

81

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.611 of 1999

DATE OF JUDGMENT: 8th OCTOBER, 1999

BETWEEN:

M.V.TAJBABU.

.. APPLICANT

AND

1. The Superintendent of Post Offices,
Tenali Division,
Tenali 522201,

2. The Post Master General,
Vijayawada Division,
Vijayawada,

3. Union of India rep. by the
Director General,
Department of Posts,
Dak Bhavan, New Delhi 110001,

4. Union of India rep. by the
Secretary,
Department of Personnel & Training,
Ministry of Home Affairs,
Govt. of India,
New Delhi.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.S.RAMAKRISHNA RAO

COUNSEL FOR THE RESPONDENTS: Mr.J.R.GOPALA RAO, Adl.CGSC

CORAM:

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

HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

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

Heard Mr.S.Ramakrishna Rao, learned counsel for
the applicant and Ms.Shakti for Mr.J.R.Gopala Rao, learned
standing counsel for the respondents.

2 ✓

2. The post of EDBPM, Yeletipalem BO under Nagaram SO became vacant due to the retirement of the regular incumbent of that post on 24.5.99. A notification was issued earlier to that date bearing NO.B II/352 dated 30.11.98 (Annexure A-III at page 26 to the OA) for filling up that post. On the left hand side of the margin it is written by hand writing in ink that this post is reserved for ST/OBC/SC. However, it is stated that the said notification was cancelled due to non-availability of the eligible candidates even though four applications were received in response to that notification. Another notification bearing No.B II/352 dated 12.2.99 (Annexure A/II at page 23 to the OA) was issued for filling up that post fixing the last date as 19.3.99. In the copy filed by the applicant, there is no mention in regard to the reservation for that post. But in the reply filed by the respondents it is shown on the left hand margin in hand writing that the post is reserved for ST/OBC/SC. That can be seen in Annexure R-2 at page 20 to the reply. The second notification dated 12.2.99 was also cancelled while issuing the third notification bearing NO.B II/352 dated 5.3.99 (Annexure A-I at page 20 to the OA) as the post was earmarked for ST community only. Hence it has to be held that the third notification dated 5.3.99 was issued cancelling the earlier notification even though the last date for receipt of applications for the second notification was 19.3.99. Earmarking of that post to STs by the notification dated 5.3.99 was necessitated because of the direction given by the Regional office of the Postal Division.



3. This OA is filed to quash the impugned notification dated 5.3.99 of R-1 reserving the post of EDBPM, Yeletipalem BO for STs only and for consequential direction to R-3 to issue the notification without reservation by setting aside the instructions issued by the letter NO.19-11/97-ED & Trg. dated 27.11.97.

4. The facts of this case and the cancellation of the first two notifications have been admitted by the respondents. The reason for cancellation of the first two notifications is in order. Hence it necessitated the issue of the third notification dated 5.3.99.

5. The only point for consideration in this OA is whether the said post has to be earmarked for filling up by a ST candidate. That will arise only if the percentage of ST employees in the ED Agents' cadre is less than the prescribed percentage of $7\frac{1}{2}\%$ of the total ^{strength} cadre. The learned counsel for the ^{respondents} ~~applicant~~ submits that it is less than $7\frac{1}{2}\%$ in the cadre of EDBPM and ED SPM and hence the notification dated 5.3.99 is in order.

6. Earlier, this Tribunal had taken the view that the percentage availability of the reserved community candidates has to be calculated on the basis of the total strength of ED Agents and not on the basis of the total strength of EDBPMs/EDSPMs. In the present case, the percentage of availability of ST employees had been calculated taking into account only the ^{strength} cadre of EDBPMs/EDSPMs. Hence that calculation cannot be accepted.


2

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In a number of earlier OAs, we had directed the respondents that the assessment of availability of reserved community candidates has to be ^{made} ~~noted~~ on the basis of the total strength of ED Agents and not on the basis of a particular category of ED staff. Those judgments had already become final. No review application has been filed to review those decisions. No appeal has also been filed against those OAs. Hence the respondents relying on the letter dated 27.11.97 cannot submit that the percentage should be calculated for availability of ST candidates only in the category of EDBPMs/EDSPMs. That submission has to be rejected in view of the reasons stated above.

7. As stated earlier, the only point for consideration in this OA is whether the reservation of the said EDBPM post to ST candidates is in order or not. For this, the respondents should assess that the total ST candidates available in the ED Agents' post (not only in EDBPM/EDSPM category but the whole of ED cadre) in the division in which the post has to be filled and decide the availability of ST staff in the cadre of ED Agents. ~~Even~~ On the basis of that calculation the total strength of STs is less than the prescribed limit of 7½%, then the said post of EDBPM for which the notification was issued on 5.3.99 has to be treated as a reserved post for STs. If the percentage is more than 7½%, the notification dated 5.3.99 should be cancelled and a fresh notification without reserving it for STs should be issued.

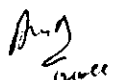
8. With the above direction, the OA is disposed of. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

8/10/99


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 8th OCTOBER, 1999
Dictated in the open court.


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