

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 423/91

199

DATE OF DECISION

16-2-93

P.T.Subramanian Applicant (s)

Mr. V.P.Mohan Kumar Advocate for the Applicant (s)

Versus

Asstt. Supdt. of Post Respondent (s)
Office, Calicut and another

Mr. George CP Tharakan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.Dharmadan, Judicial Member

The Hon'ble Mr. R.Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

N.Dharmadan, JM

In this application filed on 14th March 1991 and later amended as per order of this Tribunal on 6.3.92 the applicant seeks to set aside the selection of the 2nd respondent as ED Mail Carrier, Kolathara Post Office and prays for a direction to the respondent to appoint him as E.D.Mail Carrier in that post on a regular basis with all consequential benefits.

2. According to the applicant, when a regular vacancy of E.D. Mail Carrier arose in Kolathara Post Office, he was appointed on a provisional basis with effect from 5.9.90. Annexure-A is the charge report. The first respondent notified the vacancy for conducting a regular selection. The applicant's name was not sponsored by the Employment Exchange, even though he is fully qualified and eligible for appointment, taking into consideration registration and also the *4* his/experience in the same Post office. Hence he has filed this

application under section 19 of the Administrative Tribunals Act.

3. The respondents filed a detailed reply stating that the applicant was working in the same post office from 5.9.90 as a substitute and nominee of the regular incumbent when he had availed of Leave without Allowances. Though the Leave was granted, his resignation was not accepted pending regular selection to the post of EDMC. The applicant is still continuing as a substitute of the regular incumbent on the strength of the interim order passed by this Tribunal. He was also considered along with the candidates sponsored by the Employment Exchange as directed by this Tribunal in the interim order. Since the 2nd respondent was found to be a suitable person for the post, he was selected but he could not be appointed to the regular vacancy on account of the pendency of this O.A. The respondents contended that there is no substance in the application and it has to be rejected.

4. The applicant has filed a rejoinder denying the first statement in the reply filed by the respondent. He has still reiterated that he is continuing as EDMC in the Kolathara Post office on a provisional basis. He further stated that he is entitled to a preferential right on account of experience. He should be regarded as a provisional employee occupying the regular vacancy. He has also produced Annexure-B to show that he is a native of Kozhikode and is residing in Cheruvannur village of Kozhikode Taluk for the last 7 years. Kolathara P.O. is situated in that village.

5. We have heard the counsel on both sides. The only question to be examined in this case is whether the regular selection has been made fairly in accordance ~~is~~ with law considering the respective claims of both the applicant and the second respondent. If the regular selection is found to be valid and legal the applicant has no case and this application has to be rejected.

6. For a proper disposal of this case, perusal of the minutes of the selection held by the first respondent was found to be essential. Accordingly we directed the Central Govt. Standing Counsel appearing on behalf of the 1st respondent to produce the same. He has produced the file and we have gone through the same. The minutes disclose that 10 persons including the applicant were considered in the regular selection. The candidates at 5, 8 and 9 were not called for the interview as they failed to submit the application to the post despite due intimation. Candidates at 2, 3, 6, 7 and 10 did not know cycling, so they were eliminated. The remaining 2 candidates were the applicant and the 2nd respondent. The statement in the minutes shows that a proper assessment of the merits of the applicant and the 2nd respondent was made for making the selection. Though there is a mention about the residential condition in regard to the applicant, the final decision has been taken by the 1st respondent after observing that both the applicant and 2nd respondent are equally placed but the 2nd respondent is preferred because he is having "good health. I feel that Shri Yesunathan at §1.No.4 (2nd respondent) is the best suitable person for selection as EDMC, Kolathara." The above sentence in the minutes very clearly indicates that in the assessment of merit the 2nd respondent was found to be the suitable person for the post by the competent authority. We are satisfied that the discretion had been fairly and properly exercised by the authority who conducted the interview and selection and we do not find any convincing reason to interfere with the selection.

7. The learned counsel for the applicant submitted that the applicant is entitled to preference in the regular selection because of his past service and this Tribunal in OA 29/90 held that in a selection to the ED post a candidate who held the post is entitled to preference and the authority who conducted the selection did not follow the dictum and hence

the selection is invalid.

8. The claim of the applicant that he is working as a provisional EDMC from 5.9.90 has not been satisfactorily proved before us. He has produced Annexure-A charge report. It does not show that he has been appointed on a provisional basis. The respondent has stated that he was working as a substitute as a nominee of the regular incumbent whose resignation was not accepted pending regular selection and that the applicant is still continuing as a substitute of the regular incumbent. This is not controverted. The Full Bench judgement did not confer any legal right on a substitute for consideration in a regular selection. However, from the minutes we cannot come to the conclusion that the first respondent was not aware of the fact that the applicant was having previous experience in the post of EDMC. The regular selection as indicated above has been made fairly and it is valid. We see no substance in the arguments advanced by the applicant. The application has only to be rejected. Accordingly, we dismiss the same. There will be no order as to costs.


(R. Rangarajan)
Administrative Member


N. Dharmadan
16.2.93.
Judicial Member