

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :  
AT HYDERABAD.

O.A.No.382/99

DATE OF ORDER: -2-2000

BETWEEN :

L. Ramana Reddy,  
S/o Ganga Reddy,  
Aged about 32 years,  
Working as ED/BPM,  
Khanapur, A/w Armoor, Nizamabad  
Postal Division, Nizamabad District. .. APPLICANT

A N D.

1. Senior Superintendent of Post Offices,  
Nizamabad Division,  
Nizamabad.
2. Sri Waghmare, s/o not known  
aged about 50 years,  
Occ- Senior Superintendent  
of Post Offices, Nizamabad  
Division, Nizamabad. .. RESPONDENT

Counsel for Applicant : Mr. S.Ramakrishna Rao

Counsel for Respondent : Mr.P.Phalguna Rao, ACGSC

CORAM :

THE HONOURABLE MR. JUSTICE D. H. NASIR, VICE-CHAIRMAN.



Contd... 2.

O R D E R.

Justice D.H. Nasir, VC:

1. The applicant is challenging the legality of the notification dated 25.2.1999 calling for applications to fill up the post of EDBPM, Khanapur, A/w Armoor on regular basis mainly on the ground that when the applicant's case for appointment on compassionate ground was still pending, decision of the Circle Selection Committee, it was not legal and proper for the respondents to issue the impugned notification. The respondents are also sought to be directed to consider the applicant's case for compassionate appointment for the above post.

2. One L. Ganga Reddy, EDBPM, Khanapur BO, A/w Armoor HO expired on 30.1.1996. L. Ramana Reddy (applicant), son of late L.Ganga Reddy was appointed provisionally to work as BPM, Khanapur BO A/w Armoor HO with effect from 7.2.1996, a proposal for his appointment on compassionate ground was submitted to the Postmaster General, Hyderabad Region, on 23.4.1996. However, according to the respondents, the PMG, Hyderabad Region vide his letter dated 19.12.1997 intimated that the candidate in question (present applicant) did not have adequate other sources of income at the time of his provisional appointment and his case was not recommended for appointment on compassionate ground and therefore, PMG Hyderabad directed the local office to appoint suitable candidate for the said post. The SDI(P), Armoor was directed vide letter dated 29.12.1997 to terminate the provisional appointment of the applicant in view of the fact that the applicant failed to furnish proof of landed property from which he derives income. The SDI(P), Armoor obtained and submitted the income and property

certificates which were forwarded to PMG, Hyderabad vide his office letters of even number dated 6.2.1998, 17.2.1998 and 2.3.1998. Further reports in that regard were also forwarded to the Regional office on 22.7.1998, 17.9.1998 and 22.12.1998. The PMG, Hyderabad Region vide his letter dated 21.1.1999 called for the report on the action taken on the letter of the Regional office dated 19.12.1997. Hence the SDI(P), Armoor was directed to terminate provisional appointment vide his letter dated 25.1.1999 in view of the fact that the applicant failed to furnish the proof of landed property from which he derives income. The provosional appointment of the applicant was, therefore, terminated on 27.1.1999 entrusting the duties of EDBPM to the Mail Overseer, Armoor Sub Division till further arrangements were made. Later according to the respondents, the SDI(P) Armoor appointed the applicant on 24.2.1999 on provisional basis since by that date, according to the respondents, the applicant had acquired the landed property in his own name which made him eligible to the post in question. Further, according to the respondents, in order to appoint a suitable candidate to fill up the said post on regular basis the vacancy was notified on 25.2.1999 reserving the post for S.C. category due to the short fall of SC candidate in the Division.

3. With these short facts in the background, we may examine whether the respondent No.3/ justified in issuing the notification for regular appointment because, according to the applicant, his case for compassionate appointment was still pending with the department. The respondents claim that the applicant's case for compassionate appointment had already been rejected and

⑧

68

the same was duly communicated to the applicant. However, the learned counsel for the applicant failed to render any satisfaction to the Bench that the order of rejection for appointment of the applicant on compassionate ground had been duly communicated. In para-7 of the reply statement it is stated that the PMG, Hyderabad vide letters dated 19.12.1997 and 21.1.1999 informed that the applicant's case was not recommended by the Circle Selection Committee. If it is the case of the respondents that the communication was made by letters dated 19.12.1997 and 21.1.1999, it was incumbent upon the respondents to produce the copies of the said letters to satisfy the Tribunal that the applicant's case for compassionate appointment was rejected. It is well established that in a case where written evidence is available, no cognizance could be taken of any oral submissions with regard to the contents of such written documents and the omission on part of the respondents to produce necessary written documents could lead to adverse inference with regard to the proposition advanced in that regard. In that view of the matter, I am unable to accept the oral submission made by the learned Standing Counsel for the respondents that the applicant's case for compassionate appointment was considered and rejected. On these grounds alone, the impugned notification for regular appointment of the candidate for the post in question, deserves to be quashed inasmuch as no regular appointment in such cases could be made if any case for compassionate appointment for that post is pending.

4. The second point which arises for our consideration in this case is, whether the applicant was justified in claiming that he had put in three years of service as a provisional candidate for the post in

(0)

question and therefore, he had become entitled to be posted on regular basis and on that ground also, according to the applicant, the impugned notification had to be declared null and void. It is not disputed that the applicant was appointed provisionally to work as EDBPM, Khanapur A/w Armoor HO with effect from 7.2.1996. His provisional appointment order appears at Annexure-A.6 page 18 of the O.A. from the perusal of which it is evident that the applicant was provisionally appointed to the said post for a period from 7.2.1996 to 30.9.1996. The applicant was continuing to hold the said post even after 30.9.1996. However, his provisional appointment abruptly came to be terminated on 27.1.1999. According to the applicant, this action was taken by the respondents with a mala fide intention of preventing the applicant from completing three years as the provisional appointee so that the applicant cannot claim any right to be appointed on regular basis on completion of three-year period after first appointment on provisional basis. Surprisingly however, according to the applicant, he was reappointed on 25.2.1999 as EDBPM, Khanapur without any appointment order on provisional basis. The apprehension expressed by the applicant that <sup>the idea</sup> was to preclude the applicant from claiming benefit arising out of completion of three years of service, cannot be disregarded. If his initial appointment was made on 7.2.1996, the applicant could be treated as having completed three years on 6.2.1999. But before 6.2.1999 his services were terminated on 27.1.1999 not for any other justifiable cause <sup>but</sup> for preventing the applicant from claiming the benefit of completion of three years of service.

(W)

5. The learned counsel for the applicant Mr. S.Ramakrishna Rao drew my attention to the decision of the A.P.High Court in Writ Petition No.7907/99 dated 21.6.1999 in which the Division Bench of the A.P. High Court basing upon the judgment in BHAGWATHI PRASAD v. DELHI STATE MINERAL DEVELOPMENT CORPORATION ((1990) 1 SCC 361) wherein it was held by the Supreme Court that intermittent breaks in service up to three months had to be given benefit and while computing three years of service<sup>and</sup> breaks beyond three months should not be computed, held as follows :

" Basing upon the judgment in BHAGWATHI PRASAD vs. DELHI STATE MINERAL DEVELOPMENT CORPORATION (2) 1990(1) SCC 361 it was held by the Supreme Court in the above case that intermittent breaks in service upto three months has to be given benefit while computing three years service, while breaks beyond three months shall not be computed. As such the order of the Central Administrative Tribunal is clarified to the effect that the case of this petitioner herein should also be considered along with others in case the present post, which is occupied by a prívional EDDA is going to be filled up regularly, even if his name is not sponsored by the Employment Exchange, by computing the breaks in service for the purpose of reckoning three years service, provided the breaks in service at a stretch are within three months. It is made clear that the breaks in service beyond the period of three months shall not be computed for reckoning the period of three years."

6. The learned counsel Mr. Ramakrishna Rao for the applicant also invited my attention to the communicated dated 7.1.1999 from the office of the Senior Superintendent of Post Offices, Secunderabad Division, Hyderabad in which it is stated that the Chief Postmaster General, A.P.Circle, Hyderabad-1 vide letter dated 9.12.1998 had directed to regularise the services of ED Agents who were continuing on provisional basis without regular appointment orders for longer periods from the date of their original(provisional) appointment. The Circle office further directed not to consider the service of EDAs whose conduct and work was not satisfactory due to  their involvement in cases of frauds and were facing

disciplinary action under E.D.A. Conduct Rules. A direction was also issued by the said letter to regularise the services of all E.D. Agents in the Subdivision/Unit who were continuing on provisional basis without regular appointment order and that immediate action was directed to be initiated to regularise the services of the provisional Agents. The action which was directed to be taken included the action to the effect that if there was any break in service due to administrative reasons, the same be forwarded to the office of the Senior Superintendent of Post Offices, Secunderabad Division, for condonation.

7. From the above discussion, it clearly transpires that all was not well with regard to the applicant's appointment in question. The break in applicant's service was clearly intended to preclude the applicant from claiming the benefit of three years service on provisional basis. If the department's action is tainted in such a manner, it can certainly not be upheld and the Tribunals cannot be expected to go to the rescue of the department in retrieving the impugned action from being declared illegal and void. Even in case of the applicant's claim to be considered on compassionate ground, we have already held that absence of any evidence to show that the order of rejection was duly communicated to the applicant, disqualifies the impugned notification for appointment of a suitable candidate on regular basis. I have therefore no hesitation in arriving at a conclusion that the impugned notification deserves to be declared null and void and the same is hereby declared as null/illegal and void. The department, however, shall not

be prevented from taking corrective measures.

8. The O.A. is disposed of accordingly. No costs.

*D.H. Nasir*  
( D.H. NASIR )  
VICE-CHAIRMAN.

Dated the 16<sup>th</sup> day of February, 2000.

*Aug 2  
16/2000*

DJ/