

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.453/97

Friday this the 18th day of July, 1997.

CORAM:

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

HON'BLE SHRI P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

U.Jayesh,
Krishna Nivas,
Vadakkumthala East P.O.,
Karunagappilly,
Kollam.

.. Applicant

(Advocate Mr.M.R.Rajendran Nair)

vs.

1. Sub Divisional Inspector, Department of Posts,
Karunagappilly.
2. Senior Superintendent of Post Offices,
Kollam Division.
3. Nadarsha.A.,
Periyantayath House,
Naduvilakara,
Kollam- 690 524.

.. Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan, SCGSC(R1-2)
By Advocate Mr.O.V.Radhakrishnan(R-3)

The Application having been heard on 7.7.97, the Tribunal on 18.7.1997 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

A post of Extra Departmental Delivery Agent ('EDDA' for short) was created in Mynagappally Branch Post Office . The Sub Divisional Inspector, Department of Posts, Karunagappilly conducted a selection for appointment to the said post on 26.3.97 notifying the vacancies to the local Employment Exchange and considering the candidates sponsored by the Employment Exchange as also the third respondent. The first respondent was considered pursuant to a direction from the Tribunal in the order in O.A.No.416/97. Apart from notifying the vacancy to the Employment Exchange, the vacancy was not published in any newspaper or other media. The applicant a Matriculate is

eligible to be considered for appointment to the said post. He came to know of the selection held on 26.3.97. He sent a letter to the first respondent stating that the selection conducted by the first respondent for appointment to the post of EDDA on 26.3.97 was not in order in view of the ruling of the Supreme Court reported in JT 1996(9) SC 638. He requested that the selection held illegally on 26.3.97 may be cancelled and a fresh selection be made after making an open notification and permitting him also to take part in the selection. Thereafter on 31st March 1997 the applicant has filed this application for a declaration that the selection conducted for appointment to the post of EDDA, Mynagappally on 26.3.97 is illegal and for a direction to the respondents to make a selection considering the applicant also for appointment to the post. It is alleged in the application that the selection held on 26.3.97 without considering the claims of all eligible candidates is arbitrary, illegal and violative of the provisions of Articles 14 and 16 of the Consitution.

2. The respondents 1 and 2 have in their reply raised the following contentions. In accordance with the instructions of the D.G, P&T in regard to recruitment to ED posts, the recruitment is to be made through the Employment Exchange and public notification is prescribed only in case where sufficient number of candidates are not sponsored by the Employment Exchange. The vacancy of EDDA, Mynagapilly was notified to the Employment Exchange and apart from those who were nominated by the Employment Exchange, the third

respondent who had applied for the post directly and was directed to be considered for selection by the Ernakulam Bench of the Central Administrative Tribunal in its order in O.A.416/97 was also considered. It was only after the selection had been finalised, that the applicant applied for the post on 2.4.97. As no instructions has been received from the D.G., P&T to issue an open notification before making the selection, the selection held on 26.3.97 considering the eligible candidates who had applied was perfectly in order and does not suffer from any infirmity. The respondents contend that the application is devoid of any merit and the same is to be dismissed.

3. The third respondent who had been selected and appointed has also filed a reply statment opposing the prayer in the Original Application.

4. We have gone through the pleadings and the material placed on record and have heard the arguments of Shri M.R.Rajendran Nair, the counsel of the applicant, Shri T.P.M.Ibrahim Khan, the Senior Central Govt. Standing Counsel appearing for respondents 1 and 2 and Shri O.V.Radhakrishnan, the counsel of the third respondent.

5. The learned counsel of the applicant referred to the ruling of the Hon'ble Supreme Court in Excise Superintendent, Malkapatanam, Krishna District, Andhra Pradesh vs. K.B.N.Visweshwara Rao & others reported in (1996) 6 Supreme Court Cases 216 and argued that in the light of what is observed by Their Lordships of the Supreme Court in that case, the selection made on 26.3.97 without making an open notification of the vacancy by publication in the gazette, newspaper etc. is illegal and violative of Articles 14 and 16 of the

Constitution and is liable to be set aside. The case under citation arose from an order of the Andhra Pradesh Administrative Tribunal in O.A.No.9501/1991 and a batch of connected cases. The respondents before the Hon'ble Supreme Court, who were applicants before the Tribunal had applied selection towards for 723 posts in the Excise Department. Their names were not sponsored by the Employment Exchange. The Department refused to consider their cases for the reason that they were not nominated by the Employment Exchange. Therefore, they approached the Tribunal and sought a direction for their appointment. The Tribunal issued interim direction to consider their cases and to appoint them, if selected. Some appointments were made on the basis of the interim order. Though the Tribunal held that the requirement of sponsorship through the Employment Exchange was not violative of Articles 14 and 16 of the Constitution, since many candidates happened to be selected in terms of the interim direction, the final order directed their appointments. It was under these circumstances that the appellants approached the Hon'ble Supreme Court. The counsel for the State relying on the decision of the Hon'ble Supreme Court in Union of India vs. N.Hargopal, (1987) 3 SCC 308, where it was held that insistence of sponsorship through the Employment Exchange was not violative of Articles 14 and 16 of the Constitution, argued that the direction issued by the Tribunal, was not in order. Learned counsel who appeared for the respondents before the Supreme Court argued that restriction of the field of choice to those sponsored by the Employment Exchange, denies the rights of

other eligible people to be considered for appointment to posts under the State and that this is negation of the Equality Principles enshrined in Articles 14 and 16 of the Constitution. Considering the rival contentions, the Hon'ble Supreme Court observed as follows:

" Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking, or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates. "

Shri Rajendran Nair argued that as the Supreme Court has

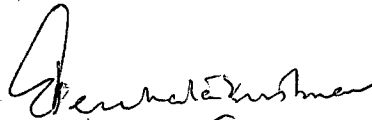
held that in addition to notifying the Employment Exchange, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins and then consider the cases of all candidates who have applied, it is incumbent on all the departments of the Government or Undertaking or Establishment to make selection for public appointment only after complying with the above directions and that if that is not done, it would not only be violation of the provisions of Articles 14 and 16 of the Constitution, but would amount to defiance of the law declared by the Supreme Court which has binding force under Article 141 of the Constitution. We are not persuaded to accept this argument. What the Hon'ble Supreme Court considered in the case was whether the Andhra Pradesh Administrative Tribunal was right in directing the appointment of those who had applied directly not being sponsored by the Employment Exchange and selected for appointment under the interim orders of the Tribunal or not. Having regard to the facts of the case and noting that the applicants before the Tribunal had put forward their candidature, the Hon'ble Supreme Court felt that it was not necessary to disturb the directions given by the Tribunal. The decision of the Hon'ble Supreme Court in Hargopal's case was not overruled. It was not held that if selection and appointment are made without calling for names by publication in newspapers having wide publicity and display on notice boards or announcement on radio or television, the

selection and appointment would be null and void. There is no such declaration of law by the Supreme Court in its decision relied on by the applicant. It is true that the Supreme Court observed that the better view appears to be that in addition to notification to the employment exchange, publicity should be given by paper publication or through other media. It is for the Government to issue instructions taking note of the observations of Their Lordships in the judgment.

6. The applicant in this case, though has come to know of the selection on the date of the selection itself, did not immediately put forth his candidature before the first respondent. He had no case that by the time he came to know of the selection on the very same date the process of selection had been complete, or that when he offered his candidature on that day, his candidature was refused to be considered. His letter asking for cancellation of the selection and for redoing the selection after making notification in newspaper etc. was received by the first respondent only on 2.4.97. The applicant could be said to have a right to be considered for selection only if he had put forth his candidature. Though the applicant came to know of the selection on 26.3.97 itself, it is not known what prevented him from offering his candidature on the very same date. It is evident from the pleadings that apart from the names of those who had been sponsored by the employment exchange, the candidature of the third respondent who applied direct, was also considered, though at the direction of the

Tribunal in its order in O.A.No.416/97. We therefore do not find any illegality or infirmity in the selection made to the post of EDDA, Mynagappally on 26.3.97.

7. In the light of what is stated above, we do not find any merit in the application and we dismiss the same leaving the parties to bear their own costs.



P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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