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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.30/99

DATE OF ORDER : 15.12.1999.

Between :-

B.Anand Kumar

...Applicant

And

1. Superintendent of Post Offices,
Sangareddy Division, Sangareddy.
2. Sub-Divisional Inspector (Posts),
Zaheerabad Division, Zaheerabad.
3. Director of Postal Services,
Hyderabad Region, Hyderabad.
4. N.Shankar

...Respondents

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Counsel for the Applicant : Shri S.Ramakrishna Rao

Counsel for the Respondents : Shri V.Vinod Kumar, Addl.CGSC
for RR 1 to 3

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CORAM:

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

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

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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(Order per Hon'ble Shri R.Rangarajan, Member (A)).

Heard Sri S.Rama Krishna Rao, learned counsel for the applicant and Sri V.Vinod Kumar, learned Standing Counsel for the Respondents 1 to 3. Respondent No.4 served with notice but called absent.

2. The applicant contends that he was appointed as a provisional EDBPM wise Mr.Mukram Ali who was earlier appointed as a provisional EDBPM in the place of regular employee Mr.B.Laxman Rao who was under put off duty with effect from 9.1.1998. The applicant further submits that he being provisional appointee, he cannot be replaced by another provisional appointee i.e. by Respondent No.4..
3. In the meantime a notification was issued bearing No.B3/Buchnelli dated 23.11.1998 for regularly filling up the post. The applicant contends that issue of that notification is irregular, as the regular employee has not completed his channel for redressal of grievance in accordance with the Discipline and Appeal Rules.
4. This OA is filed to set aside the impugned notification No.B3/Buchnelli dated 23.11.1998 calling for applications for the post of EDBPM on regular basis when the appeal of the regular incumbent before the Appellate Authority is pending for a final declaration of the action of the respondents declaring the same as illegal, unwarranted against the ED rules and to declare the action of the 1st respondent in replacing the applicant who is working on provisional basis by

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another provisional candidate is arbitrary, illegal, unwarranted and in violation of the DG P&T LETTER No.43-4/77-Pen. Dated 18.5.1979 with all consequential benefits.

5. The first point for consideration in this OA is whether the applicant has been appointed as a provisional appointee as a ~~provisional candidate~~ ^{note} ~~wise~~ the earlier provisional candidate viz., Mr. Mukram Ali. The applicant himself in his OA admits that there was no action taken by the Respondents in regard to acceptance of the resignation of the earlier provisional candidate viz., Mr. Mukram Ali and that Mr. Mukram Ali frequently applying for leave nominating the applicant herein as substitute. It is also stated that Mr. Mukram Ali addressed letter to Respondent No.2 on 25.10.1998 that he would not apply for further leave. His resignation was not accepted even then. But the Respondent No.2 directed the applicant to work as provisional EDBPM. If the resignation of Mr. Mukram Ali was not accepted, the question of posting anybody as a provisional EDBPM in that post office does not arise till the resignation of Mr. Mukram Ali is accepted. The applicant himself submits that Mr. Mukram Ali's resignation was not accepted even after 25.10.1998. Hence the contention of the applicant that he was appointed on provisional basis from 26.10.1998 is not right. Even the relieving order of the applicant by Respondent NO.4 treating him as a provisional candidate has not been produced. In the facts and circumstances, we feel that the applicant was only working as a substitute and not as a provisional EDBPM of that post office. Hence Respondent No.4 is not replacing

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the applicant as a provisional EDBPM. Hence the prayer to set aside the appointment of Respondent NO.4 cannot be accepted.

6. It is a fact that the ^{regular incumbent} viz., Mr. Laxman Rao was ^{disposed of} not ~~accepted~~ on 23.11.1998 when the notification for filling up the post on regular basis was issued. Sri V. Vinod Kumar, learned Standing Counsel for the Respondents submits that the applicant has no locus standi to challenge the notification dated 23.11.1998 as he was not even a provisional candidate at that time. ^{all} But the respondents cannot over throw their own orders of the DGs to the effect that the notification for filling up the EDBPMs post on regular basis can be issued only if the removed candidate exhausted ^{all} the channels available to him for redressal of his grievance. It is admitted that by 23.11.1998 the regular incumbent has not exhausted his channel of appeals. Hence issue of notification dated 23.11.1998 is irregular. The question of issue any preparatory notification on the presumption the appeal of the regular incumbent will be dismissed is not correct. Hence the following direction is given :-

The Original Application is dismissed and the notification dated 23.11.1998 set aside. Respondents are directed to issue a fresh notification in accordance with the rules if the regular incumbent had exhausted ^{all departmental} the grievance redressal channels by now.

7. No order as to costs.

AVL/

(R. RANGARAJAN)
Member (A)

(D. H. NASIR)
Vice-Chairman

Dated: 15th December, 1999.
Dictated in Open Court.

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH.
HYDERABAD.

COPY TO.

1. HDHJ
2. HRN.M (ADMN)
3. HGSJP.M. (JUDL)
4. D.R. (ADMN)
5. SPARE
6. ADV CATE
7. STANDING COUNSEL

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE DH. NASIR
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

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

DATE OF ORDER 15/12/99

MA/RA/CP.NO.

IN
CA. NO. 30/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

