

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.705/99.

DATE OF ORDER : 09-11-1999.

Between :

J. Nandesh, s/o J. Veeraiah,
aged about 25 years, presently
working as ED/MPM, Veepangandla,
A/w Pentlawally, Wanaparthi Postal
Division, Mahaboobnagar District. .. APPLICANT

(By Advocate Mr. S.Ramakrishna Rao)

A N D

1. Superintendent of Post Offices,
Wanaparthi Postal Division,
Wanaparthi, Dist. Mahaboobnagar.
2. Postmaster General,
Hyderabad Region,
Hyderabad - 500 003. .. RESPONDENTS

(By Standing Counsel Mr. V. Vinod Kumar)

CORAM :

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

Contd. ... 2.

O R D E R.

Justice D.H.Nasir, VC:

1. The applicant of this O.A. is seeking annulment of notification No.B-2/BPM/Veepangandla dated 22.3.1999 of the 1st respondent on the ground that the same was issued without considering the case of the applicant for appointment on compassionate grounds which was pending decision of the Circle Selection Committee. The applicant further seeks a direction from the Tribunal to regularise his services as EDBPM, Veepangandla on compassionate grounds. His case is emphatically denied and contested by the respondents. According to the respondents, the post in question had fallen vacant consequent upon the demise of K. Mallaiah on 8.9.1996. The present applicant who is the son-in-law of the deceased employee was provisionally appointed as EDBPM, Veepangandla BO with effect from 9.9.1996 at the request of Smt. Leelavathamma, wife of the deceased BPM. In a representation dated 9.9.1996, she urged the respondents to appoint her 3rd son/in/law J. Nandesh (applicant) as EDBPM as she had no sons and none of her daughters was eligible for appointment. Accordingly the synopsis and other relevant documents were obtained and forwarded to the Regional Office on 9.9.1997. The PMG, Hyderabad Region, vide his letter dated 9.12.1997 intimated that no near relative other than the widow/son/daughter/adopted son or daughter is eligible for appointment in relaxation of recruitment rules. The contents of this letter were communicated to the applicant on 22.12.1997.

2. The widow of the deceased employee submitted another representation dated 21.1.1998 which was forwarded to the PMG, Hyderabad, but the Regional office reiterated its earlier decision. The decision of the PMG was intimated to Smt. Leelavathamma by the SPOs, Wanapathy



vide registered letter dated 2.2.1998. By representation dated 10.2.1998 she requested the authorities to appoint her daughter Smt. K. Rajeswari on compassionate grounds with a condition that she would acquire the requisite qualification within two years.

3. According to the respondents, as stated on page 3 of the counter affidavit, an employment notification was issued on 16.4.1998 fixing 18.5.1998 as the last date for receipt of applications. The Employment Exchange sponsored a list of 20 candidates on 15.5.1998. Efforts were made to select a suitable candidate from among the list of 20 candidates, but the same were not successful as most of the candidates did not respond and one candidate who responded was not in a position to provide any accommodation for locating the Branch Office. An open notification was therefore issued on 24.8.1998 notifying vacancy to the general category and 25.9.1998 was specified as the last date for receipt of applications. Only four applications were received in response to the notification. The same were forwarded to SDI(P) for verification on 9.10.1998. On 4.12.1998 the SDI(P) returned the same after verification. According to the applicant, as stated in para 2 of the O.A., he submitted his application with all enclosures and on 22.12.1998 the applicant was called upon by the respondents to submit a proper income certificate, which was complied with by the applicant on 31.12.1998. This version of the applicant is not quite correct which becomes evident from the contents of a letter dated 22.12.1998 which the applicant received from the respondent No.1 which are reproduced below :

" The income certificate submitted by you in the existing proforma is not valid, since the proforma intended to show the income of the parent or guardian.

W

It has therefore been decided by the PMG that production of the certificate in the said proforma is not valid for the purpose of securing ED appointment since candidates for ED post are required to have independent source of income.

Therefore pl. produce an income certificate within a week from MRO specifically indicating that this is his own income from independent source."

The R-1's statement ^{was} as contained in the last para on page 3 of the counter affidavit that -

" Shri J. Nandesh the applicant in this OA was only the person who has submitted the income certificate and the R1 has selected the applicant subject to approval of the PMG and forwarded the case to Regional Office for approval."

I am tramplng this area because the case smacks of some foul play. The unfortunate death of the employee (K. Malliah) takes place on 8.9.1996, his widow makes an apuplication for compassionate appointment next day, i.e. 9.9.1996 and her son-in-law J. Nandesh (the applicant) gets compassionate appointment on the same day i.e. 9.9.1996 and also receives the appointment letter(Annex-V to OA,page 17) for his appointment on provisional basis for a specified period from 9.9.1996 to 31.12.1997. No clarification comes on record whether he has ceased to hold the provisional post from 31.12.1997 or he still continues.

②

4. Reverting back to the original story the Regional office directed the respondent No.1, as stated in the last para on page 3 of the counter affidavit, to re-notify the vacancy in view of the fact that the minimum three 'effective applications' were not received in accordance with D.G.'s letter No.19-4/97 ED & Trg. dated 19.8.1998 communicated in R.O. letter No.H/ST/14-1/ED-Rlgs/IV dated 20.9.1998 and therefore, the vacancy was renotified on 22.3.1999 fixing the last date as 22.4.1999 and in response to the same, 11 applications were received including that of the applicant. All the applications were sent for verification on 29.4.1999 and the verification report was awaited. But in the meantime, the applicant filed this O.A.

5. From the facts of the case being as stated above and from the submissions made by the learned counsel for either side, two issues arise for our consideration in this O.A. Firstly, whether the applicant's plea for compassionate appointment is sustainable and secondly, whether the second notification dated 22.3.1999 deserves to be quashed and set aside mainly on the alleged ground that the applicant was entitled to be appointed on merits in pursuance of the first notification dated 24.8.1998.

6. The claim for compassionate appointment advanced during the course of arguments can straightaway be rejected because the relief clause is not specific regarding the applicant's right to be appointed on compassionate ground. The applicant makes a reference about the same in the relief clause but does not seek any

20

relief on that ground. The relevant portion of this relief clause is extracted below so as to have a clear ^{perspective} picture of the grievance sought to be remedied.

"(a) to set aside the impugned Memo No.B-2/BPM/Veepangandla dated 22.3.1999, of the 1st Respondent without considering the case of the applicant for appointment on compassionate grounds which is pending decision by the Circle Selection Committee as no communication was issued till date and also without acting upon the notification dated 24.8.1998, declaring the action of the respondent as arbitrary, illegal, unwarranted and in violation of Articles 14 & 16 of the Constitution of India;

(b) to direct the respondents to regularize the services of the applicant duly appointing him as ED/BPM, Veepangandla on compassionate grounds ;

with all the consequential benefits; "

The memo dated 22.3.1999 (Annexure-A.1 to OA, page 9) which is sought to be set aside in the above relief clause has nothing to do with compassionate appointment. Annexure-A.1 is merely a notification dated 22.3.1999 the legality or otherwise of which shall be considered later in this order.

7. The respondents have produced with their counter affidavit a letter dated 18/22.12.1997 addressed to the applicant in which it is stated as under :

" Your case file was returned by O/o PMG, Hyderabad Region, Hyd, stating that you are not eligible for appointment under relaxation of recruitment rules.

The reasons mentioned in R.O. Lr. are furnished below for information.

"No near relative other than the widow/son/daughter/adopted son & daughter is eligible for appointment under relaxation of rectt.rules."

8. The applicant has not disputed the receipt of the same and not filed any rejoinder affidavit with regard to the same. If the applicant had any grievance against the contents of the said letter dated 18.12.1997, he should

AD

have questioned the propriety of the same in this O.A. which was filed on 26.4.1999; but the applicant has refrained from doing so for the reasons ~~best~~ known to him. On the contrary the applicant pleads in para 4(3) of the O.A. that,

" This notification is irregular since the applicant's request for compassionate appointment remains pending since he or his mother-in-law did not get a rejection letter."

The applicant can, therefore, not be awarded any relief on that ground in this O.A.

9. This issue therefore surviving for our consideration in this O.A. is whether the interpretation of the term "effective applications" as made by the respondents could be accepted and if not, what consequences would follow from the non-acceptance of the respondents' version with regard to "effective applications."

10. According to the respondents, in response to the open notification issued on 24.8.1998 only four applications were received and all of them were sent to SDI(P) for verification on 9.10.1998. The Subdivisional Inspector (Postal) returned the applications duly verified along with his report on 4.12.1998. The report contained the following remarks in respect of the applicant before us.

" Shri J. Nandesh the applicant in this OA was only the person who has submitted the income certificate and the RI has selected the applicant subject to approval of the PMG and forwarded the case to Regional Office for approval. The Regional office has directed the RI to renotify the vacancy as the effective number of 3 applications have not

(v)

been received as per the DG Lr.No.19-4/97 ED & Trg dtd.19.8.98 communicated in R.O. 1r No.H/ST/14-1/ED-Rlgs/IV dtd.20.8.98. Accordingly the vacancy was re-notified on 22.3.99 fixing the last date as 22.4.99. In response to the notification Dtd. 22.3.99 only 11 applications have been received and Shri J. Nandeesh is one among them. All the applications have been sent for verification on 29.4.99 and the verification report is awaited. Aggrieved by the action of the respondents the applicant in the meanwhile has filed this O.A."

11. In my opinion, the term "effective applications" covers those applications which contain the basic particulars concerning the eligibility criteria as may be laid down in the recruitment notification. An application if it does not disclose that the candidate satisfies the basic eligibility criteria, such an application falls outside the mischief of the term "effective applications" because it would be an exercise in futility to call the concerned candidate for interview if on the face of the application itself it is evident that the candidate cannot be treated as possessing the basic eligibility criteria for the appointment in question.

12. The question of effective applications fell for consideration before a Division Bench of this Tribunal in OA No.1434 of 1998 (R. Muralidhar Rao v. Superintendent of Post Offices, Parvathipuram and others) decided on 7.4.1999 in which it is observed in para 5 that the main reason putforth by the respondents was that they failed to get effective applications numbering 3 in response to the second notification and that in order to consider what the respondents meant by effective number of applications, the Bench directed the respondents to file an additional reply affidavit on 30.3.1999. In para 2 of the additional reply affidavit, the respondents stated as follows :

"2. It is respectfully submitted that the word "Effective" is interpreted as "Effective in all respects" or as an applicant can be considered as effective if it is complete and eligible in all respects."

The Bench further observed that the respondent authorities were not certain whether effective applications means three applications which were complete in all respects or when only three applications were received in response to the notification and one of the applications was found to be defective, the remaining two applications could be considered as effective applications. The respondent-authorities, therefore, should have clarified this aspect when they were called upon by the Bench to file additional reply affidavit. The Bench found that the explanation given as extracted in the earlier part of the judgment was not satisfactory. The respondents did not interpret the term "effective applications" in the reply and therefore, the Bench felt that it should take upon itself the interpretation of the word "effective" and went on to say in paragraph-9 of the judgment that in the ED Rules it was provided that at least minimum three applications were to be received so as to ensure that proper candidate was selected for filling up that post. Receipt of three applications in the opinion of the Bench would be necessary to select a suitable candidate. But the word "effective" only means when the minimum number of applications (three) were received irrespective of the fact whether the applicant in those three applications was eligible for consideration or not and if he was not eligible, that application may be rejected from the purview of the selection.

13. According to the respondents, in this case in response to the open notification issued on 24.8.1998 only four applications were received and all of them were forwarded to the SDI(P) for verification on 9.10.1998.


②

However, the respondents do not make any clarification in their counter affidavit in the paragraph relating to the notification dated 24.8.1998 whether any one or more of the applicants was or were not eligible for being considered on the ground that the particulars mentioned therein did not render satisfaction that they possessed the basic eligibility criteria. In the absence of such clarification, the principle of effective applications ~~cannot~~ be urged for declining the validity and legality of the notification issued on 24.8.1998 so as to justify the need for issuing a fresh notification which was eventually issued on 22.3.1999. However, the justification thereof could still be derived from the fact that the applicant who was allegedly found to be the only candidate meeting the eligibility criteria, who in fact was not eligible because the income certificate produced by him when verification was undertaken, was not found to be in order and therefore, an opportunity was given to the applicant to produce the acceptable income certificate. This conduct of the Department was not legal and proper. It is on this basis that the second notification dated 22.3.1999 cannot be called in question, even if the "effective application" factor in this case is not upheld in this O.A. No prejudice shall be caused to the applicant because of this course of action, because the applicant has already submitted his application in response to the second notification dated 22.3.1999.


14. In the above view of the matter, therefore, the notification issued on 22.3.1999 need not be cancelled and the respondents need not be restrained from proceeding ahead with the selection process in pursuance of the

notification dated 22.3.1999 and therefore, his candidature can also be considered by the respondents along with other candidates on merits.

15. This O.A. is, therefore, dismissed. However, the applicant shall not be precluded from being considered on merits along with others in response to the notification dated 22.3.1999. No costs.


(D.H. NASIR)

DATED THE 09th DAY OF NOVEMBER, 1999.


9-11-99

DJ/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO :-

1. DDHND
2. HRRN M (A)
3. DDJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

⑧ DL (J) - 2

⑨ Reportable - 5.

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR

VICE - CHAIRMAN

THE HON'BLE MR. R. SAMPARANAN :

MEMBER (ADMN.)

THE HON'BLE MR. S.S. JAI PARAMESWAR :

MEMBER (JUDL.)

* * *

DATE OF ORDER: 9/11/99

MA/PA/CP.No.

in
OA. NO. 705/99

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

(14 copies)

