

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 1530/91 & x~~xxxxxx~~
XXXXXX 419/92 x~~xxxxxx~~

DATE OF DECISION 26.5.1992

Smt. M.R. Ramani in OA 1530/91

Applicant (s)
Shri N.G. Appan in OA 419/92

Shri M.R. Rajendran Nair--OA1530/91

Shri V.N. Ramesan--OA 419/92 Advocate for the Applicant (s)
Versus

Sub Divisional Inspector of
Post Offices, Vaikom & others Respondent (s)

Shri V.V. Sidharthan in OA 1530/91

S/Shri AA Abul Hassan for R.1&2 Advocate for the Respondent (s)
and MR Rajendran Nair for R.4 in OA 419/92.

CORAM :

The Hon'ble Mr. N.V. Krishnan - Administrative Member
&

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

These two applications are very closely related on facts and also in question of law and, therefore, they can be disposed of by a common order.

2. The cases relate to appointment to the post of EDDA, Koduvechoor. When the post became vacant, the Sub Divisional Inspector took steps to fill up the post by issuing a notification. Smt M.R. Ramani, the applicant in O.A.1530/91, Shri N.G. Appan, the applicant in O.A.419/92 and one Shri M. Soman were among the several candidates

who responded to the notification. At the first instance, in the process of selection, Smt. Ramani, the applicant in O.A.1530/91 and the 4th respondent in O.A.419/92 was selected and appointed. The selection and appointment of Smt. Ramani was challenged by Shri N.G. Appan, the applicant in O.A.419/92 before this Tribunal in O.A.793/90 on various grounds. It was contended by him that Smt Ramani was ineligible for appointment for the reasons that she resides away from the Post Office and also that she does not know cycling. However, by judgement dated 29.3.91 the selection and appointment of Smt. Ramani was set aside not on the ground of her ineligibility but for the reason that the selection was improper for certain irregularities and infirmities in the process. It was noticed that the notification contained certain stipulations which were not warranted in view of the directions of the DG, P & T on that subject. Therefore, this Tribunal set aside the selection and appointment of Smt Ramani and directed the respondents to re-do the selection from the very beginning. But it was directed that till a regular selection and appointment is made, the respondents might allow Smt Ramani to continue in that post on a provisional basis. In obedience to the above judgement, the respondents conducted a fresh selection and in that process, one Shri M. Soman was selected and appointed. Shri N.G. Appan, the applicant in O.A.419/92 challenged the selection of Shri Soman by filing O.A.1409/91. When that application

came up for hearing, the Department counsel submitted that under instructions from the higher authorities, action had been taken to cancel the appointment of Shri Soman and to conduct the selection afresh. In view of the above submission, as the application was found infructuous, the same was dismissed recording the submission made by the counsel. While notice was issued to terminate the services of Shri Soman, he entered on leave nominating Smt Ramani as his substitute and thus, Smt Ramani was re-induced as EDDA as substitute of Shri Soman. While so, Smt Ramani filed O.A.1530/91 challenging the very selection and appointment of Shri Soman and praying that the termination of her service on 23.7.1991 was null and void and that she is also entitled for consideration for regular selection as EDDA, Koduvechoor. In that application, an interim order was issued on 12.11.1991 directing that Smt Ramani should also be considered purely on provisional basis subject to the outcome of the application for regular selection and it was specifically directed that if Shri Soman is removed from the post, the vacancy should not be filled on a provisional basis by any outsider till 29.11.1991. On the basis of the above order, Smt Ramani is still continuing as an EDDA on a provisional basis. In these circumstances, Shri N.G. Appan filed O.A. 419/92 praying that the respondents may be directed to make a fresh selection for regular appointment to the post of EDDA,

Koduvechoor strictly in compliance with the directions in Annexure A1 order.

3. In the reply affidavit, the Department has contended that as Shri Soman's selection was found to be irregular on a review made by the Superintendent of Post Offices, it was found that the applicant in O.A. 419/92 Shri N.G. Appan was the most suitable candidate to be appointed and that his appointment is being held up on account of the interim order in O.A. 1530/91.

4. We have heard the counsel on either side and have also carefully gone through the pleadings and documents on record. On a perusal of the pleadings in these two cases, we understand that the Department has not conducted any fresh selection. The Department counsel had undertaken before the Tribunal that cancelling Shri Soman's selection, they would be making proper selection and appointment. It was on the basis of that submission that O.A. 1409/91 was disposed of. Instead of doing that, what the Department has done is deciding that Shri N.G. Appan is the most eligible candidate, without holding a process of selection. Further, we understand that the Department has left Smt Ramani completely out of consideration. As per the interim order passed in O.A. 1530/91, the Department is bound to consider the candidature of Smt. Ramani. We do not understand how the Department got over that direction. The learned counsel

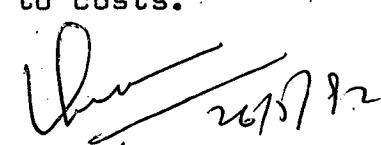
for the applicant in O.A. 419/92 vehemently argued that inasmuch as the selection and appointment of Smt. Ramani to the post of EDDA, Koduvechoor has been held to be irregular, in the final order of this Tribunal in O.A. 1793/90, Smt. Ramani has no right to be considered at all. He invited our attention to the fact that in O.A. 1793/90 it was alleged that Smt. Ramani did not satisfy the residential qualification and that she did not know cycling and also to the observation in paragraph 2 of the judgement in that O.A. that Smt Ramani's name was found in the voters list at Cherthala. On the strength of the above allegation in the application and the observation in the judgement, the learned counsel argued that the selection of Smt Ramani was set aside only because of her ineligibility and that, therefore, she does not have a right to be considered. We do not agree with this argument. Though there is a passing comment in para 2 of the judgement regarding residence of Smt. Ramani, nowhere it is mentioned that Smt. Ramani did not satisfy the residential qualification or that she was ineligible for consideration for selection for any reason. The question whether Smt Ramani is eligible or not has not been actually adjudicated. We are not saying any final word about the eligibility of Smt. Ramani in this case because relevant materials in that regard have not been placed before us. It is open for the Department to consider on the basis of the materials placed before it and to decide whether Smt. Ramani or any other candidate do satisfy the essential residential and other qualifications and to make a

proper selection in accordance with law, considering all the candidates. Now that no outsider has any grievance regarding the process of selection, it will be sufficient if the respondents are directed to make a final selection considering the case of all those who had responded to the original notification including the applicants in both these cases and Shri Soman. Having found that a mere review and picking up of Shri Appan does not amount to a regular process of selection, we dispose of these two applications with the following directions:-

- (a) The Sub Divisional Inspector of Posts, the first respondent in both these applications, is directed to make a regular selection to the post of EDDA, Koduvechoor considering all the candidates who had responded pursuant to the notification including the applicants in both these cases and Shri Soman and to publish the results thereof within a period of one month from the date of communication of this order;
- (b) Till the final selection and appointment is made, the services of Smt. Ramani shall not be dispensed with; and
- (c) If for making appointment of the regularly selected candidate, it becomes necessary to terminate the services of Smt. Ramani, it shall be done in accordance with law.

5. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER