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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.No.1678/97.

DATED : 09.03.1999.

BETWEEN :

P. Chandramouli,
S/o Narsaiah,
aged about 26 years,
R/o Rangapur village,
Mogullapalli Mandal,
Warangal District.

.. Applicant

And

1. Superintendent of Post Offices,
Hanamakonda Division,
Hanamakonda.

2. Sub-Divisional Officer (P),
Parkal Sub-Division, Parkal,
Warangal District.

3. P. Narsaiah,
S/o Yellaiah,
EDBPM, Rangapur village,
Mogullapalli Mandal,
Warangal District.

.. Respondents

Counsel for Applicant : Mr. S. Lakshma Reddy

Counsel for Respondents : Mr. V.Rajeswara Rao, CGSC

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER(ADMN.).

..... 2.

O R D E R.

(Per Hon'ble Mr. Justice D.H. Nasir, Vice-Chairman)

1. The applicant was appointed on provisional basis as Extra-Departmental Branch Post Master (EDBPM, for short), Rangapur. His services came to be terminated vide Memo. dated 18.11.1997. The third respondent was appointed in his place also on provisional basis pending regular selection. The applicant is challenging the legality of his termination in this O.A.

2. The applicant belongs to S.C. community. His predecessor B. Rama Rao retired on 30.6.1997 and he was appointed to fill up the vacancy because of his retirement. In pursuance of the notification issued in April, 1997, according to the applicant, he was given to understand that regular appointment order would be issued to him after receiving police verification report. However, without informing the applicant and without giving him any notice, his services came to be abruptly terminated and the third respondent took charge from him. On an approach being made by the applicant, the first respondent informed him that the police verification report was not conducive to continue him in service and therefore, his services were terminated. On making further enquiries, the applicant came to know that he was alleged to have been involved in PWG activities. However, according to the applicant, the said report was totally incorrect. He had no connection with the said organisation and that he (applicant) was eking out his livelihood by working as a Photographer. He had immovable property in the village and he was the permanent resident of the same village. No cases were booked against him and no case was pending against him in any Court. He did not suppress any facts nor did he misrepresent any fact before

the respondents and therefore, according to the applicant, the respondents' action of terminating his appointment without giving him an opportunity of being heard was illegal and void and violative of Articles 14, 16 and 21 of the Constitution of India and also in violation of the principles of natural justice.

3. The applicant also pleads that it was not correct that his appointment was provisional in view of the fact that regular selection process had been followed at the time of his appointment. He further pleads that even if it is conceded that his appointment was ~~provisional~~, it was not in order to make any provisional appointment in his place. If the appointment is made pursuant to the impugned notification the applicant would suffer irreparable loss and damage. On all these grounds, the applicant challenges the legality of the termination of his services as provisional EDBPM.

4. In the reply affidavit filed by V.S.Murthy, Assistant Director in the office of the PMG(HR), a contention, inter alia, is raised that simultaneously with the provisional appointment of the applicant, his attestation form was forwarded to the District Collector and Magistrate, Warangal District for verification of the applicant's antecedents and it was reported by the District Collector as follows :

- (a) The applicant is an active militant of CPI ML PWG ;
- (b) There are three Police cases registered against him with the Police Station, Mogullapalli PS, (Cr Nos.15/96, 46/96 and 93/96) which are under investigation.

It is further stated in the affidavit that the particulars of the applicant's involvement in all the three cases had

also been furnished in sub-paras (1), (2) and (3) of Para-4 of the reply affidavit filed by the Assistant Director. We do not consider it desirable or necessary to reproduce the same in this order. Suffice it to say that it is a matter of serious concern if a person against whom serious crimes are alleged is continued in public employment. The learned counsel Mr. Lakshma Reddy for the applicant emphatically submitted that there was nothing on record to show that the applicant was in any way connected with the offences alleged against him and in any case, it was not in order for the respondent-Department to say that the applicant suppressed the facts regarding his involvement in such crimes because at the time when he was called upon to furnish his antecedents for the purpose of offering employment to him, neither his name was disclosed in any FIR lodged with the police nor was the applicant aware that he was implicated in any such crime which was the subject matter of any investigation and that in any case, the applicant was not given any opportunity of being heard if his services were to be terminated on the ground that he was involved in such serious crimes.

5. This is the crux of the entire case. The question whether there was any substance in the allegation that the applicant was involved in such crimes and whether the applicant intentionally suppressed the same for securing his appointment as EDBPM and also whether the absence of any knowledge of the applicants involvement in such crimes, if at all believed, could be treated as a mitigating factor exonerating him from the liability of being terminated from public employment.

6. On perusing the xerox copies of the FIR and the charge sheet made available to the Bench by the learned

Standing Counsel Mr. V. Rajeswara Rao, the following facts which are relevant for the purpose of determining the legality of the impugned action come to light.

The applicant was appointed on 3.9.1997. Prior to his appointment on 3.9.1997, from the report of the District Collector, Warangal dated 29.10.1997 it is revealed that on 11.2.1996 he along with other persons went to Rangapur village and assaulted one person of the same village. The applicant figures as the second accused in this crime which is registered as Crime No.15/96 at Mogullapally P.S. for the offences punishable under Sections 148, 452, 324, 506 read with 149 of the I.P.C. and also under Section 25(1)(a) of the Indian Arms Act. Another crime registered on 21.6.1997 vide Crime No.46/96 at the same police station for similar offences also reveals that the present applicant was involved in the same along with others and that in this crime also the applicant figures as the second accused and that the case was still under investigation on 29.10.1997 when the report was submitted by the Collector. The third crime i.e. Crime No.93/96 registered on 2.11.1996 for the offence punishable under Section 435 IPC of the same police station, also includes the name of the applicant as one of the accused and that he figures as 9th accused in the said crime. The case was still under investigation when the report was made by the District Collector. The contention raised by the learned counsel Mr. Lakshma Reddy for the applicant that the name of the accused was not appearing in the FIR when the crimes were registered and therefore, no prima facie case could be made out against the applicant that he was implicated in any manner in the commission of the alleged crimes and on that ground also, according to Mr. Lakshma Reddy, no knowledge could be attributed to the applicant that he was

aware of the aforesaid crimes alleged against him.

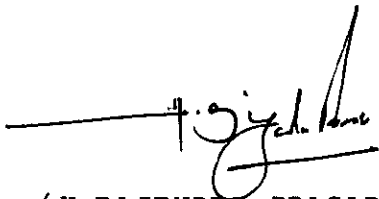
7. We are afraid, it would not be correct to say so. It is not within the jurisdiction of this Tribunal to make any observation with regard to involvement of the applicant in the commission of the alleged crimes and any observation which may still be made by this Bench could only be treated as an observation for arriving at a tentative finding whether the accused had the knowledge of the commission of the above crimes at the time when he filled up the prescribed form for entry into service as EDBPM. The charge sheet filed in August, 1997 in connection with the Crime registered at No.15/96 on 11.2.1996 includes the name of the present applicant as accused No.2. It is reported that accused No.2 (the present applicant) and accused No.4 to 11 were absconding. In Charge sheet No.46/97 dated August 1997 in respect of the crime registered on 21.6.1997 at Crime No.46/97 at Mogullapally P.S. also the applicant's name appears as Accused No.2. In the report annexed to the charge sheet it is mentioned that two witnesses confessed that the present applicant was alleged to have been involved in the commission of the alleged crime which stood corroborated from the fact that the weapon used in the commission of the crime was discovered on the basis of such statement.

8. Of course, it is not brought to our knowledge from whose statements the name of the present applicant stood disclosed as one of the offenders. Even if it is believed that the applicant's name did not appear in any FIR we cannot disregard the Collector's report which throws ample light on the complicity of the applicant with the commission of the alleged crimes. The allegation contained in the charge sheet that the applicant-accused ~~was absconding~~ is a sufficient disclosure of the prima facie case.

9. However, one factor which heavily weighs on our mind is whether at this stage could such serious jeopardy be caused to the applicant by severing all his ties with the post in question or whether a lenient view could be taken, particularly at this interlocutory stage when the trial in criminal cases against him has still not commenced. Eventually, if by any chance, the applicant is acquitted of the offences alleged against him, he would be driven to vagaries of wilderness if his termination is upheld. The applicant could be saved from his eventual plight by allowing or directing the respondents to put him off-duty from the post of EDBPM, Rangapur and in the event of the applicant being acquitted from criminal cases, he could be restored to his present position without any advantage of pecuniary benefits for the intervening off-duty period. We are not adversely inclined to grant such remedy at this stage. We are conscious of the fact that the impugned termination has been ordered not because of the criminal cases launched against the applicant but because of the alleged suppression of material facts regarding his involvement in the commission of the alleged criminal offences. But in either case, we believe that the interests of justice would be better served if action of subjecting the applicant being put off-duty is taken. The impugned order of termination is, therefore, set aside. The respondents shall put the applicant off-duty instantly with a condition that the applicant may be restored to his present position in the event of his acquittal from the offences alleged against him in the pending criminal cases. The applicant, however, shall not be entitled to claim any pecuniary benefit for the intervening period if he is required to be reinstated in the event of his acquittal from the offences alleged against him in the pending

criminal cases. The respondents shall be at liberty to make suitable appointment in place of the applicant, but the same shall be provisional and not permanent. A clear clause shall be incorporated in the provisional appointment order of any interim appointee that the same shall be subject to the outcome of the criminal cases pending against the present applicant. As the provisional appointment shall be subject to the outcome of the criminal cases pending against the applicant, the services of the interim appointee shall be terminable if the present applicant is eventually acquitted of the charges by a competent Court of law.

10. The O.A. is disposed of accordingly. No costs.



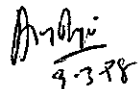
(H. RAJENDRA PRASAD)

MEMBER (ADMN.)


(D.H. NASIR)

VICE-CHAIRMAN.

DATED THE 9th MARCH, 1999.



DJ/

Copy to:

1. HDHND
2. HHRP M(A)
3. HGSOP M(J)
4. D.R. (A)
5. SPARE

19/3/99
Ist and IInd Court.

Typed By
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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 H. RAJENDRA PRASAD
MEMBER (A)

THE HON'BLE R. RANGARAJAN
MEMBER (A)

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

DATED: 9/3/99

ORDER/JUDGMENT

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

IN

O.A.NO :

1678/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

