

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 510/90 ~~xxxxxx~~ 2009

DATE OF DECISION 31-12-91

Jayasree.O Applicant (s)

Mr M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

The Sub Divisional Inspector Respondent (s)
Calicut North Sub Division,
Calicut and 2 others

Shri K.A. Cherian, ZCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Vice Chairman(A)

The Hon'ble Mr. N. Dharmadan, Member(A)

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

JUDGEMENT

N. Dharmadan, M(J)

In this application the complaint of the applicant is that his regular appointment as Extra Departmental Messenger at Calicut Medical College Post Office is sought to be terminated as per the impugned order at Axe-III on the sole ground that the applicant does not know cycling and that the original selection itself was irregular.

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2. The applicant was appointed as ED Messenger with effect from 4-8-89 after following the normal procedure and formalities. The applicant had stated in her application that she knows cycling. But when the selection and appointment was made respondents 1 and 2 did not subject the applicant to any cycling test, though in fact she knew cycling during the relevant time. However, she was selected and Axe-I Memorandum dated 3-8-89 was issued appointing her provisionally to that post. By Axe-II order dated 27-10-89 her service has been extended. She is even now continuing in the post. While so the Sr. Supdt. of Post Offices, Calicut issued Axe-III memorandum dated 18-5-90 intimating the proposal to terminate her services on the sole ground that the records revealed that she had not fulfilled the required condition of ^{knowledge of} cycling prescribed for the ED post.

3. The only question arises for consideration is about the ^{facts of the} cycling test and the applicants knowledge of cycling at the relevant time of selection.

During the course of the argument, the learned counsel for the respondents produced the files pertaining to

the selection of the ED Messenger. The said files do not disclose that a cycling test was actually conducted for ascertaining whether the candidates were having the skill of riding cycle and knowledge of cycling. The minutes indicate that in the column 'whether knows cycling', the selecting authority simply noted 'yes' or 'No' against each candidate presumably without having conducted a cycling test as part of the selection process or making any physical test or verification in this respect. After the ~~xxxxxx~~ appointment of the applicant, based on some complaint by a defeated candidate in selection, impugned Axe-III memorandum had been issued. It had been issued without even a verification as to whether the applicant satisfies the requirements of knowledge/ of cycling.

4. The contention advanced by the learned counsel for the respondents is that the applicant did not prove knowledge of cycling at the time of selection which is a pre-requisite condition for selection. The respondents further submit that though the applicant had stated in the applicant that she knew cycling, the

Sub Divisional Inspector (Postal) Calicut North

Sub Division, the appointing authority, found at the

time of selection that she had no knowledge of cycling

and that she did not satisfy the requirements of cycling ^{knowledge of}

at the time of selection. The result was clearly

recorded in the selection files also. This was,

however, fully denied by the applicant. When the

files were perused, as indicated above, we found that

no cycling test was conducted at the time of selection

and no fault can be attributed to the applicant. The

respondents have no case that the applicant does not

know cycling at present and thereby the department is

handicapped. Their case is that the applicant did

not satisfy the requirements of cycling ^{knowledge of} at the time

of original selection. This can be proved only if

some records are made available pertaining to the

selection to satisfy us that a cycling test has been

conducted during the original selection. No such

records are available except a statement in the ^{bland}

minutes of selection proceedings as stated above

'Yes' and 'No' in the particular column which

provides for the entry whether the candidate 'knows

cycling'. This is not sufficient.

5. In fact it has been specifically stated in the application itself that the selection and the appointment of the applicant was made without subjecting her to a cycling test for ascertaining whether she had the knowledge of cycling at the relevant time. It is also relevant to state that the respondents have not produced any materials or documents to show that such a test of cycling was conducted at the time of selection.

6. Under these circumstances, we can only reasonably presume that no such test for physical verification of skill of cycling was conducted and that the applicant was appointed after finding her fully suitable for the post. The appointment given to her in this manner cannot be denied to her simply because some complaint has been lodged against the selected candidate in the original selection. Complaints from the defeated candidates would not normally be encouraged or entertained unless they bring to light some grave procedural irregularity or fraud in the selection which results in unjust benefit to an ineligible person.

7. In the instant case the applicant asserts that she knew cycling even at the time of original selection and even now she can exhibit the skill by riding a cycle in any test or selection process. Though the assertion of the applicant is disputed, the respondents are unable to satisfy us as to whether a cycling test was actually conducted at the time of selection.

8. When the basic facts are not proved by producing the necessary documents, we are persuaded to accept the case of the applicant and we are inclined to uphold the selection of the applicant and to quash the impugned order at Axe-III, the order of cancellation of the selection of the applicant.

9. Under these circumstances having regard to the facts of the case, we are of the view that the application deserves to be allowed. Accordingly, we allow the application on the above lines and quash Axe-III order. There shall be no order as to costs.

Dharmadan
(N. Dharmadan)
Member (Judicial)

S. Mukerji
(S.P. Mukerji)
Vice Chairman