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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1059 of 1999

DATE OF JUDGMENT: 10th AUGUST, 2000

BETWEEN:

A.ANANDA RAO

.. APPLICANT

AND

1. The Superintendent of Post Offices,
Karimnagar Division,
Karimnagar,
2. The Chief Postmaster General,
A.P.Circle,
Hyderabad,
3. The Director General of Posts,
Dak Bhavan,
Ministry of Communications,
New Delhi.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.S.RAMAKRISHNA RAO

COUNSEL FOR THE RESPONDENTS: Ms.Shama, Addl.CGSC

CORAM:

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

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

JUDGEMENT

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

Heard Mr.S.Ramakrishna Rao, learned counsel for the applicant and Ms.Shama, learned standing counsel for the respondents.

2. The applicant was appointed as EDBPM, Mothe BO, in account with P.P.Colony Sub Office in Karimnagar District. It was purely a provisional appointment with effect from 2.11.1994 in place of the regular incumbent who was placed under "off duty" with effect from 2.11.94. The

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case of the regular EDBPM was reviewed and he was reinstated to service with effect from 13.11.1996 replacing the applicant. On finalisation of the disciplinary proceedings against the regular incumbent, the regular incumbent was removed from service. At that time also, the applicant was appointed as EDBPM of that Branch Post Office.

3. The regular incumbent had filed an appeal to the appellate authority. The Respondent No.1 had initiated regular selection process ^{live} stating the vacancy as Unreserved. Against that, the regular EDBPM approached this Tribunal by filing OA No.622/99 which was dismissed on 26.4.99. The regular EDBPM had submitted an application to the Post Master General, Hyderabad Division against the punishment of removal. The same was rejected on 21.4.99.

4. The applicant has filed this OA challenging the notification dated 17.3.99 on the ground that he had worked as EDBPM on provisional basis with effect from 2.11.94 to 2.11.96 and from 30.9.97 to till the date of filing of this OA.

5. The respondents submit that in response to the notification dated 17.3.99, 26 applications were received and they have rejected the claim of the applicant stating that he was working on provisional basis for a period of five years. As can be seen, he had worked in the first spell for about two years and in the second spell from 30.9.97 to till date. He continued from 13.7.99 on the basis of the interim order dated 21.7.99.



6. Aggrieved by the notification dated 17.3.99, the applicant filed this OA to set-aside the impugned notification dated 17.3.99 calling for the applications for filling the post of EDBPM, Mothe BO, when the applicant is already working and completed more than 3 years of service, declaring the action of the respondents as arbitrary, illegal, unwarranted and in violation of Articles 14 and 16 of the Constitution and to direct the respondents to regularise his services in the post of EDBPM, Mothe BO, having acquired the vested right and having rendered more than 3 years of service, with a further direction to the respondents to modify the instructions of the DG contained in the letter NO.43-4/77-Pen dated 18.5.79 to the extent that those who completed 3 years of service are to be regularised in the post in which they ^{are} already working, without disturbing them and giving them the service benefits and consequential benefits.

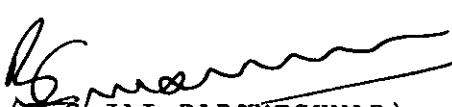
7. We feel that the relief claimed in para 8(c) of the OA is not warranted.

7. The contention of the applicant is that he had completed more than 3 years of service combining the first and the second spells of service and on that basis he submits that he should be regularised as he had completed 3 years of service. There are rules in this connection that those who have completed 3 years of service as provisional ED Agents, their name should be kept in the thrown out ED Agents' list. Further, this Tribunal has taken a view that in case the ED employee has completed more than 3 years of

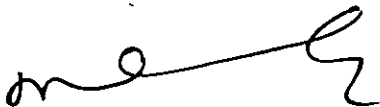
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service, his case should be considered for regularisation before issuing the notification for regular appointment provided the post is reserved for the community to which such a candidate belongs to and also provided he fulfills all the conditions. In the present case, the applicant has not completed 3 years of service. There was a gap of 10 months and 17 days in between the first spell and the second spell. In view of the judgement of the High Court, any spell exceeding three months has to be taken note of and in that case previous service cannot be added for including the total length of provisional service. In this case, the break between the first and second spell is more than three months. The earlier spells cannot be added to the second spell for counting the three years service. In the second spell, till date, the applicant has not completed three years service. Hence keeping him in the thrown out ED Agents list may not also ^{be} proper. But a sympathetic view has to be taken in this case as the applicant is about to complete three years of service very shortly i.e, in September 2000. Further he has also two years of provisional service in the first spell. Considering the above points, the name of the applicant should be kept in the ED Agents' list for consideration for appointment in the above vacancy.

7. With the above observations, the OA is disposed of. No order as to costs.


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

10.8.2000


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 10th AUGUST, 2000
Dictated in the open court

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD.

COPY TO:-

1. HDND
2. HRN (ADMN) MEMBER
3. HOSJP (JUDL) MEMBER
4. D.R. (ADMN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

~~1ST AND 2ND COURT~~

TYPED BY CHECKED BY
COMPARED BY APPROVED BY

THE HON'BLE MR. JUSTICE DR. NASIR
VICE-CH. JUDGE

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

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

DATE OF ORDER 10/8/2000

MA/RA/CP.NO

IN
DA.NL. 1059/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

A.A. CLOSED

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
घोषण / DESPATCH

17 AUG 2000

हैदराबाद ब्याचपीठ
HYDERABAD BENCH