

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.497/98

Monday, this the 18th day of December, 2000.

CORAM:

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Shaji Mathew,
Kunnel House,
Vazhavara, Idukki.

- Applicant

By Advocate Mr K Balakrishnan

Vs

1. Chief Post Master General,
Thiruvananthapuram.
2. Sub Divisional Inspector of Post,
Kattappana,
Idukki.
3. Superintendent of Posts,
Idukki District,
Thodupuzha.P.O.
4. Latheesh.M.J.
Muthuparakkunnel,
Kalvery Mount.P.O.
Kattappana.

- Respondents

By Advocate Mr Govindh K Bharathan, SCGSC(for R.1 to 3)


By Advocate Mr PC Sebastian(for R-4)

The application having been heard on 18.12.2000, the Tribunal
on the same day delivered the following:

O R D E R

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


The applicant and the 4th respondent were among the
candidates considered for appointment to the post of Extra
Departmental Delivery Agent(EDDA for short), Vazhavara Post



Office. The grievance of the applicant is that while he was more meritorious inasmuch as he has secured 395 marks out of 600 and the 4th respondent had got only 355 out of 600 at the SSLC Examination for the simple reason that applicant's sister is working as Postmaster in the same post office, the applicant was denied appointment and the 4th respondent who is less meritorious has been selected and appointed. Applicants states that the denial of appointment to the applicant who is more meritorious is in violation of the principles of equality enshrined in Article 14 of the Constitution. The applicant therefore challenges the selection and appointment of the 4th respondent as ED Agent, Vazhavara Post Office and seek a direction to the respondents to select and appoint the applicant on the post.

2. The official respondents do not controvert the factual averments that the applicant had secured 395 marks out of 600 and the 4th respondent got only 355 marks out 600 at the SSLC Examination and that marks in the SSLC examination is a criterion for selection. However, respondents 1 to 3 contend that as the sister of the applicant is working as Postmaster in the same Post Office, he is not eligible for appointment as per DG's letter dated 25.3.97(Annexure-R3).


3. The fourth respondent has filed a reply statement contending that as he has been selected in a due process of selection, the applicant who participated in the selection



proceedings has no right to challenge the selection. He has further contended that, higher marks in the S.S.L.C. examination is not the sole factor in determining the merit and that the applicant, who's father working in the same office, is not entitled for appointment.

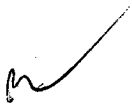
4. We have heard the learned counsel on either side and have perused the pleadings and other materials placed on record. An identical question whether a person can be denied appointment as ED Agent on the ground that his close relative is working in the same Post Office came up for consideration before the Apex Court in Baliram Prasad Vs Union of India and others ((1997) 2 SCC 292) wherein it has been held as follows:

"It is difficult to appreciate how pursuant to the said decision the appellant could have been treated as not qualified to be appointed as Extra Department Branch Postmaster in the Post Office. His cousin brother was working on a lower post of Extra Department Delivery Assistant. He would be performing a manual work of effecting delivery of postal articles to the addressees. Only because the appellants cousin brother was working as a Peon in the said Post Office doing such manual work it passes our comprehension how the appellant could not be appointed as Extra Department Branch Postmaster in the said Post Office. There is no rhyme or reason underlying such an



approach on the part of the authorities. To say the least it would be totally arbitrary and irrational. Even if there may be any risk of fraud etc. even non-relatives can be guilty of frauds while on the contrary relatives may not be prone to such frauds. But even if they are, appropriate procedure can be adopted for detecting such frauds and bringing the guilty to book or even for effectively checking such tendencies by having appropriate vigilance machinery. But to refuse to appoint a more meritorious candidate only on the ground that his cousin brother was working in the same Post Office would, in our view, be totally an arbitrary exercise of power which cannot be countenanced on the touchstone of Article 14 of the Constitution of India...Once it is found that the appellant was more meritorious as compared to respondent 7 and deserves to be appointed on merits and his claim was not considered on a totally irrational and arbitrary ground, the legal consequences resulting from the voiding of such an illegal exercise must follow."

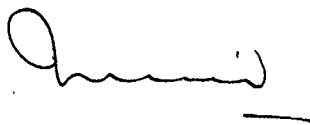
It is seen that taking note of this ruling of the Apex Court, the D.G., Posts has issued a letter dated 17.2.99 to be circulated to all Circles recalling the earlier instructions. Though the instruction was issued recalling the earlier instruction only in February, 1999, the ruling of the Apex



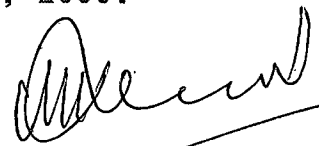
Court is to be followed as the law of the land. The fact situation in Baliram Prasad's case was exactly identical to the facts of this case. The applicant who admittedly was more meritorious having secured higher marks was denied appointment only on the ground that his sister is working in the same office. This practice has been deprecated by the Apex Court. We do not find any reason to deviate from the principle laid down by the Apex Court in Baliram Prasad's case.

5. In the result, the application is allowed. The selection and appointment of the 4th respondent ignoring the superior merit of the applicant solely for the reason that he happened to be the sister of an employee in the same Post Office is set aside. The official respondents are directed to appoint the applicant as EDDA, Vazhavara Post Office, if he is not otherwise unsuitable on the basis of the superior merit as between the applicant and the 4th respondent. The above exercise shall be completed and necessary orders passed within a period of one month from the date of receipt of a copy of this order. No costs.

Dated, the 18th of December, 2000.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

trs

Annexure R-3(A): Photo copy of the letter No. 17-125/93-EDA & Trg. dated 25.2.1997 issued by Assistant Director General (ED & TRG).