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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO. 849/99

DATE OF ORDER : 17-9-1999.

Between :-

M.Narayana Rao

... Applicant

And

1. The Superintendent of Post offices, Anakapally Postal Division, Anakapally.
2. The Post Master General, Visakhapatnam, Region, Visakhapatnam.
3. T.Appala Swamy

... Respondents

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Counsel for the Applicant : Shri K.Venkateswara Rao

Counsel for the Respondents : Shri P.Phalguna Rao, CGSC

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CORAM:

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

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

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

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... 2.

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

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Heard Sri K.Venkateshwar Rao, counsel for the applicant and Sri P.Phalguna Rao, Standing Counsel for the Respondents.

Notice served on Respondent No.3 called absent.

2. The applicant in this O.A. was appointed on provisional basis from 9.5.1996 as EDBPM, Chandana, While he was continuing as such, his services were terminated by posting the Respondent No.3 as provisional EDBPM (Annexure-I page-5 to the OA).

3. This OA is filed praying to quash the provisional appointment of Respondent No.3 and for a consequential direction to the Respondents to reinstate the applicant as provisional EDBPM in that post office.

4. A reply has been filed in this O.A. The Respondents submit that the appointment of the applicant was only as a stop-gap arrangement and was appointed temporarily. Hence the Respondent No.3 was appointed on provisional basis as EDBPM <sup>Vice</sup> ~~wise~~ the applicant by the impugned letter dated 5.5.1999.

5. Further it is submitted that sufficient efforts were taken to post a regular candidate but nothing could be materialised as the candidates applied for the post were found to be ineligible. Last open notification dated 28.5.1999 (Annexure - IV page-8 to the OA) is issued and it is still to be finalised.

6. The Respondents submit that on an earlier occassion a candidate was posted on regular basis but the applicant had obstructed that candidate while he was about to report for the ✓

duties. Therefore that regular candidate was replaced by Respondent No.3 on provisional basis. It is also stated for the Respondents that the applicant while joining the post has given an undertaking that he was agreeable to the termination of his services whenever a regular incumbent was posted. Therefore he cannot protest against the posting of Respondent No.3 on provisional basis.

7. We enquired from the learned counsel for the Respondents to show us the rule position for appointment as ED staff by way of stop-gap arrangement. The learned counsel for the Respondents could not produce any rule in this connection in the ED service rules. The ED service rules provide for substitute services and appointment on provisional basis. There is no provision for appointing ED staff on stop-gap arrangement. Hence the appointment of the applicant on 9.5.1996 as EDBPM has to be treated as a provisional appointment only. The provisional appointee cannot be replaced by another provisional appointee as held by the Hon'ble Supreme Court in the Piarra Sing's case. Hence the replacement of the applicant by the Respondent No.3 is irregular. The provisional appointment of Respondent No.3 has to be set aside and a direction has to be given to re-instate the applicant to that post as a provisional candidate forthwith.

8. Learned counsel for the Respondents submits that the applicant is responsible for obstructing the regular candidate and hence he has no case. If the applicant had obstructed the regular candidate being posted, then the proper course for the respondents was to lodge complaint with the local police for causing obstruction to the Department to post a regular candidate and ...4.

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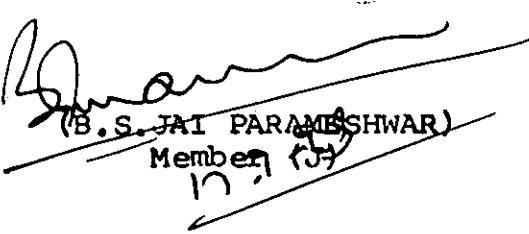
there-by obstructing the public servant in the discharge of his official duties. There is no such material shown to us. Hence this submission cannot be accepted.

9. The Respondents already issued the last notification dated 28.5.1999 (Annexure-IV page-8 to the OA). It should be finalised expeditiously and a regular candidate should be posted and the appointment of the applicant should be terminated if the regular candidate is other than himself.

10. In the result, the following direction is given :-

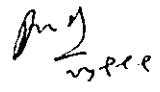
The provisional appointment of Respondent No.3 is set aside. The applicant should be re-appointed as provisional EDBPM. Notification dated 28.5.1999 should be finalised expeditiously and a regular candidate selected on that basis should replace the applicant as EDBPM of that post office if the regular candidate is not the applicant himself. The service of the applicant from the date of his discharge till his reinstatement should not be treated as break in service but he is not entitled for any allowances for that period.

11. With the above observations O.A. is allowed. No order as to costs.

  
(B.S. JAI PARAMESHWAR)  
Member (A)  
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(R. RANGARAJAN)  
Member (A)

Dated: 17th September, 1999.  
Dictated in Open Court.

  
w.p.c.e

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7/9/99  
1ST AND II NO COURT

COPY TO :-

1. H.D.H.N.
2. H.R.N.M. (A)
3. H.B.S.J.P. M. (D)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
HYDERABAD BENCH : HYDERABAD.

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

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

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

\* \* \*  
DATE OF ORDER: 17/9/99

MA/RA/CP.NO.

IN

DA. No. 849/99

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(6 copies)

केन्द्रीय प्रशासनिक अधिकार अधिकार  
Central Administrative Tribunal  
क्षेत्र / DESPATCH

- 4 OCT 1999

हैदराबाद स्थायी बैठक  
HYDERABAD BENCH