

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1498/98 & O.A. 36/99

Date of decision: 26/7/99

Between:

O.A.1498/98

Gunda Venkateswara Rao

.. Applicant

A N D

1. The Sr. Supdt. of Post Offices,
Eluru Division,
Eluru.
2. The Postmaster General,
Vijayawada Region,
3. Vaditya Krishna
S/o. V. Hussen,
R/o. Nagi Reddigudem V.,
Chintalapudi Mandal,
W.G. Dist.



.. Respondents

Counsel for the Applicant : Mr. S. Ramakrishna Rao
Counsel for Respondents 1&2 : Mr. B.N. Sharma, Sr.CGSC
Counsel for respondent 3 : Mr. CH.H.Govinda KhoranaReddy

O.A 36/99

Vaditya Krishna

.. Applicant

A N D

1. Director General,
Department of Posts,
New Delhi.
2. Superintendent of Post Offices,
Eluru Division, Eluru - 534 007
3. The S.D.I (P)
Eluru North Sub Division,
Eluru - 534 001.
4. Branch Post Master (Acting)
Errampalli Branch Post Office,
under Pragadavaram Sub Office,
West Godavari Dist.

5. Gunda Venkateswara Rao

.. Respondents

Counsel for the applicant : Mr.CH.H.G. Khorana Reddy
Counsel for R-1 to R-4 : Mr.B.N. Sharma, Sr.CGSC
Counsel for R.5 : Mr. S. Ramakrishna Rao

Coram:

Hon'ble Shri Justice D.H. Nasir, Vice-Chairman

Hon'ble Shri H. Rajendra Prasad, Member (A) 4/76

(ii) Having offered his candidature for the post in response to the impugned notification, it is not open for the Applicant in OA 1498/98 to question the same.

----- The representation submitted by him to respondent No.2 is not covered by any provision of rules as stated by the Applicant himself in OA 1498/98. (Item-3 Chronological statement of events in the cause-title page of the OA) There is no warrant, therefore, for directing Respondent No.2 to dispose of the said representation.

(iv) The letter cited by the Applicant (DG P&T letter No. 43-4/77/Pen dt. 23-2-79) relates to those situations where a person, having been regularly selected for appointment against a clear vacancy, is suddenly rendered surplus on account of contingencies such as abolition of a post, upgrading or closure of an EDBO, or its merger with another office, or any other administrative reason. The mere fact that a provisional appointee had necessarily to be allowed to occupy the post, on the same continuing basis, for more than 3 years would not by itself entitle him to claim the privilege or protection contained in the DG's circular. It is entirely possible that disciplinary cases initiated under Rule (8) of ED Rules can often get inescapably stretched over a period of time owing to variety of reasons, including the need to afford all reasonable opportunities to the accused official to defend himself. The proceedings in such situation might naturally consume considerable time in some cases and there would be no way in which the due processes can be abbreviated. Furthermore, as pointed out by the learned counsel for the official respondents, the concerned authorities are prohibited

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the regular incumbent led to his removal. Out of the 13 candidates who applied in response to the impugned notification, as well as those sponsored by the Employment Exchange, the candidature of seven persons were verified and the Applicant in OA 36/99 was selected on merit since he fulfilled all the eligibility criterion and had also secured the highest marks. It is explained by the respondents that the arguments of Applicant in OA 1498/98 regarding regularisation of services are misconceived since the letter of the DC cited by him pertains to the cases of those regularly selected candidates who are rendered surplus owing to any administrative reasons. The said letter does not apply at all to provisionally-appointed candidates like the Applicant (in OA 1498/98).

5. It is also explained that the instructions contained in CPMG AP letters No.ST/ED/Hyd.City.Dn/95 dt. 9-12-1998 and an earlier letter No.ST/Union/EDAs/98 dt. 27-4-1998 do not pertain to cases such as the present one.

6. The Applicant in OA 36/99 who was not impleaded by the Applicant in OA 1498/98, but who later impleaded himself in the case, has filed an MA No. 256/99 in OA 1498/98 for vacating the stay which was granted by this Tribunal on 12-11-1998 and which is still in force.

7. The facts of the case have been examined. The Applicant was appointed provisionally in a vacancy which had arisen owing to the initiation of a disciplinary case against the regular incumbent. The said disciplinary case having been disposed of, the Respondents were required to take action to fill up the post on a regular basis. The impugned notification is therefore quite in order and cannot be faulted on any count.

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candidates who have been regularly selected, and in whose favour orders of regular appointment could not be issued for want of certain essential formalities ... as provisional appointees for inordinately long periods. These circular state that every effort should be made to regularise all such appointments. Certain measures to achieve this object are also spelt out. The Applicant in OA 1498/98 is not a regularly selected candidate appointed provisionally; he is a person who was given provisional appointment in a stop gap arrangement pending regular selection of suitable candidates. The said circulars cannot ~~be~~ apply to this case or the claim of the Applicant.

9. The respondents have duly considered the candidature of the Applicant in OA 1498/98 along with other candidates while making regular selection to the post. The Applicant cannot therefore complain of discrimination or any undue disregard of his candidature.

10. In view of the foregoing observations we are unable to accept the claims of the Applicant in OA 1498/98. There is no validity to the arguments put forth by him nor is there any merit in his claim. The OA is liable to be ~~be~~ dismissed and is accordingly dismissed as lacking in merit.

11. The Applicant in OA 36/99, having been regularly selected, cannot be denied his right~~s~~ for appointment to the post any longer. OA 36/99 is therefore allowed. Supdt. of Post Office, Eluru Division (Respondent No.2 in OA 36/99 and Respondent No.1ⁱⁿ O.A. 1498/98) shall ensure that the charge is transferred from the applicant in

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from making regular appointments in such vacancies unless the regular incumbent, against whom proceedings were initiated, exhausts the normal avenue of appeal, etc. This would also contribute to the prolongation of proceedings. During this entire period a provisional appointee has to be necessarily allowed to continue to discharge the duties of the post. And only because he has done so for more than 3 years, for valid and acceptable reasons, the delay cannot be equated to ~~admission of the applicant to the post~~. The argument of the applicant on this score is flawed. We are unable to accept this particular contention.

(v) The status of a provisional appointee remains provisional no matter how long he renders service in such capacity. There cannot obviously be an automatic regularisation of his service only on the strength of his having served on provisional basis for a certain length of time for such action would inevitably deprive the concerned authorities of the opportunity of throwing open the post to a wider circle of aspirants and the choice of selecting the best available candidate for a public post. This can be done only through open competition among the maximum number of eligible candidates. Regularising the services of a provisional appointee would only serve to impose an avoidable curb on ~~the~~ such authorities to attract the best available talent in consonance with the rules of recruitment.

8. The letters of Chief Post Master General, which are also cited by the Applicant, are, similarly, not related to any aspect of the applicant's claim. The purport of these letters appears to be only that

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O.A. 1498/98 (provisional appointee) to the Applicant in OA 36/99 (regularly selected candidate) for the post. The former is directed to make over charge of the post on being asked to do so by the said Respondent.

12. Thus the OAs are disposed of.

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CASE NUMBER

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DATE OF SIGNATURE

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