

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 487/91
~~OA No.~~

x100

DATE OF DECISION 13-7-91

Painkili T.C.

Applicant (s)

Mr. Paul Varghese

Advocate for the Applicant (s)

Versus

The Sub-Divisional Inspector, Respondent (s)
Tripunithura Postal Sub-Divn.,
Tripunithura & 3 others.

Mr. P. Sankarankutty Nair (R. 1, 3) Advocate for the Respondent (s)
Mr. P. S. Biju (R. 4)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

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

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by the refusal of the 1st respondent to consider him for regular selection as E.D. Delivery Agent at Ezhakkaranad Post Office inspite of his past services in the said Post Office.

2. The applicant had been working as a substitute in the same Post Office from 1988 onwards, in short spells, whenever the regular incumbent was on leave. Thus, he has completed about 100 days. On 25.1.91 when one Shri M.V. Jacob was promoted as Postman subject to the outcome of the decision of the Tribunal in O.A. 58/91 the applicant was appointed as EDDA and he took over charge on the same day. Later, the first respondent initiated steps for making regular appointment to the post of EDDA in the

same Post Office. Though the applicant approached the Employment Officer and requested to sponsor his name for being considered in the regular selection, his name was not recommended. The applicant is a person belonging to Scheduled Caste community and according to him the vacancy has to be filled up with SC candidate for fulfilling the requirements. He has also filed Annexure-II representation before the 1st respondent. Since he was not considered for the post he filed this application under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

- i) Declare that the proposed selection to the post of EDDA at Ezhakkaranad Post Office and the resultant termination of applicant's services is null and void as there is no regular vacancy.
- ii) In the alternate, declare that the applicant is entitled to be considered for regular selection as EDDA, Ezhakkaranad P.O. and direct the respondents to consider him in accordance with law giving due weightage to his past services in the process of selection.
- iii) Declare that the proposed termination of applicant's services is null and void as violative of the provisions contained in Chapter V-A of Industrial Disputes Act.
- iv) Grant such other reliefs as may be prayed for and this Hon'ble Tribunal may deem fit to grant.
- v) Grant the cost of this original application.

3. While admitting the application on 1.4.91 we directed the respondents to consider the applicant also provisionally for the selection which was scheduled to be held on 2.4.91 or any subsequent dates. Accordingly, the applicant was also considered but he has not selected. In the regular selection 4th respondent was selected and he was appointed replacing the applicant. Accordingly, he has filed M.P. 795/91 and impleaded the selected candidate as additional 4th respondent.

4. The main contentions raised by the applicant are that his past services in the same Post Office was not considered in the regular selection, if the same was considered giving weightage for his services he would have been selected and he being a Scheduled Cast he is entitled to preference for the appointment to the post of EDDA because the said post is earmarked for a S.C. candidate.

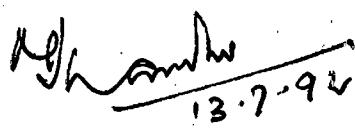
5. The contentions of the applicant are specifically denied by the respondents in their written statement. According to them the applicant was working as a substitute through out, even from 25.1.91 when Shri Yacob was promoted applicant's status was that of a substitute and not a provisional hand because the appointment of Shri Yacob was challenged in O.A. 58/91, which was dismissed only on 17.3.92, by that time the regular selection was over and the 4th respondent was selected and appointed ousting the applicant. Hence, according to the respondents, the applicant is not entitled to any preference or weightage on account of his prior service in the same Post Office. The respondents also denied the contention of the applicant that the present vacancy should be filled with a S.C. candidate and that the applicant is eligible to be selected and appointed to that post.

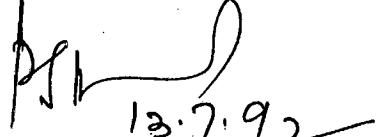
6. The applicant was not able to satisfy us that he was continuing as a provisional EDDA in the Post Office. Even after his appointment on 25.1.1991 he cannot claim the status of a provisional employee because the regular incumbent to the post Shri Yacob was not given a posting as Postman unconditionally. His appointment was subject to the outcome of the decision of the Tribunal in OA 58/91. So, there was the possibility of the regular incumbent

coming back to the post, in case his appointment was interfered by the Tribunal. However, it was dismissed at a later stage but the dismissal of the application will not give the applicant the status of a provisional employee for being considered in the regular selection which was held before the dismissal of the O.A. 58/91. Under these circumstances we are not inclined to accept the contention of the applicant that he is eligible for weightage on account of his prior service in the Post Office and we reject his claim. The second submission made by the learned counsel for the applicant that the present vacancy was a reserved one for a S.C. community candidate was denied by the respondents in their reply statement. Annexure-R1 office note pertaining to selection proceedings discloses that the vacancy was announced to the Employment Exchange as an unreserved/since the communities ^{one} xxx entitled to reservation (SC & ST) have already been given their due share of representation in the cadre as per standing orders. The proceedings further state that the SC community has been over represented in the Division. Out of 73 employees in the cadre of EDDA/EDMC in the unit 12 belong to SC. As per the rules they are entitled to get 10% representation. Hence, the present selection was notified and conducted as if it is unreserved in which the applicant was also considered but he could not be selected.

7. There is no material before us to contravert the statement regarding the representation of the SC in the cadre so as to enable us to accept the contention of the applicant.

8. In the light of these discussions we are of the view that there is no substance in the application which is only to be rejected. Accordingly, we dismiss the same. There will be no order as to costs.


13.7.92
(N.DHARMADAN)
JUDICIAL MEMBER


13.7.92
(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

v/-