

42

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.1552/97

Between:

Dt. of Order: 23.12.97

A.Sudhakar Reddy

...Applicant

And

1. Chief Postmaster General, A.P.Portal Circle, Hyderabad.
2. The Postmaster General, Hyderabad Region, Hyderabad.
3. The Superintendent of Post Offices, Wanaparthy Postal Division, Mahabubnagar District.
4. K.Gelvalaiah

...Respondents

Counsel for the Applicant : Mr.K.S.R.Anjaneyulu

Counsel for the Respondents : Mr.M.R.Devraj

CORAM:

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

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

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Sri Subrahmanyam for applicant, Sri N.R.Devraj for the respondents. He prays time for production of records. List it on 9.1.98 by which date respondents shall produce the records.

Anil Kumar
DEPUTY REGISTRAR (J)

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Copy to:

1. Chief Postmaster General, A.P. & Postal Circle, Hyderabad.
2. The Post Master General, Hyderabad Region, Hyderabad.
3. The Superintendent of Post Offices, Wanaparthy Postal Division, Wanaparthy, Mahaboobnagar District.
4. K.Gelvalaiah, R/O Kammareddipalli, Gowreddipalli 80, Mahaboobnagar District.
5. One copy to Mr.K.S.R.Anjaneyulu,Advocate,CAT,Hyderabad.
6. One copy to Mr.N.R.Devraj,Sr.CGSC,CAT,Hyderabad.
7. One duplicate copy.

YLKR

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COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESWAR :
M(J)

Dated: 28/12/82

ORDER / JUDGMENT

MA./R.A./C.A.No.

in

D.A.NO. 1552/82

Admitted and Interim Directions
Issued.

Allowed List it on 9.1.88

Disposed of With Directions

Dismissed.

Dismissed as Withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

SRR

II Court

Ratan

केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal

प्रेषण/DESPATCH

29 DEC 1997 *Ref*

हैदराबाद न्यायालय
HYDERABAD BENCH

45

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1552/97

Date of Order : 2.3.99

BETWEEN :

A.Sudhakar Reddy

.. Applicant.

AND

Union of India represented by :

1. Chief Post Master General,
A.P.Circle, Hyderabad.
2. The Post Master General,
Hyderabad Region, Hyderabad.
3. The Superintendent of Post Offices,
Wanaparthi Postal Division,
Wanaparthi, Mahaboobnagar Dist.
4. K.Gelvalaiah

.. Respondents.

Counsel for the Applicant

.. Mr.K.S.R.Anjaneyulu

Counsel for the Respondents

.. Mr.B.N.Sharma

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, M(J)

Mr.K.S.R.Anjaneyulu, learned counsel for the applicant
and Mr.B.N.Sharma, learned standing counsel for the respondents.

Notice to R-4 served, called absent.

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2. The incumbent of the post of EDBPM, Gaggalpalli a/w Thelkapally in Mahaboobnagar District was due to retire from service w.e.f. 4.4.97 on attaining the age of 65 years.

3. The respondents requested the local employment exchange to sponsor the eligible candidates to fill up the said post. There was no response.

4. An open notification was issued on 20.2.97 reserving the post for ST community. Since no ST community candidate was available, the respondents issued second notification dated 6.5.97 again reserving the post for ST community candidate. For the second notification a candidate belonging to ST community had responded who had failed to produce the marks memo. Hence the respondents again issued 3rd notification dated 12.6.97.

5. The applicant and others ^{have} ~~are~~ responded to the said notification. The respondents selected and appointed R-4 to the said post.

6. As the selection could not be made before 4.4.97 the applicant was appointed to that post on provisional basis. The applicant handed over the charge to the selected candidate (R-4) on 15.11.97.

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7. The applicant has filed this OA challenging the notification dated 12.6.97 and also challenging the selection and appointment of R-4 to that post.

8. The main contention of the applicant is that he was more meritorious than R-4. The notification dated 12.6.97 did not indicate that the post was reserved for ST community. ^{has} He ~~had~~ relied upon the Calcutta Bench of this Tribunal in the case of Shubnath Dhara v. Union of India reported in 1997 (37) ATC 474. It is also the contention of the applicant that the ^{-ed} first 2 notifications fail to get the ST candidate and hence the 3rd notification was issued to fill up the post whether ST or other candidates. That is why the 3rd notification does not indicate the reservation for the post.

9. The above contentions were considered by us. The first 2 notifications were issued reserving the same ^{for a} ~~by~~ ST candidate. In that background the 3rd notification has to be considered. When the post is reserved for ST it is not permissible to fillup the post by OC unless proper de-reservation obtained in that connection. But from the record no material is available to show de-reservation was obtained and because of that 3rd notification was issued without any reservation. Hence it ^{to} has^{ed} be presumed the respondents fail to make a proper endorsement reserving the post of ST. Subsequently, it was rectified by selecting a ST candidate probably correcting at a later stage.

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In the present context the 3rd notification should only be considered for ST and ^{as} the applicant did not belong to ST community his case was rejected. In that view of the matter the filling up of the post by ST candidate cannot be questioned.

10. The second contention of the applicant is that his case was considered by sending it to SDI and that itself showed that the respondents wanted to fill up that post either by ST or OC and he being the meritorious he had to be appointed.

^{considered and announced}
This contention has already been observed by us. By presumption the notification is to be regarded as reserved for ST and not for OC. Hence this contention also has to be rejected.

11. The 3rd contention though not made by the applicant is necessary to be considered. The ED rules provides for consideration of minimum 3 applications for filling up the post of EDBPM. In this case, the application of the applicant was rejected then there were only 2 applications, whether 2 applications could have been considered for filling up the EDBPM post in the present case.

12. Normally, due to dearth of ST candidates enough number of applications are not received. When the post is necessarily to be filled by a ST candidate an approval has to be obtained from the authority to consider the applications when there are less than 3. But such an approval was not obtained. However whether the rule ^{was} ^{is} ~~can be followed~~ is not a point for consideration.

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The point is of purely on technical consideration. If the applications are rejected for want of requisite number of applications then the constitutional obligation thrust on the respondents may not be fulfilled.

13. As already observed only 3 candidates had responded to the notification. They were the applicant and the other 2 reserved community candidates. In case the candidature of the applicant is rejected, then the question is whether the respondent No.3 can have finalised the selection process with the two applicants. The rule states that there shall be minimum 3 applications for selection. The response from the reserved community candidates is poor. We, therefore, feel that the rule/instructions shall not come in the way of finalising the selection process, as they are required to discharge the constitutional obligations. In such circumstances, the authorities may obtain approval from the official superior. In the instant case, earlier 2 notifications proved futile as the required ST candidates were not available. It is our experience that whenever respondents reserved a particular E.D. post to a reserved community- particularly to ST community, response from such community candidates is very poor. In such circumstances, we feel the CPMG, AP Circle, Hyderabad may consider giving instructions to the appointing authorities to consider the applications in such circumstances even though the number of applications received falls below the minimum. That will avoid recurrence of litigations of this type. We earnestly hope the CPMG will take necessary action in this case.

14. In view of what is stated above, the OA is dismissed

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Copy to:

1. HDHNJ

1ST AND 2ND COURT

TYPED BY
COMPARED BY

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: 2/3/99

ORDER/JUDGEMENT

MA./RA./CP. No.

IN

O.A. NO. 1552/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

8 copies

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
DESPATCH

23 MAR 1999

हैदराबाद न्यायालय
HYDERABAD BENCH