

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.780 of 1999.

DATE OF ORDER:23-7-1999.

BETWEEN:

R.Venkataiah.

.....Applicant

A n d

1. Sri P.Venkataswamy,
Sub-Divisional Inspector (Posts),
Narayanapet.

2. Superintendent of Post Offices,
Mahboobnagar.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS: Mr. P.Phalguna Rao

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

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

: O R D E R :

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

Heard Mr.S.Ramakrishna Rao, learned Counsel for the Applicant and
Mr.P.Phalguna Rao, learned Standing Counsel for the Respondents.



2. The applicant had been appointed as provisional ED Packer/MC/DA, Lalkota Sub-office. He is continuing as such. A notification bearing Memo.No.PF/EDA/Lalkota, dated:5-4-1999, (Annexure.A-I, page.7 to the OA), was issued for filling up the post temporarily with a condition that "the temporary appointment will be terminated whenever the regular incumbent is discharged from Army Postal Service".

3. This OA is filed for setting aside the impugned notification dated:5-4-1999, issued by the Respondent No.1, and for a consequential direction to strictly follow the reservation contemplated for STs as per the instructions of the DG Posts in letter and in spirit and to fill up the post of ED Packer/MC/DA, Lalkota by an ST candidate and consequently regularise the services of the applicant as he is an ST candidate.

4. The regular incumbent of that post Sri Shankaraiah has been deputed to Army Postal Services and he has not been appointed in Group-'D' yet. If the regular incumbent of the post Sri Shankaraiah comes back and if he is not appointed in Group-'D' by then the applicant has to give way for the regular incumbent. That is why the applicant is now working as a provisional candidate. The present notification has been issued to appoint a temporary candidate with proviso to terminate his services if regular incumbent comes back for joining.

5. The department is fully aware that in the ED Service Rules, there is no term as temporary ED Packer. There are only two designations viz., provisional and regular. It is not understood how the department used the word temporary. That itself shows that the impugned notification was issued without looking into the details. On that score itself the impugned notification is liable to be set aside. Apart from that the applicant is already working as a provisional candidate. There is no surity that the regular incumbent Sri Shankaraiah will be absorbed in Group 'D' when he comes back. When he comes back and by then he has not been absorbed as Group 'D', he has to be posted



back as ED Packer discharging the applicant. Hence, filling up that post by a regular candidate does not arise. The impugned notification would mean that the applicant is going to be replaced by another provisional candidate. Replacement of a provisional candidate is not permitted as held by the Apex Court in the case of STATE OF HARYANA & OTHERS Vs PIARA SINGH & OTHERS (reported in (1992)21 ATC 403 SC). Hence, issue of the impugned notification is liable to be set aside for the reasons stated above. The applicant should be allowed to continue as a provisional ED till the case of the regular incumbent has been decided by absorbing him in Group 'D' post.

6. In view of the foregoing, the impugned notification No.PF/EDA/Lalkota, dated:5-4-1999, is set aside. The applicant should be continued as a provisional candidate till the case of the regular candidate Sri Shankaraiah is decided in regard to his absorption in Group 'D' post and a regular candidate is posted in that post of ED/Packer.

7. The OA is ordered accordingly. No costs.

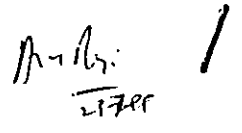


(R.RANGARAJAN)
MEMBER(ADMN)



(D. H. NASIR)
VICE CHAIRMAN

DATED: this the 23rd day of July, 1999
Dictated to steno in the Open Court



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