

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

448

1990

DATE OF DECISION 9.8.1991

D.K.Sukumaran Applicant (s)

Mr.T.K.Venugopalan Advocate for the Applicant (s)

Versus

The Post Master General,
Northern Region, Calicut & Respondent (s)
Another

Mr.P.Sankarankutty Nair, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

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

(Mr.A.V.Haridasan, Judicial Member)

The applicant was working as a substitute in the place of E.D.Branch Post Master, Oorakam-Melmuri during the leave vacancy as nominated by the regular incumbent during the period from 1.1.1986 to 20.1.1986, 11.6.1986 to 30.6.1986, 22.12.1986 to 31.12.1986, 1.7.1987 to 31.7.1987, 1.8.1987 to 31.8.1987, 16.10.1988 to 15.10.1988, 16.10.1988 to 15.11.1988 and 16.11.1988 to 10.12.1988. On the death of Shri M.K.Rajagopalan Nair, the regular incumbent, the applicant was required to work as E.D.Branch Post Master, OOrakam-Melmuri, from that date onwards as a provisional arrangement.

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While the applicant was thus continuing to work as E.D. Branch Post Master, Oorakam-Melmuri, the second respondent, the Superintendent of Post Offices, Manjeri made a requisition to the Employment Exchange, Malappuram for nomination of intending eligible candidates to fill up the post of EDBPM on regular basis. The Employment Officer, Malappuram issued a notification in Mathrubhoomi Malayalam Daily Newspaper dated 21st, May, 1990 directing, those who want to apply for the post of EDBPM, Oorakam-Melmuri who have passed the SSLC Examination, are aged between 18 and 65, and had registered their names in the Employment Exchange before 24.9.80 and renewed upto date and are residing permanently within the limit of Oorakam Post Office to be present in the Employment Office at 10 AM of 24.5.1990. The applicant had registered with the Malappuram Employment Exchange only in the year 1985. The interview of the candidates sponsored by the Employment Exchange was to be held on 6.6.1990. As the applicant had registered his name only in the year 1985 in the Employment Exchange, apprehending that he would not be considered for selection, he has filed this application under Section 19 of the Administrative Tribunals Act, alleging that the stipulation in the notification dated 21.5.1990 that, persons who had registered their names in the Employment Exchange upto 24.9.80 alone need apply is ⁱⁿ against the rules regarding recruitment to the ED Posts and violative of principles of natural justice, equity and fairplay, and praying

For a declaration that the applicant is also eligible to be considered for appointment to the post of EDBPM, Oorakam-Melmuri and for a direction to the respondents to consider him for such appointment. It has also been prayed that the respondents 1 and 2 may be directed not to terminate the service of the applicant as EDBPM, Oorakam-Melmuri.

2. The respondents in the reply statement have contended that the stipulation in the notification at Annexure-A1 that the applicants ^{should} have registered their names prior to 1980 was not based on any instruction by the department, that this stipulation was inserted only by the Employment Officer who ^{to this application} is not a party, and that the applicant who has been working only as a substitute for the larger part of his service ^{and} as a provisional employee, for a short while, is not entitled to be considered for regularisation or for appointment on a regular basis as he has not been sponsored by the Employment Exchange. It has also been contended that the proposed selection has not been held, as the same has been stayed by the Interim Orders of the Tribunal. The second respondent has contended that, as the applicant has no legitimate right to be regularised in the post or to claim consideration for regular appointment, the application has to be dismissed.

3. We have heard the arguments of the counsel for the both parties and have also gone through the pleadings and documents.

4. The prayers of the applicant are that the respondents may be directed not to terminate the service of the applicant as EDBPM, Oorakam-Melmuri, that it may be declared that the applicant is entitled to be considered for appointment as EDBPM, that the respondents may be directed to regularise the service already put in by the applicant in the department and to declare that he is entitled to be considered for the post of EDBPM, Oorakam-Melmuri. The learned counsel for the applicant argued that, since the applicant has been working as a substitute from 1.1.1986 intermittently for various spells until he was provisionally appointed on the death of the regular EDBPM, Shri M.K.Rajagopalan Nair on 24.2.1990, he is entitled to be regularised in the post of EDBPM, Oorakam-Melmuri. In support of this the learned counsel referred to the decision of the Hon'ble Supreme Court in Jacob M Puthuparambil and others Vs. Kerala Water Authority and others (AIR 1990-SC 2228), Delhi Transport Corporation Vs. DTC Mazdoor Congress and others (AIR 1991-SC 101) and Daily rated Casual Labourers employed under P&T Department through Bharatiya Oak Tar Mazdoor Manch Vs. Union of India and others (AIR 1987-SC 2342) wherein the Supreme Court had held that, persons continuously working as Casual Mazdoors or in posts on provisional basis for a considerable long time should be regularised in the post, and that they should be regularly absorbed in their service. The dicta laid down in those rulings have absolutely no application to the facts of this case. Until 24.2.1990 the applicant was working ^{in the place} ~~of~~ the regular

EDBPM, as his nominee intermittently during the period when he was availing leave. It was only on 24.2.1990 the applicant was appointed on a provisional basis. So, it is not a case where the applicant has been continuously officiating as an EDBPM, under the department as pointed out by the department. Therefore, the facts of the case are entirely different from the cases under citation. The principle enunciated in the above cases therefore cannot be applied to the facts of this case.

5. The applicant has filed his application apprehending that, he would not be considered for selection to the post of EDBPM, Oorakam-Melmuri on a regular basis because in the notification under Annexure-A1, it has been specifically stated that, only persons who had passed SSLC Examination and had registered their names with the Employment Exchange before 24.9.80 need apply and since he had registered his name with the Employment Exchange only in the year 1985. In a number of cases this Tribunal has taken the view that, fixing a date of registration with the Employment Exchange as a cut off date and to deny opportunity for persons who had registered after that date for consideration for appointment to the post of EDA ~~xxxx~~ is unsustainable since it is violative of the mandates of Article 14 and 16 of the Constitution of India. Therefore, though recruitment as ED Agents is made primarily

through Employment Exchange and registration with the Employment Exchange is considered to be necessary, the instructions regarding the recruitment of EO Agents issued by the DGP&T did not contain any stipulation regarding the date of registration with the Employment Exchange. The second respondent in the reply statement has stated that the requirement of registration with the Employment Exchange before 24.9.80 was not based on any rule or instruction, that it was not as per the instructions of the department that such a clause was inserted by the Employment Officer, and that the department has no responsibility in that matter. Therefore, it is clear that the stipulation regarding the date of registration with the Employment Exchange had no relevance, and that it was not in accordance with the rules or instructions.

By reason of the above restriction, several persons probably much more ~~than~~ meritorious ~~than~~ ^{who} those responded to the notification would have abstained from offering themselves as candidates thinking that their candidature would not be accepted for the reason that, they had registered ^{their names} with the Employment Exchange only on a date subsequent to 24.9.80. Further, the educational qualification prescribed for the post of EDBPM is only ^{the} VIII standard, though a pass in the matriculation examination is considered to be a preferable qualification. In the notification at Annexure-A1, it has been stated that, those who have passed ~~in~~ the

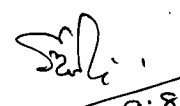
SSLC Examination alone need appear in the Employment Exchange for offering their candidature. This is also against the rules and instructions in regard to the recruitment of ED Agents. Therefore, the recruitment process commenced with and pursuant to the Annexure-A1 notification is vitiated for the reasons that several persons who were eligible to be considered for appointment have been prevented from offering their candidature on account of the stipulations contained in Annexure-A1. Therefore, we are of the view that the respondents have to be directed to initiate the recruitment process afresh placing a requisition with the Employment Exchange without the stipulations that the intending candidates should have registered with the Employment Exchange on any particular date, and that they should have passed the matriculation examination. As far as the applicant is concerned though not sponsored by the Employment Exchange, as he is working in the post of EDBPM, Oorakam-Melmuri, he should be considered along with the other candidates sponsored by the Employment Exchange for regular appointment when the respondents proceed with the recruitment process.

6. The applicant has prayed that the respondents may be directed not to terminate his service as EDBPM, Oorakam-Melmuri. Since the applicant was working only on a provisional basis his service will have to be terminated in accordance with law when a regularly selected

person becomes available. He will be entitled to continue only till a regular selection and appointment is made.

7. In the facts and circumstances of the case, we direct the respondents to initiate process for recruitment to the post of EDBPM, Dorakam-Melmuri afresh by placing a requisition with the local Employment Exchange without any restriction regarding the date of registration in the Employment Exchange, and without stipulation that intending candidates should have passed the SSLC Examination, to consider the applicant also as one of the candidates for the post though not sponsored by the Employment Exchange and to finalise the selection in accordance with law. We further direct that the service of the applicant as provisional EDBPM, Dorakam-Melmuri should not be terminated, otherwise than on appointment of a regularly selected incumbent and in accordance with law. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

9.8.1991