

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.423/2001

Wednesday, this the 5th day of September, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Benchima Chandra.B.S.
Syam Nivas, Manalivila,
Neyyattinkara.P.O. - Applicant

By Advocate Mr Thomas Mathew

Vs

1. Superintendent of Post Offices,
Trivandrum South Postal Division,
Trivandrum.
2. Director of Postal Services,
O/o the Chief Postmaster General,
Kerala Circle,
Trivandrum.
3. Director General,
Department of Posts,
New Delhi.
4. Union of India represented by
its Secretary,
Department of Posts,
New Delhi.
5. K.Sasisekharan Nair,
Superintendent of Post Offices,
Trivandrum South Postal Division,
Trivandrum.
6. Reji Varghese,
Reji Bhavan, Kanjampazhanji.P.O.
Poovar. - Respondents

By Advocate Ms Rajeswari.A., ACGSC (for R.1 to 4)

By Advocate Mr MHJ David J (for R-6)

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The application having been heard on 5.9.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant and 6th respondent alongwith others were considered for selection and appointment to the post of Extra Departmental Branch Post Master (EDBPM for short),Kanjampazhanji. Though the applicant had among the eligible candidates obtained highest percentage of marks in the SSLC examination, i.e. 474 out of 600, she came to know that the official respondents have selected the 6th respondent who had got only 632 marks out of 1000 on the ground that the 6th respondent had produced documents showing ownership of landed property and income derived therefrom has been selected for appointment, though the applicant also owns landed property and had produced document showing her independent income without verifying the documents. It is alleged that the 5th respondent who is the incumbent in the office of the 1st respondent had selected the 6th respondent on extraneous considerations. The applicant has filed this application seeking to set aside the orders by which the sixth respondent has been selected for appointment declaring that the applicant have more marks in the SSLC examination and satisfies the eligibility criteria, is entitled to be selected and appointed.

2. The official respondents in their reply have sought to justify the selection of the 6th respondent, though the applicant was found more meritorious in terms of marks in the SSLC examination on the ground that the certificate produced

by the 6th respondent showed independent ownership and income from landed property while the applicant has not produced such certificate and that independent income from own landed property is an essential qualification for appointment as EDBPM. The sixth respondent has also raised similar contentions.

3. We have heared the learned counsel for the parties and have carefully scrutinised all the documents brought on record. It is not disputed that among eligible candidates for appointment to the post of EDBPM one who has higher marks than the rest has a better right to be selected in terms of instructions in that regard. It is also not disputed that the applicant had obtained higher marks in the SSLC examination than the 6th respondent. If the applicant has satisfied the eligibility criteria on merits, she should have been selected. The applicant was not selected and the 6th respondent was selected on the ground that the applicant did not produce evidence to show that she has independent means of livelihood derived from landed property. Annexure A5 is the certificate issued by the Tahsildar , Neyyattinkara to the effect that the applicant has an annual income of Rs.49,500/-. Annexure A10 is another certificate from the Tahsildar certifying that the applicant's income from property is Rs.2250/-. The official respondents contend that it has not been stated in A10 that the income was from landed property. We are of the considered view that this contention of the respondents is too hyper technical to be accepted. In case the responndents wanted to verify whether the applicant was owning immovable property,

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the applicant should have been asked to produce the title deed. This has not been done. Under the circumstances the argument of the applicant that the applicant has been discriminated ~~discarded~~ against and the 6th respondent has been given undue favour cannot be brushed aside. Even assuming that the documents produced by the applicant did not establish her ownership of immovable property, Annexure A5 income certificate issued by the Tahsildar, Neyyantinkara proves that the applicant has an independent annual income of Rs.49,500/-. Income of Rs.49,500/- an year for an individual cannot be said to be an inadequate means of livelihood. The constitutional validity of the condition in D.G., Posts letter dated 6.12.93 stipulating that in the case of appointment to the post of EBPM and EDSPM, preference should be given to those whose adequate means of livelihood is derived from landed property has been declared as unsustainable and ultravires of the Constitution by the Bench of the Tribunal in V.P.Praseetha vs. Superintendent of Post Offices , Kannur District and another in O.A. 1514/1999 decided on 23rd December,1999 to which one of us(Hon'ble Sri A.V.Haridasan, Vice Chairman) was a party. The above decision has not been reversed or modified by any appellate forum. Therefore the requirement of ownership or possession ~~provision~~ of immovable property and deriving income therefrom cannot be considered as a criteria for giving xx preference in appointment as EDBPM. The applicant who is otherwise more meritorious possessed adequate means of livelihood and eligible in all respects should have been selected for appointment. We are not substituting our view of merits,

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because according to the binding instructions, the person who has higher marks in the examination among eligible candidates is required to be selected.

4. The learned counsel for the official respondents invited our attention to a ruling of the Punjab and Haryana High Court in Writ Petition No.15356/97 delivered on 23.3.98 wherein it has been observed as follows:

"A careful reading of the qualifications and the contents of the letter issued by the Government of India show that the property qualifications prescribed for recruitment of ED SPM is an essential and mandatory qualification. The tenor the language issued in the rules does not indicate that the rule making authority had intended this qualification to be directory or only a preferential qualification. The letter dated 6.12.1993 issued by the Government of India also does not give any such indication. Therefore, it must be held that the Tribunal has erred in holding that the provisions regarding "adequate means of livelihood" is not an essential pre-requisite but is only a preferential qualification. Any other interpretation of the letter issued by the Government of India would be contrary to the rules regulating recruitment to the service."

and argued that the Punjab and Haryana High Court has upheld the requirement of income from landed property as a required qualification for eligibility to be appointed as EDBPM and EDSPM. We find that the Punjab and Haryana High Court had not gone into the constitutional validity of the stipulation in those letters that for being eligible to be considered for appointment as EDBPM, a person should be in possession of

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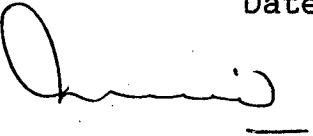
landed property. But in O.A.1514/97, this Tribunal has considered the vires of the stipulation and held it as unconstitutional and has struck down the said stipulation.

5. Since it is not disputed that the applicant was a candidate with highest marks at the SSLC examination and the 6th respondent had obtained only less marks than the applicant the official respondents should have selected the applicant as he was not suffering from any disqualification.

6. In the light of what is stated above, we set aside the selection and appointment of the 6th respondent to the post of EDBPM, Kanjampazhani. We direct the official respondents to consider the applicant and the 6th respondent on the basis of the marks obtained at the SSLC examination and in the light of the instructions on the subject and since the applicant is admittedly more meritorious, to consider her appointment as EDBPM, Kanjampazhani as expeditiously as possible and at any rate, within a period of one month from the date of receipt of copy of this order and to appoint her, if she is not otherwise found unsuitable for such appointment.

7. The application is allowed as aforesaid. No costs.

Dated, the 5th September, 2001.


T.N.T.NAYAR
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

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APPENDIX

1. Annexure A-1 : True copy of notification dated 2.3.2001 issued by the 1st respondent.
2. Annexure A-2 : True copy of application submitted by the applicant to the post of Branch Post Master, Kanjampazhanji.
3. Annexure A-3 : True copy of page 2 of S.S.L.C book of the applicant.
4. Annexure A-4 : True copy of page 6 of S.S.L.C book of the applicant.
5. Annexure A-5 : True copy of income certificate issued by the Tahsildar dated 17.3.2001 bearing No.K.Dis.A6/8285/01.
6. Annexure A-6 : True copy of certificate in Appendix VII regarding Non-Creamy Layer issued by the Tahsildar, Neyattinkarai dated 15.3.2001.
7. Annexure A-7 : True copy of receipt No.EE 75052005 showing that the application alongwith the documents have been forwarded to the 1st respondent by speed post.
8. Annexure A-8 : True copy of land tax receipt No.52 in Book No.188 issued by Village Officer, Pallichal.
9. Annexure A-8 (a): True English translation of Annexure A-8.
10. Annexure A-9 : True copy of Land Tax Receipt No.12 in Book No.117 issued by the Village Officer, Athiyannur Village.
11. Annexure A-9(a) : True copy of English translation of Annexure A-9.
12. Annexure A-10 : True copy of income certificate issued by Tahsildar, Neyyattinkara dated 5.5.2001.
13. Annexure A-11 : True copy of applicant's representation dated 5.5.2001 to the 1st respondent.
14. Annexure A-12 : True copy of receipt on Speed Post in token of having sent income certificate and representation as above.
15. Annexure A-13 : True copy of letter No.BIC/53 dated 30.4.2001 issued by the 1st respondent to attend interview on 8.5.2001.
16. Annexure A-14 : True copy of applicant's representation dated 16.5.2001 to the 2nd respondent.