

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.45 of 1998

Thursday this the 25th day of February, 1999.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. R.K. AHOOJA, ADMINISTRATIVE MEMBER

Rajendran Pillai.R.
Extra Departmental Delivery Agent,
Vettiyar residing at Thadathilyath,
Vettiyar PO.

...Applicant

(By Advocate Ms. K. Indu)

vs.

1. Union of India represented by the
Secretary, Ministry of Communications,
Department of Posts, Dak Bhawan,
New Delhi.
2. The Director General of Posts,
Department of Posts,
New Delhi.
3. The Post Master General,
Central Region, Kochi.16.
4. The Superintendent of Post Offices,
Mavelikkara.

....Respondents

(By Advocate Mr. Govindh K Bharathan (rep.)

The application having been heard on 25.2.99, the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant was appointed as an Extra Departmental Delivery Agent (EDDA for short), Vettiyar Sub Post Office with effect from 23.6.88 and is continuing on that post. When a vacancy of Extra Departmental Sub Post Master (EDSPM for short) arose in the same Sub Post Office, the applicant made a request for transfer to that post. He preferred to work against the post of EDSPM as the allowance attached to the post of EDDA is only Rs.1089/- while that attached to the post of EDSPM is 1865/-. Though the applicant had applied for an appointment as EDSPM by transfer, the first respondent

notified the vacancies to the Employment Exchange and was about to make selection from among the nominees of the Employment Exchange. The applicant was not called for the interview which was fixed on 11.1.98. The applicant who has passed the SSLC Examination and claims to possess adequate means of livelihood claims that he is entitled to be transferred and appointed to the post of EDSPM in accordance with the instructions contained in Director General of Posts Letter No.43-27/85-PEN (ED&TRG) dated 12.9.88 (A5). It appears that on the basis of a direction given by this Tribunal in its orders in O.A.325/94 to the third respondent to clarify the meaning of expression "place" occurring in the letter of the DG (Posts) (A5) the third respondent on 11.8.94 issued a clarification to the expression "place" to mean "recruiting unit". Further clarification as to the method of selection by transfer was also given in a letter dated 28.8.96 (A6). The applicant's case is that he is entitled to be appointed by transfer to the post of EDSPM, Vettiya Post Office and the steps taken by the respondents to make appointment by notifying the vacancy to the Employment Exchange and making a selection is unwarranted and unjustified in the light of the instructions contained in A5 and A6 letters. Finding that the 4th respondent is refusing to consider the case of the applicant for transfer from the post of EDDA to that of EDSPM on the basis of a clarificatory letter dated 4.2.97 (A7) issued by the Member (Personnel) and another letter dated 16.10.97 (A8) by the Senior Superintendent of Post Offices, Aluva Division in which it was clarified that the clause (i) in the A5 letter was intended only to mean that working E.D.Agents would be entitled to be considered for regular selection for another post alongwith those sponsored by the Employment

Exchange without being sponsored by the Employment Exchange. The applicant has filed this application seeking to have these two orders A7 and A8 set aside and for a declaration that the applicant as working E.D.Agent in the same office is entitled to be transferred and posted as EDSPM, Vettiayar Sub Post Office in preference to outsiders and for a direction to the respondents to consider the applicant for transfer and posting as EDSPM, Vettiayar Sub Post Office ignoring A7 and A8 letters.

2. The respondents in their reply contend that the appointment to the E.D.Posts being made on a local basis, transfer of E.D.Agents from a post to another not being generally permitted, in the instructions contained in A5 relied on by the applicant the benefit given to working E.D.Agents was only for being considered for appointment if they apply direct not being sponsored by the Employment Exchange for selection and appointment to another E.D.Post falling vacant in the same office or in the same station and not for a transfer. According to the respondents, the applicant is not entitled to get a transfer to the post of EDSPM but is only entitled to be considered alongwith others who have been sponsored by the Employment Exchange in the light of the clarificatory instructions issued by the Member (Personnel) (A7). The impugned instructions are issued in administrative interests and keeping in view the method of appointment to E.D.Posts being made locally, contend respondents.

3. The questions that would arise for consideration are whether the D.G. (Posts) in its letter dated 12.9.88 (A5) had intended that when E.D.Posts fall vacant in an office or in a place, if any working E.D.Agent applies for that post and he is eligible and qualified to be appointed, is he entitled to be appointed

without being subjected to selection alongwith others sponsored by the Employment Exchange or not. Clause (i) of A5 is reproduced hereunder:

(i) When an E.D.post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions."


4. If the intention was that there should be a selection then it would have been clearly stated that if an E.D.Agent applies he shall also be considered for selection alongwith persons who might be sponsored by the Employment Exchange. To our mind it appears that the intention of the above quoted clause was that if a working E.D.Agent in the same office or in the same place prefers ^{to work} against a post which has fallen vacant he ~~can be~~ appointed if he is eligible and qualified to be appointed to that post without subjecting him for a selection alongwith outsiders. It is true that a clarificatory letter was issued on 14.2.97 (A7) by the Member (personnel) on the basis of certain directions given in an order of the Tribunal. If the A7 has been issued in supersession of the A5 order from the date of issue of A7 it can be said that the intention was only to allow working E.D.Agents to be considered for selection not being sponsored by the Employment Exchange and not ^{for} being appointed without such a selection. A clarification cannot change the meaning of the original order. A reading of A5 and A7 leads to an anomolous situation that

we are asked to give an interpretation to a clause in A5 which is repugnant to the literal meaning of what is contained therein. If the D.G. (Posts) is of the opinion that even for E.D.Agents working in the same office or in the same place for being appointed to ^{another} ~~the~~ post falling vacant, he should compete with those who are sponsored by the Employment Exchange, it is upto the D.G. to issue such a direction in supersession of the existing instructions contained in Annexure.A5. So long as that has not been done we are of the considered view that the clarification contained in A7 and A8 to the extent they are repugnant to the original instructions contained in A5 cannot stand. Therefore, the impugned letters A7 and A8 are set aside.

5. As the A7 and A8 letters have since been set aside, we have to consider what relief the applicant is entitled. We are of the view that the applicant is entitled to be considered for appointment by transfer to the post of EDSPM, Vettiya Sub Post Office, if he is otherwise suitable and eligible for appointment to that post.

6. In the result, the application is allowed. We set aside the A7 and A8 declaring that the applicant as a working E.D.Agent in the same office is entitled to be transferred and posted as EDSPM, Vettiya Sub Post Office if he is eligible and qualified in preference to outsiders. We direct the respondents to consider the case of the applicant for transfer accordingly. The above action shall be completed and necessary orders issued within a period of one month from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 25th day of February, 1999.


R.K. AHOOJA
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A5: True copy of the letter No.43-27/85.Pen (EDC & Trg) dt. 12.9.88 issued by 2nd respondent.
2. Annexure A6: True copy of the letter No.17-60/95-ED & Trg dated 28.8.96 issued by 1st respondent.
3. Annexure A7: True copy of the letter No.19-72/96-ED & Trg. dated 14.2.1997 of the 4th respondent.
4. Annexure A8: True copy of the letter No.CC/2-85/96 dated 16.10.1997 of the 2nd respondent.

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