

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.499/03

Thursday this the 25th day of March 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

Narendran N,
S/o.Madhavan Nair,
Patterikandy House,
Kalpathoor P.O., Meppayur (via),
Calicut District - 673 524.

Applicant

(By Advocate Mr.O.V.Radhakrishnan)

Versus

1. Assistant Superintendent of Post Offices,
Vatakara South Sub Division,
Vatakara - 673 101.
2. Superintendent of Post Offices,
Vadakara Division, Vadakara - 673 101.
3. Director of Postal Services,
Office of the Post Master General,
Northern Region, Calicut.
4. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.
5. Baiju N.D.,
S/o.Devi,
Residing at : Nanampoyilil House,
Kalpathur PO, GDS Mail Deliverer,
Kalpathur BO, Vadakara.

Respondents

(By Advocate Mr.C.Rajendran, SCGSC [R1-4] &
Mr.M.R.Rajendran Nair [R-5])

This application having been heard on 25th March 2004 the
Tribunal on the same day delivered the following :

O R D E R

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


The applicant who was a candidate for selection and
appointment to the post of Gramin Dak Sevak Mail Deliverer (for
short GDS MD), Kalpathur has filed this application aggrieved by
rejection of his candidature for the sole reason that he did not
produce evidence to show that his independent income was derived

from landed property and the appointment of the 5th respondent who had secured much lower marks than the applicant in the SSLC examination. It is alleged in the application that the applicant had secured 78.83% marks in the SSLC examination, that he fulfilled all the eligibility conditions, that he had produced Annexure A-2 certificate showing that his annual independent income was 42,000/- and that despite all these the official respondents have selected and appointed 5th respondent who had obtained much lower marks than him in the SSLC, namely, 55.5%. The applicant has challenged Annexure A-1 notification which prescribes the requirement of independent income derived from the landed property as also Annexure A-2 in which it has been stipulated that preference would be given to persons who has income from the landed property, The applicant has sought to set aside the offending clause in Annexure A-1 and Annexure A-2 for a declaration that the prescription of income from landed property as pre-condition for appointment is unconstitutional, ultra vires, void and inoperative, for setting aside the selection and appointment of the 5th respondent and for a direction to the respondents to review the selection and appointment made in favour of the 5th respondent and to consider the applicant for appointment to the post of GDS MD, Kalpathur.

2. The respondents 1-4 in their reply statement seek to justify the selection of the 5th respondent on the ground that as per the extant Rules preference goes to a person whose independent income is received from landed property. The 5th respondent also has filed a reply statement seeking to justify his selection and appointment on the ground that he had proved that he had independent income derived from the landed property

while the applicant has not done so.

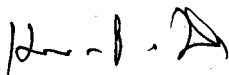
3. We have heard Shri.O.V.Radhakrishnan, the learned counsel of the applicant and Shri.C.Rajendran,SCGSC learned counsel for the respondents 1-4 and Shri.M.R.Rajendran Nair for the 5th respondent and perused the material on record. The undisputed fact of the case is that the applicant is a person who had secured highest marks in the SSLC examination among the candidates while the 5th respondent who has been selected and appointed had obtained only much lower marks than the applicant and that denial of appointment to the applicant was on the sole ground that the applicant did not produce the evidence on the date of application that he had landed property from which he derived independent income. The Tribunal had in O.A.1540/97 considered whether the prescription that persons with independent income derived from landed property should be given preference is valid or not. The Tribunal held that such a prescription is unconstitutional. The matter was carried to the Hon'ble High Court by the Department of Posts. The Hon'ble High Court has vide its judgement in Directorate General of Post Offices Vs. C.A.T. Ernakulam Bench reported in 2002 (1) KLT 554 upheld the decision of the Tribunal. Therefore the prescription of the same criteria in Annexure A-1 and Annexure A-2 which are only administrative orders against the judicial pronouncement are totally invalid and inoperative. The action on the part of the respondents in ignoring the superior merits of the applicant and discarding his candidature merely for the reason that he did not produce certificate to the effect that his independent income was derived from landed property is discriminatory, arbitrary and against the provisions of equality enshrined in Article 14 and



Article 16 of the Constitution. The applicant had already produced certificate from the competent authority that he was deriving independent income, that should have been accepted by the respondents.

4. In the light of what is stated above we find that the action on the part of the respondents 1-4 in selecting the 5th respondent for the post of GDS MD, Kalpathur discarding the superior merits and claims of the applicant is arbitrary and irracionale. We set aside the appointment of the 5th respondent, and direct the respondents 1-4 to consider the appointment of the applicant as he is undoubtedly the ^{most} meritorious candidate, as he has independent means of income as is evident from the Income Certificate and to appoint him as such if he is found otherwise not unsuitable for appointment within six weeks from the date of receipt of a copy of this order.

(Dated the 25th day of March 2004)



H.P.DAS
ADMINISTRATIVE MEMBER

asp



A.V.HARIDASAN
VICE CHAIRMAN