

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
KXX XXX

502

1991

DATE OF DECISION 7-2-1992

R.Rajkumaran Pillai Applicant (s)

Mr.P.S.Biju Advocate for the Applicant (s)

Versus

Sub Divisional Inspector, Respondent (s)
Department of Posts, Shertallay Sub Divn.,
Shertallay & Another

Mr.Mathews J Nedumpara 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?
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal? *NO*

JUDGEMENT

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

The applicant who has passed the S.S.L.C.

Examination in 1981 had registered his name in the

Employment Exchange, Shertallay in the year 1981 with

Registration No.1004/81. According to him he had

been continuously working as a Casual Mazdoor Messenger

at the Pattanakkad Post Office under the first res-

pondent, SDI, Shertallay. Now that, a regular post

of ED Messenger at the Pattanakkad Post Office has

been created, the first respondent placed a requisition

with the Employment Exchange for sponsoring candidates

to fill up the post. As the Employment Exchange, Shertallay town sponsored only the names of candidates who had registered their names prior to 1980, the first respondent informed the applicant that, he would not be considered for selection. According to the applicant, as he had been working as casual messenger for about 10 years and as the post of ED Messenger involves the same duties which ~~was~~ ^{were} being performed by him for all these years, he is entitled to be regularised in that post. / ~~non-consideration of his~~ ⁽²⁾ case for regularisation or for appointment in the post of ED Messenger, Pattanakkad is a violation of the principles of natural justice. Therefore, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, for a direction to the first respondent to regularise him in the post of ED Messenger, Pattanakkad, considering his past services ~~and in the~~ ^{or} alternative to direct the first respondent to consider him also for regular selection to that post. The applicant had also prayed as an Interim Relief for a direction to the first respondent to consider him also for selection to the post of ED Messenger provisionally subject to the outcome of this application. By order dated 5.4.91 this Tribunal ~~has~~ directed the first respondent that the applicant should also be considered for selection to the post of ED Messenger, Pattanakkad, provisionally and subject to the outcome of this application.

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2. The respondents in their counter affidavit have contended that as the applicant had been engaged only occasionally as a Cooly messenger, he is not entitled to be regularised in the post of ED Messenger. It has also been contended that as his name was not sponsored by the Employment Exchange, he is not entitled to be considered for regular selection. It has been further contended that the claim of the applicant that he has been working as Casual messenger for 10 years continuously is not admitted as the records of his employment are not maintained in the office. According to the respondents, the applicant who was engaged occasionally as a Cooly messenger on payment on piece-rate basis has no preferential claim for selection.

3. We had directed the first respondent to produce the file relating to the selection of ED Messenger, Pattanakkad and the first respondent has produced the file for our perusal. We have heard the counsel on either side and have also carefully perused the pleadings and documents. We have also gone through the file relating to the selection of the ED Messenger, Pattanakkad.

4. The post of E.D.Messenger, Pattanakkad is a newly created post. Therefore the applicant cannot be said to have been working on that post. But before/post the work of delivering

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incoming telegrams was being entrusted to casual messengers and the respondents have admitted in the reply affidavit that the applicant was being engaged as a cooly messenger to deliver the telegrams, though they have indicated that the details of the period for which the applicant was so engaged are not available in the office. The contention of the respondents in the reply statement that the case of the applicant that he has been working as casual messenger is not admitted is against the admission contained in the earlier part of the reply affidavit that he had been engaged as cooly messenger occasionally. Anyway, from the admission in the reply affidavit it is evident that the applicant has been engaged as a casual messenger for delivering the telegrams received in that Post Office.

As by creation of the regular post of ED Messenger the work which the applicant was performing on a casual basis will be carried out by the regular incumbent in the post of ED Messenger to be selected and appointed. In such circumstances, we are of the view that, on the basis of his casual service and experience in the work, though not sponsored by the Employment Exchange, the applicant is also entitled to be considered for regular selection. We have held in several cases that, to stipulate a date of registration in Employment Exchange for the purpose of sponsoring candidates is not justified. In that view of the matter also the applicant

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is entitled to be considered for a regular selection to the post. From the file relating to the selection produced by the respondents, it is seen that the applicant along with candidates sponsored by the Employment Exchange was considered. Out of the nine candidates sponsored by the Employment Exchange, seven turned up, So, including the applicant eight candidates were interviewed. Serial Nos.1 to 5 were not considered suitable, as they were unable to ride cycle which is a requisite qualification for the post of ED Messenger. Serial No.6 in the table prepared by the first respondent is P.Maniyappan, Serial No.7 is the applicant and ~~in~~ Serial No.8 is one P.Krishnappan. The first respondent has stated in the proceedings that, a written test was held in which Sl.No.6 scored 27 marks out of 50, Sl.No.7 scored 26 marks out of 50, and Sl.No.8 scored 12 marks out of 50. It has also been stated that, Sl. No.6, P.Maniyappan is residing near Pattanakkad and as he has scored the highest marks in the written test, he is more eligible to be selected and appointed than the applicant, who has scored only 26 marks, whose residence is at Velamangalam which is comparatively at a ~~xxxxxx~~
~~xxxxxx~~ more distant place than that of Sl.No.6. The learned counsel for the applicant argued that the first respondent has ignored the marks of the candidates in his SSLC Examination and conducted a written test with malafide intention of pulling down the applicant, who

has obtained more marks in the SSLC Examination than the Sl.No.6. The learned counsel invited our attention to the instructions of the Post Master General, in regard to the method of selection which says that, among the candidates who have passed the SSLC Examination, the person who ~~has~~ obtained higher marks ⁸ will have the better chance to be selected. He also referred to the instructions of the DGP&T which says that, in regard to the candidates for the post like ED Messenger the residential qualification is that, ^{reside in or} they should as far as possible/near the place of their work ⁸.

The learned counsel further argued that the SDI had not taken into account the fact that the applicant's ^{were} services/being utilised for a long period for the work ⁸ of delivering messages, and the fact that the post of ED Messenger is now being created for performing these functions. We find that there is considerable strength in this argument. The file relating to the selection discloses that, what was intended was only to hold an interview of the candidates. The candidates were not informed that a written test would be held. It is also an admitted fact on either side that, usually for making selection to the post of ED Agents, the postal authorities do not conduct a written test. So, we are at a loss to ⁸ understand as to why the first respondent ~~has~~ conducted ⁸

a written test in this case. We are of the view, that the first respondent should have made the selection strictly in accordance with the instructions of the DGP&T and the PMG, as also the practice until ~~then~~ then.

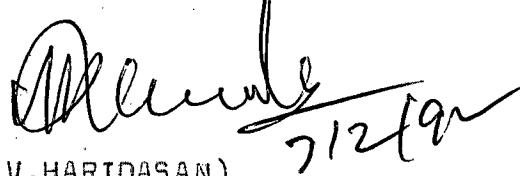
The necessity to deviate from the regular practice of making the selection on the basis of the marks obtained in the SSLC Examination and the other preferential criteria and to hold a written test is not justified. The qualification prescribed for the post of ED Messenger is only that the candidates should have a working knowledge of local language, English and simple ~~Arithmathics~~ ^{Arithmathics}. As the candidates considered by the first respondent had passed SSLC Examination, it was not necessary to hold a written test to ascertain whether they have a working knowledge in English, Malayalam and ~~Arithmathics~~ ^{Arithmathics}, because a person who has passed the SSLC Examination can be taken to have a working knowledge in these subjects to the standard of requirement to work as an ED Messenger. Therefore, we are of the view that the first respondent has to be directed to make the regular selection from among the three candidates found eligible, ^{and knowing cycling} i.e. Sl.No. 6, 7 and 8 in the table prepared by him on the basis of the marks obtained by each of them in the SSLC Examination and considering the past experience of the candidates in delivering messages.

5. In the result, the application is disposed of with the following directions:

a) The first respondent is directed to make the selection from the 3 candidates namely, Maniyappan, Rajakumaran (the applicant) Pillai and P.Krishnappan, Sl.Nos.6, 7 and 8 in the table prepared by him on the basis of the marks obtained by each of them in the SSLC Examination, without considering the marks in the written test, taking into account also the past experience of the persons in the field of delivering telegram messages. It is also made clear that the instructions regarding residential qualification in the case of ED Messenger is only that the candidate should as far as possible reside in or near the place of their work.

b) The selection in the manner indicated in Close-A should be completed within a period of 15 days from the date of communication of this order.

6. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

7.2.1992