance Secretary
A.P. Circle, Hyderabad-500 001.
A.P. CIRCLE, HYDERABAD-500 001.

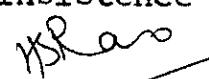
K. Basu
DEPONENT
Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General
A.P. Circle, Hyderabad-500 001.

13. In reply to Para-6(f) : It is submitted that the claim of the applicant that she possessed senior qualifications than the second respondent is not understood. Educational qualification required for the post of B.P.M. is a pass in the Matriculation or equivalent examination. In the Notification it was clearly mentioned that no weightage will be given for higher educational qualifications and the selection will be based on the marks obtained in the Matriculation or equivalent examination. This is in accordance with the paras 2(ii) of Lr. No. 17-366/91-ED & TRG., dated 12.3.1993. The applicant's plea that the second respondent is not having any immovable properties is not correct. He need not have properties in Jammu village, he may not be a permanent resident of Jammu village as per rules. An outsider having immovable properties anywhere provided the documentary proof is submitted is eligible for the post. He need not have immovable properties in the B.O. village. He need not be a permanent resident of the village also as per Directorate letter No. 17-104/93-ED & Trg. dated 6.12.1993. The rule envisages that while making selection for appointment to E.D. posts permanent residence in the village or delivery jurisdiction need not be insisted upon as a pre-condition for appointment. However, it should be laid down as a condition of appointment that any candidate who is selected must before appointment in the post take up his residence in the village/delivery jurisdiction of the E.D. Branch Office. Even though the person who offered accommodation for the second respondent withdrew his letter on the insistence of



ATTESTOR

सहायक संचालक अधिकारी (बजट)
Assistant Accounts Officer (Budget)
धूम्र वीटमार्ट अमरावती कार्यालय
Office of the Chief Postmaster General,
आ.प. वीटमार्ट, 3-000001.
A.P. CIRCLE, HYDERABAD-500001.



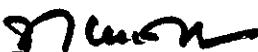
DEPONENT

Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General
A.P. Circle, Hyderabad-500001.

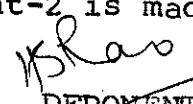
the applicant the second respondent secured accommodation of tiled house given by one Sri Althi Chinamarayya, s/o late Rajappadu and the E.D.B.O. is presently located in it and therefore he is residing in it after his selection. All the pleas put forth by the applicant in this para are not covered by any rule of law.

14. In reply to Para-6(g) : It is submitted that the applicant claim that she has previous experience. No preference is assured either in the notification or in the rules for the previous experience for the post of B.P.M. Further, even though the second respondent and the applicant are equally qualified, the second respondent secured higher marks than the applicant besides fulfilling other eligibility criteria like landed property and income on the landed property in his name and having independent source of income. The second respondent has also produced title deed pattadar pass book in his name in proof of his possessing landed property in Gantyada Mandal in Vizianagaram Division. The Jammunarayananapuram where the applicant claims that she is possessing property is also located in Vizianagaram Division. The rules do not say that the properties of the candidates should be in the B.O. village. The previous experience cannot be taken as preferential qualification.

15. In reply to Para-6(h) : It is submitted that the grounds taken by the applicant are not supported by any rules or the conditions prescribed in the notification for the appointment of B.P.M., Jammu. The selection fo respondent-2 is made by


ATTESTOR

सहायक लेखा अधिकारी (बजट)
Assistant Accounts Officer (Budget)
मुख्य वोक्युलस्ट बजेट का कार्यालय
Office of the Chief Postmaster General,
आ० प. फॉर्म्यूला, ४००००१,
A.P. CIRCLE, HYDERABAD-500 001,


DEPONENT

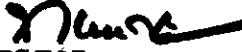
Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General
A.P. Circle, Hyderabad-500 001.

Selection Committee strictly according to rules on the subject as submitted in the previous paras and therefore, the Hon'ble C.A.T. may kindly be pleased to dismiss the Application with costs.

16. In reply to Paras - 7 ' 8 : Needs no comments.

17. In reply to Para-9 : It is submitted that the grounds taken by the applicant in the O.A. have no legs to stand as they are not supported by any rules nor fulfil the conditions laid down in the notification. The selection process for the post of B.P.M. is very systematically done as per rules and the selection was made by the Selection Committee consisting of two Divisional Superintendents, on the basis of merit of marks besides fulfilling other eligibility criteria mentioned above. Therefore, the selection is neither illegal nor arbitrary nor contrary to the rules governing the appointment to the post of E.D.B.P.M.

It is further submitted that a copy of judgement pronounced by this Hon'ble Tribunal in O.A.No. 35 of 1988 between Paidi Lokanadham applicant and Director of Postal Services, Visakhapatnam; Sr. Supdt. of Post Offices, Srikakulam as Respondents, in which the Hon'ble Tribunal ordered that the candidates for B.P.Ms post have to be selected on merit of marks. From the above, it is submitted that the selection to the post of B.P.M., Jammu, was made in accordance with the rules of the Department and the applicant who had no merit has no claim on the post of B.P.M., Jammu.


ATTESTOR

लहानक लेखा अधिकारी (बजट)
Assistant Accountant Officer (Budget)
मुख्य पोस्टमास्टर विभाग का कार्यालय
Office of the Chief Postmaster General,
अ.प. सर्कार, १०१, विजयनगर, ५००००१,
A.P. CIRCLE, HYDERABAD-500 001.


DEPONENT

Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.

18. In reply to Para-10 : It is submitted that the applicant worked as B.P.M. in leave vacancy of his brother from February 1997 and on provisional basis from 24.5.97. The second Respondent provided suitable accommodation for locating the B.O. in the B.O. village as per the conditions after his selection. The applicant avoided to hand over the charge of the B.O. when the S.D.I (P) went and therefore, the charge was first taken over by the Mail Overseer from the substitute arranged by the applicant. For handing over the full charge of the B.O. the Department had to seek Police assistance also. This itself indicates the indisciplined behaviour on the part of the Applicant.

19. In reply to Para - 11 : It needs no comments.

20. In reply to Paras 12 & 13 : Needs no comments.

In view of the facts stated supra, it is submitted that the applicant has not made out a fit case for consideration and therefore, it is prayed that this Honourable Tribunal may be pleased to dismiss the O.A.

Khas
DEPONENT
Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.

Sworn and signed before me
on the 11th day of Dec. 1997
at Hyderabad.

M. M.
ATTESTOR

सहायक लेखा अधिकारी (बजट)
Assistant Accounts Officer (Budget)
मुख्य पोस्टमास्टर कार्यालय
Office of the Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.
A.P. CIRCLE, HYDERABAD-500 001.

BRM*

English Translation

Declaration

I understand that,
my appointment as
Branch postmaster,
Tirumalai is temporary
only, and the department
has the power to
remove me at any
time, without assigning
any reasons and I have no
right to claim regular
appointment in the post.
As long as I continue in
the post I abide by
E.D Agents [Conduct and
Service Rules] 1964
and the instructions
issued by my Superior
and I will perform my
duty with interest.

Sd/-
B. Vanikumari

Annex 1

Sub Divisional Inspector

Villanagaram (West) Sub Dn. 531243

ಬ್ರಹ್ಮಾಂಡ ಮಾನ್ಯ ಮಾನ್ಯ ಮಾನ್ಯ ಗ್ರಂಥ ನಾ ಶಿಖ

నియమానుకుము క్రిష్ణాము దంతశ్శాఖల్నిమానిసు

ఈ వెన్ను మండి వెప్పున్నికను వ్యక్తారుము

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ಉತ್ತರ ಮುಂದಿನ ಪ್ರವರ್ತನೆಗೆ

એક ક્રમાંકની રૂપે એક એડ એજન્ટીસ

(connects and service) Routes

1964 ජූලියේ මෙයින් ගෙවා ඇති

1969 in
मुमुक्षु विद्यालय (मुमुक्षु विद्यालय)

ప్రముఖ ప్రాంతి సభల్లోను వున్నాడు.

Obtained by me
1/1947

area
Vancouver

Sub Divisional
Mysore (West) Sub Div.

Sub D.
VIZIARIAEATRUM (West.)

1920-1921

B. Vireonari

R/C B. Ramaswamy

Terminus nomenclatorum

Jammie (B.O) 24/5/97.

KTO

(ii) If a candidate for appointment to the post of EDSPM acquires landed property in his own name after sponsorship of his candidature by the Employment Exchange in response to the notification but before verification of educational qualification, income/property etc., whether such a candidate should be considered eligible for consideration for appointment to the above post in relation to the property qualification.

3. The issues raised above have been examined in this office. Although in the notification issued to the Employment Exchange, specific mention about the broad eligibility conditions required to be satisfied by the prospective candidates are mentioned excepting residence the Employment Exchange cannot be expected to know whether the candidate sponsored fulfills the income/property condition in as much as candidates are not required to apply to the Employment Exchange with this information. 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 3 candidates respond with documentary proof with regard to fulfilment of prescribed eligibility conditions, the question of issue of open advertisement would not arise. In this case, the nominated candidates are required to be addressed through registered post calling for applications within the date to be stipulated by the recruiting authorities. In the rarest case, if a candidate at the time of making an application does not satisfy the income/property condition but acquires this qualification subsequent to the submission of the application and sends a written request enclosing documentary evidence in continuation of his application and the same is received within the stipulated date, the recruiting authorities should entertain the same. However, if such an intimation is received after the last date prescribed or the development regarding acquisition of this qualification itself takes place after the last date prescribed is over, also be followed in case it becomes necessary to fill in the post of EDSPM/EDSPM through open advertisement. In other words, in this case also if an intimation accompanied by documentary proof is received subsequent to the submission of the application within the stipulated date, the same should also be entertained and acted upon.

4. The contents of this letter may kindly be brought to the notice of all concerned for information/guidance and uniform application.

Annexure R-II 43

POSTAGE
VISAKA

13 OCT 1995

74481649

DAY 530 003
SANSAD PARK
NEW DELHI-110011

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF POST

NO:17-104/91 - ED'TRG.

DATED: 18-09-1995.

To,

1. All Chief Postmaster General
2. All Postmasters General (Regions)
3. Director, Postal Staff College of India, Ghaziabad
4. Controller, Foreign Mails, Bombay
5. Additional Director General, APS, R.K.Puram, New Delhi
6. Postmaster General (Mail Management), Bombay/Madras/Calcutta
7. CPMG, New Delhi
8. All Principals, Postal Training Centres, Saharanpur/Vadodara/Mysore/Darbhanga/Madurai.

Subject: Income and ownership of property conditions for appointment to the post of ED2PMs/ED5PMs - crucial date for determining eligibility regarding.

Sir,

I am directed to invite your kind attention to this office letter of even number dated 5th December, 1993 on the above mentioned subject. This office subsequent letter no.17-366/91 - ED TRG., dated 26th May, 1995 containing clarifications on certain points of doubt including the subject cited above also refers.

2. In the context of the above instructions, references have been received from certain quarters seeking clarification on the following points :-

- (i) If a candidate for appointment to the post of ED 2PM/ED 5PM acquires landed property in his own name after submission of the application in response to the open advertisement but before verification of the bio-data including income/property, whether he should be considered eligible for consideration for appointment to the aforesaid post with regard to property qualification ; and

Sir,
Submitted
for info -
Mathan & FFc:sp
2/2
20/0

1) Stamps to be attached
on the other side.
2) Name & firm to be typed.

16/12/97

Conceded it
on 23-12-97
for N. Raghava
Reddy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

O.A. No. 1396 of 1997

Between :

Bhogapurapu
Vanikumari

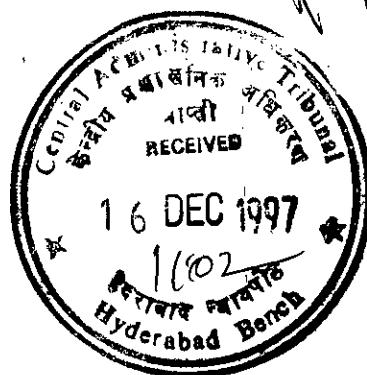
... Applicant

And

The Superintendent
of Post Offices,
Vizianagaram Divn.,
Vizianagaram &
another

... Respondents

Filed on : 15-12-97



Reply filed & Contra dated
23/12/97
Contra for Applicant

Filed by : N.V. Raghava Reddy,
Addl. C.G.S.C.

May be 8/98
S. T. M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1396/97

Date of Order : 4.3.99

BETWEEN :

Bhogapurapu Veni Kumari .. Applicant

AND

1. The Superintendent of Post Offices,
Vizianagaram Division,
Vizianagaram.

2. B.Krishna Murthy .. Respondents.

- - -

Counsel for the Applicant .. Mr.K.V.S.Narsu

Counsel for the Respondents .. Mr.B.N.Sharma
for R-1
Mr.G.Ramagopal
for R-2

- - -

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 B.S.Jai Parameshwar, Member (Judl.) X

- - -
Mr.K.S.R.Murthy for Mr.K.V.S.Narsu, learned counsel
for the applicant and Mr.B.N.Sharma for R-1 and Mr.Suryanarayana
Sastry for Mr.G.Ramagopal for R-2.

X

.. 2 ..

2. The post of EDBPM, Jammu Narayanapuram BO a/w Vizianagaram became vacant due to resignation of the regular incumbent. While earlier to his resignation he was on leave, and during that period the applicant had worked as leave substitute. The vacancy was notified to the employment exchange on 10.4.97 and the resignation of the regular incumbent was accepted by letter dated 20.5.97. The SDI Postal, Vizianagaram, was directed to make provisional arrangement for the post of EDBPM, Jammu till a regular candidate is posted. Accordingly the applicant was posted w.e.f. 25.4.97 on provisional basis. The employment exchange, Vizianagaram has sponsored 20 candidates and the Sub Employment Exchange, Parvatipuram had sponsored 5 ST candidates. All the 25 sponsored candidates were supplied forms but amongst them only 12 candidates were responded including the applicant herein. As the number of candidates ^{had} _{and were eligible} sponsored the employment exchange and who responded were less than 3, the vacancy was locally notified on 23.7.97 prescribing the last date for receipt of applications as 22.8.97. In response to the notification 7 applications had been received and 5 applications were rejected.

3. A Committee consisting of SPO, Vizianagaram Division and SPO, Parvatipuram Division considered the eligible candidates and R-2 was appointed.

2

.. 3 ..

4. The applicant has filed this OA to declare the memo bearing No.B/ED-3/194 A dated 10.10.97 issued by R-1 as illegal and contrary to rules and for a direction to R-1 to appoint the applicant in the post of EDBPM, Jammu Branch Office.

5. The main contention of the applicant is that his experience should have been considered in selecting a suitable candidate. It is also contended that the applicant is a better equipped by way of income and property compared to the selected candidate. Hence on that basis he should have been posted as EDBPM of that post office. The applicant submits that the experience gained by him has to be taken note of in view of the judgement of this Tribunal in O.A. 615/88 disposed of on 29.4.91 enclosed as Annexure-8 to the OA.

6. The respondents have filed the counter. That the Committee had not selected the applicant that service rendered by her as a leave substitute or on provisional basis cannot be taken into consideration and that the eligible person need not have the property within the jurisdiction of the branch office, and he need not be a permanent resident of the village as per the letter dated 6.5.93.

7. On 26.2.99 the respondents produced the selection proceedings. On perusal of the selection proceedings we found that the R-2 had obtained 284⁴²¹ marks in SSC/Matric, whereas the applicant had obtained in the same examination 251+24 marks. R-2 had secured more marks than the applicant.

R

Further we found that the Committee after taking into consideration of all the relevant factors like educational qualifications, property and income selected R-2 as BPM of that post office. It was also stated that the candidate should also locate the B.O. in a suitable house which is fire proof, theft proof and leak proof within the jurisdiction of the B.O.

8. The ED Rules does not provides for considering the service rendered by the candidate during leave vacancy or on provisional basis. The applicant submits that even though R-2 had obtained more marks than the applicant he should be considered as meritorious as he had past experience ~~either as leave a substitute or a provisional EDBM.~~ For that he had relied on the judgement in OA.615/88 of this Tribunal. This Tribunal consistently taking the view that the meritorious position of a candidate should be decided on the basis of the marks obtained in the S.S.C. without resorting to the experience gained by him if anybody either by substitute or by provisional. We have gone through the judgement in OA.615/88. The relevant portion of the judgement which the applicant has insisting is reproduced below.

"When distinction according to rules, between two persons becomes difficult, what is it that can tilt the balance? In a similar case OA.29/90 confirmed in Review Petition 4/91 decided by the Madras Bench, this Tribunal held that although there is no specific provision in rules to give preference to experience, where it is otherwise difficult to make a distinction,

past experience could be the deciding factor to decide the question in favour of one or the other".

9. From the above it is evident that the other Bench has not quoted any rule to say that experienced person should be selected compared to others even though the other person had obtained more marks in S.S.C. The reason for giving a direction as quoted above is due to the fact that both the persons i.e. selected and non-selected were having the same marks. In that case to decide the meritorious person the past experience should be counted. This is evident from the question raised by the Tribunal which reads as "when distinction according to rules, between two persons becomes difficult, what is it that can tilt the balance?" Hence no where it is stated in the judgement even though the selected candidate had obtained more marks the applicant has to be selected in view of the fact that he had experienced. Similar views had been taken in OA.75/92. Hence we still hold the view even after perusing the judgement of the Tribunal in OA.615/88.

When everything ^{are} equal including the marks obtained in S.S.C.

with experience then the person should be treated as meritorious candidate.

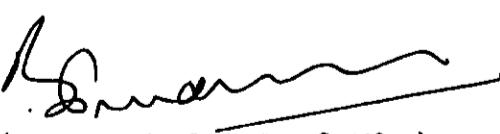
This view is no way against the principles laid down in OA.615/88. Hence the contention has to be rejected.

3

10. The second contention of the applicant is that the applicant had more income and probably more property and hence he has to be selected instead of R-2. The applicant further submits that to prove that the records have to be called for and the position should be examined.

11. In the notification nowhere it is stated that the applicant should possess more property and income compared to others even that candidate had obtained more marks in SSC. The settled law in such case is that the person should possess the minimum property and minimum income for consideration and selection. Both the applicant and R-2 had fulfilled the condition and hence both were called for selection. More than can be said that no preference is given even if she possess more income and more property. In that view, we do not see any reason to call for the records to take the quantum of the income possessed by the applicant and also the quantum of the property possessed by the applicant and compare it to R-2 herein.

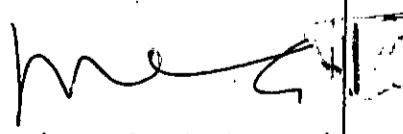
12. In view of what is stated above, there are no merits in the OA and the OA is accordingly dismissed. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)

413197

Dated : 4th March, 1999

(Dictated in Open Court)


(R. RANGARAJAN)
Member (Admn.)

Amby.
103/99

Copy to:

1. HDHNJ

19/3/99
1ST AND 2ND COURT

CHECKED BY
APPROVED BY

2. HHRP M(A)

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

3. HBSJP M(J)

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

4. D.R. (A)

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

5. SPARE

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

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

DATED: 4/3/99

ORDER/ JUDGEMENT

MA/ RA/ CP. NO.

IN

D.A. NO. 1396/92

ADMITTED AND IN TERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

7 copies

