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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.875 of 1999.

DATE OF ORDER:22-3-2000.

Between:

Bollina Bhaskara Rao.

.....Applicant

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1. Post Master General, Department of Posts, Vijayawada.
2. Superintendent of Post Offices, Tadepalligudem Division, Tadepalligudem, West Godavari District.
3. Asst. Superintendent of Post Offices, Kovvur, West Godavari District.
4. Avula, Sree Rama Krishna, s/o Bhaskara Rao, r/o Peddevam, Tallapudi Mandal, West Godavari District.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.G.Krishna Murthy

COUNSEL FOR THE RESPONDENTS: Mr.B.Narsimha Sharma

CORAM:

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

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

:O R D E R:

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

Heard Mr.G.Krishna Murthy, learned Counsel for/Applicant
and Mr.M.C.Jacob for Mr.B.Narsimha Sharma, learned
Standing Counsel for the Official Respondents. Notice to
Respondent No.4 served. Called absent.



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2. One Sri Parameshwar Rao, EDBPM, was a regular incumbent of the Branch Office of EDBPM, Yernagudem a/w Devarapalli. He was put-off duty contemplating disciplinary action. In his place the applicant was appointed on provisional basis.

3. The regular incumbent was dismissed from service by the proceedings of the Superintendent of Post Offices, Tadepalligudem, dated 29-12-1998.

4. On the same date the respondents approached Employment Exchange. Since there was no response, they issued Open Notification and selected the Respondent No.4 to that post on regular basis.

5. The applicant has filed this OA challenging the selection and appointment of Respondent No.4 to that post. He submits that he is more meritorious candidate than the Respondent No.4.

6. It is to be noted that when a disciplinary proceeding is initiated against the ED Staff, then the provisional appointment has to be continued till the regular incumbent exhausts all the remedies available to him under the rules. The regular incumbent was dismissed from service on 29-12-1998. He had an opportunity of preferring an appeal against the said punishment order within a period of 45 days. The respondent-authorities even without waiting for the said

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45 days to lapse, issued the notification and appointed Respondent No.4 to that post. We feel that the respondents ~~action to post~~ the regular candidate to that post before the regular incumbent exhausted his remedy, is irregular.

7. Infact the applicant has not taken that contention in the OA. But we cannot ignore the instructions issued by the DG P&T in this connection. The DGP&T letter No.43-4/77-Pen., dated 18-5-1979 clearly states that provisional appointment should be continued till all the channels of remedies available to the regular incumbent is exhausted. When that is so, the issuance of notification immediately after 29-12-1998 and appointing Respondent No.4 to that post is irregular.

8. The learned Counsel for the Respondents submits that no prejudice is caused to the applicant by the appointment of Respondent No.4 and that is reflected in the particulars of order against which the application is made. There is no bar to appoint a non-local as BPM of the Post Office. As the applicant has challenged the notification only on that ground, the appointment of Respondent No.4 cannot be set aside.

9. We do not agree with the argument that the case of the applicant is not prejudiced. Within 45 days many things would have happened. It is possible that the Respondent No.4

would not have applied for the post for some reason or the other. Hence, the reasoning given by the respondents to dismiss the OA as above cannot be accepted.

10. In that view of the matter, the notification dated 29-12-1998 is hereby set aside. The appointment of Respondent No.4 is set aside as also the notification bearing Memo.No.B.10/212, dated 29-12-1998. A fresh notification should now be issued for selecting the most meritorious candidate to fill up that post after ensuring that the charged employee has exhausted the channels available to him for the dis-posal of his grievance.

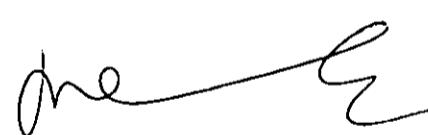
Till such time, the present incumbent should be continued as a provisional candidate.

11. The OA is ordered accordingly. No costs.


(B.S.JAI PARAMESHWAR)

MEMBER (JUDL.)

22.3.00

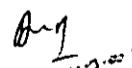

(R.RANGARAJAN)

MEMBER (ADMN.)

DATED: this the 22nd day of March, 2000

Dictated in the Open Court

DSN


Am
22.3.00