

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 508/99

Friday this the 27th day of July, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

D.Thomas
Extra Departmental Delivery Agent
cum Extra Departmental Mail Carrier
Akamkudy P.O.
Mavelikkara.

Applicant

[By advocate Mr.P.C.Sebastian]

Versus

1. The Superintendent of Post Offices
Mavelikkara Division
Mavelikkara P.O.
2. The Post Master General
Central Region
Cochin - 682 016.
3. The Director General of Post
Department of Post
Dak Bhavan
New Delhi.

Respondents

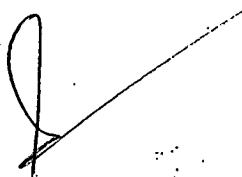
[By advocate Mr.S.Krishnamoorthy, ACGSC]

The application having been heard on 27th July, 2001,
the Tribunal on the same day delivered the following:

O R D E R

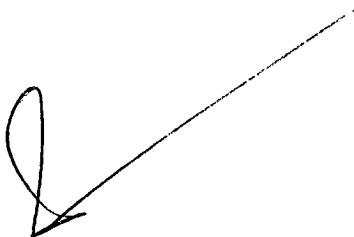
HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-5, to declare that he is entitled to be selected as postman in the vacancy notified for the physically handicapped in the examination for promotion/recruitment to the cadre of postman held on 26.4.98 in Mavelikkara Division and to direct the 1st respondent to select him as postman against the vacancy notified for the physically handicapped in the examination for promotion/recruitment to the cadre of postman held on 26.4.98 with all consequential benefits.



2. The applicant is working as Extra Departmental Delivery Agent-cum-Extra Departmental Mail Carrier, Akamkudy Post Office. He is orthopaedically handicapped. First respondent held a departmental examination for recruitment of postmen in Mavelikkara Division on 26.4.98 as per the extant recruitment rules. One vacancy was reserved for the orthopaedically handicapped. The applicant appeared for the examination. He came out successful obtaining over 73% marks. As per A-4 result was published. One P.R.Vijayamohan, EDDA, Arunoottimangalam, ranking 4th in the merit has been selected in the quota reserved for the physically handicapped, overlooking the applicant's claim for selection in the reserved quota of the physically handicapped. His representation has been rejected as per A-5. A candidate selected on merit though belongs to a reserved category cannot be considered to be adjusted against the reserved quota. As such P.R.Vijayamohan cannot be treated as selected against the vacancy notified for the physically handicapped. Applicant being the only eligible and successful candidate, he should have been selected against the vacancy notified for the physically handicapped.

3. Respondents resist the OA contending that there was one vacancy earmarked for orthopaedically handicapped candidate and there were two eligible candidates. P.R.Vijayamohan secured 126 marks whereas the applicant secured only 110 marks. Vijayamohan stood higher in merit in the written examination than the applicant. Hence Vijayamohan was selected against the physically handicapped quota.



4. Learned counsel appearing for the applicant argued that the respondents have gone wrong in selecting P.R.Vijayamohan against the reserved vacancy for physically handicapped as a person who is entitled to get in the merit quota should not be included in the reserved quota. In support of this stand , he drew our attention to the ruling in Ritesh R.Sah Vs.Dr.Y.L.Yamul and others 1996 3 SCC 253. That was a matter where a writ petition under Article 32 of the Constitution of India was filed raising the question whether a candidate belonging to Scheduled Caste or any other reserved category even if he is entitled to be selected for selection for admission in the open competition on the basis of his own merit yet can he be counted against the quota meant for reserved category or will he be treated as open competition candidate. Here the question is not relating to communal reservation. The ruling relied on by the learned counsel for the applicant deals with the question of communal reservation. That being so, this ruling does not apply to the facts of the case at hand.

5. Learned counsel appearing for the applicant further argued that if Vijaya Mohan is considered in the merit quota, the applicant can be considered in the physically handicapped quota and then no harm is caused to Vijay Mohan. If this argument is accepted it will be affecting the person of the lowest rank in the merit quota. That person is not in the party array. There cannot be an order against any person behind his back. In that situation, the argument advanced by the learned counsel for the applicant cannot be accepted.

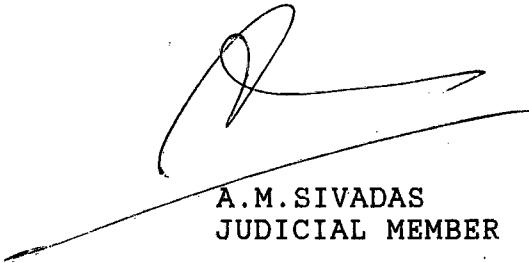
6. Learned counsel appearing for the applicant submitted that since the vacancy earmarked for Ex-Serviceman is not filled up, the applicant can be considered in that vacancy. This particular submission is only to be rejected for the simple reason that there is no such plea raised in the OA. A plea which is not raised cannot be considered.

7. Accordingly the OA is dismissed.

Dated 27th July, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

A-5 True copy of letter No.B2/44/Exam-99 dated 21.8.98 issued by the 1st respondent.