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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1124 of 1999

DATE OF JUDGMENT: 10th NOVEMBER, 1999

BETWEEN:

T.JAGANNADHA REDDY

.. APPLICANT

AND

1. The Superintendent of Post offices,
Mahabubnagar Division,
Mahabubnagar 509 001,

2. The Postmaster General,
Hyderabad Region,
Dak Bhavan,
Hyderabad 500 001.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.N.SAIDA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.VINOD KUMAR, Adl.CGSC

CORAM:

HON'BLE SHRI JUSTICE D.H.NASIR, VICE CHAIRMAN

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

JUDGMENT

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

Heard Mr.N.Saida Rao, learned counsel for the applicant and Mr.V.Vinod Kumar, learned standing counsel for the respondents.

2. The applicant in this OA was provisionally appointed as EDBPM, Bhogaram Branch Post Office on 10.9.94 and it is stated that he is continuing without any break. The respondents issued notification No.B2/BPM/31/Bhogaram/99 dated 6.7.99 for filling up that post regularly as the

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vacancy had arisen due to removal of the regular EDBPM of that Post Office. The applicant submits that he had put in more than 3 years of service and hence as per para 2 of the DGP&T's letter No.43-4/77/Pen dated 18.5.79, efforts should be made to give alternative employment to the ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons if at the time of discharge, they have put in not less than three years of service.

3. This OA is filed to set-aside the impugned notification No.B2/BPM/31/Bhogaram/99 dated 6.7.99 (Annexure A-2 at page 10 to the OA) and for a consequential direction to the respondents to regularise the services of the applicant from the date of his provisional appointment i.e, 10.9.94.

4. A reply has been filed in this OA on 2.9.99. The respondents in their reply contend that the applicant has no claim for his regular absorption as EDBPM as per rules as he was appointed only on provisional basis due to placing off duty of the regular EDBPM pending disciplinary action against him and the applicant will be treated as a thrown out ED Agent and his name will be kept in waiting list of thrown out ED Agents. It is further submitted that there are no thrown out ED Agents kept in waiting list in Mahabubnagar Division and if the applicant is not selected in the normal course in response to the impugned notification, he would be considered for selection to the next post. They further add that in case the applicant is considered for regular selection in the same post in which



he is presently working without resorting to regular selection process, it may result in depriving the more meritorious candidates than the applicant who are otherwise eligible and applied in response to the impugned notification and if the applicant's services are regularised, there may be possibility of filing a number of OAs on the file of this Bench from the provisional ED Agents who are working on provisional basis for more than three years in various divisions due to the various reasons. Hence the applicant can have no claim for regular absorption as he is only the provisional candidate and he will be treated as a thrown out ED Agent and he will be absorbed in the next vacancy to occur in the Mahabubagar Division and his name will be kept in the waiting list of thrown out ED Agents as per DG's letter NO.43-4/77/Pen dated 18.5.79. As regards the contention of the applicant that in Hyderabad (North) Sub Division, a one time regularisation was given to regularise the services of the provisional ED Agents with more than 3 years service in that Sub Division, it is stated that they had worked in that Sub Division for more than 18 to 19 years. That cannot be quoted as a precedence^t to regularise the services of the applicant herein.

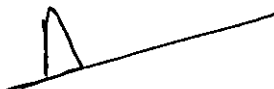
5. From the above contention of the respondents, it is evident that the name of the applicant will be kept in the waiting list of thrown out ED Agents in accordance with the DGP&T's letter dated 18.5.79 and that his case will be considered in the next vacancy that arises in the Division. If that be the case, it is not known why he cannot be appointed in the post in which he is working as a provisional EDBPM provided he fulfills the eligibility

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conditions. By making the applicant to wait keeping his name in the list of thrown out ED Agents may not serve any useful purpose. When the applicant had worked for more than three years, it has to be held that he had acquired experience for running the post office as EDBPM and on that basis only the DGP&T had issued the instructions dated 18.5.79. When the applicant was continuing on provisional basis on administrative grounds it has to be held that he had discharged the duties of provisional EDBPM in accordance with the duties assigned to him and that he performed the duties satisfactorily. Just because the respondents apprehend that there may be possibility of filing some cases in this Tribunal, the case of the applicant has to be rejected, it cannot be a reason to accept such contention. Even though the reasons for regularisation of the service of the ED Agents in the Hyderabad (North) Sub Division is acceptable, it is not understood why such a view cannot be taken in the case of the applicant herein. It is not necessary for us to further examine the reasons which led to the regularisation of the services of the ED Agents in the Hyderabad (North) Sub Division who had completed more than 3 years of service as no material is available before us in that connection.

6. Considering the above points, we are of the opinion that the case of the applicant has to be considered for regularising his services in terms of the DGP&T's letter dated 18.5.79 provided

(i) he fulfills all the conditions required for regular appointment as EDBPM of that post office;



(ii) none is waiting in the thrown out ED Agents list for appointment; and

(iii) the applicant's case cannot be considered in view of the communal reservations as the applicant does not belong to any reserved community.

7. In order to examine the above points, we have issued a direction on 21.9.99 to the Chief Post Master General to send a senior officer not below the rank of the Director attached to CPMG to assist the Court on 28.9.99. Accordingly, Mrs. Sandhiya Rani, Director of Postal Services was present on that date. She made certain submissions. In order to bring those submissions on record, we have permitted the Department to file an additional reply. Accordingly, the additional reply has been filed on 11.10.99. We have perused the additional reply.

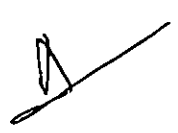
8. Some of the contentions made in the additional reply are more or less on the same lines as the original reply filed on 2.9.99. Those contentions have already been considered as above. One of the valid contentions made in this additional reply is that one Mr.G.Kistappa of Mahabubnagar Division was also kept in the waiting list of ED Agents in Mahabubnagar Division and in view of the judgment of this Tribunal dated 18.8.99 in OA 1118/99, he ranked senior to the applicant herein in the list of thrown out ED Agents. Hence one of the conditions as laid down in para 6 supra is not fulfilled and hence the applicant has

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to wait for his turn.

9. The learned counsel for the applicant submits that there are about 10 vacancies in the Division and hence the applicant need not be kept on waiting list but he can be directly appointed in the same post office posting Mr.G.Kistappa elsewhere and that will meet the ends of justice.

10. We heard both sides. No doubt, the services of the applicant can be regularised in the same post office in which he is working on provisional basis, posting Mr.G.Kistappa elsewhere if the Department feels so. The Court or the Tribunal cannot direct the Department to post some one in a particular place. It is for the Department to decide as to whether the applicant has to be fitted in that post. If a direction is given as desired by the learned counsel for the applicant, then that would mean that the Tribunal has taken over the charge of appointing him in a particular post. Such an unwarranted duty cannot be taken by the Tribunal. Hence it has to be left open to the Department to decide regarding the posting of the applicant in a suitable post in accordance with law. Postings and transfers are prerogative of the Department. The Court or the Tribunal cannot interfere in such cases. Hence we do not propose to issue a direction to the Respondents to regularise the services of the applicant in the same post office in which he is working as a provisional EDBPM. But it has to be held that the case of the applicant should be entered in the waiting list of thrown out ED Agents list and he should be considered for

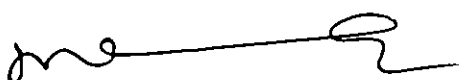


posting in the next vacancy that arises in the Division or in the existing vacancy in the Division as he is second in the waiting list. If the applicant desires to get posting in the same post office, then also this Tribunal has no objection. But that is left to the Department concerned.

11. In view of what is stated above, following direction is given:-

The name of the applicant has to be entered in the list of the thrown out ED Agents as per the DGP&T's letter dated 18.5.79. As he is second candidate in the list of thrown out ED Agents for consideration for posting regularly as ED staff, the respondents are directed to appoint the applicant regularly either in the present vacancy or in any other vacancy that is available or likely to arise next as per his turn in terms of the DGP&T's letter dated 18.5.79.

12. The OA is ordered accordingly. No order as to costs.

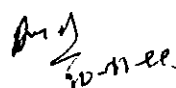


(R. RANGARAJAN)
MEMBER (ADMN.)



(D.H. NASIR)
VICE CHAIRMAN

DATED: 10th NOVEMBER, 1999


10-11-99

vsn

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

1ST AND 2ND COURT

COPY TO :-

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

DR (J) - 2
advocate - 5

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

25/11/99

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

VICE - CHAIRMAN

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

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

* * *

DATE OF ORDER: 10/11/99

MA/RA/CP.No.

in

GA. NO.

1124/99

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

13 copies

