

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.
XXXXX8.

511/ 199 1989

DATE OF DECISION 10.8.1990

N.K Muraleedharan Applicant (s)

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

Versus

The Sub Divisional Inspector Respondent (s)
Posts, Mananthavady and another

Mr. P.Santhosh Kumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant who is working as an Extra Departmental Delivery Agent at Tharuvana Post Office in a leave vacancy of Shri V.Balakrishnan apprehended termination and approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- i) Direct the respondent to consider the applicant for regular selection to the category of Extra Departmental Delivery Agent, Tharuvana P.O.
- ii) Direct the respondents not to terminate the services of the applicant as EDDA, Tharuvana.
- iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and
- iv) Grant the cost of this Original Application.

2. After admitting the application we passed an interim order directing that "the applicant should be allowed provisionally to appear in the interview for selection for the post of EDDA being held on 28.8.89 or any adjourned date subject to his being otherwise eligible for such an appointment. The result of the interview should not be declared until further orders".

3. When the case was taken up for hearing , the learned Sr.Central Govt.Standing Counsel appearing on behalf of the first respondent produced before us the minutes of the selection proceedings for appointment of a regular person in the existing vacant post. It shows that out of the seven candidates considered, the applicant was placed first in the merit position. But since his name was not sponsored by the employment exchange, no final decision was taken for selecting him. The learned Sr.Central Govt. Standing Counsel contended on the basis of the counter affidavit filed in this case that persons who had registered their names earlier than that of the applicant were given priority on the basis of the registration. Admittedly the applicant was registered later in the employment exchange.

4. The applicant was also included in the list of candidates and a selection was conducted considering the claims of the applicant also provisionally as directed by this Tribunal in the interim order passed in this case on 25.8.89. The decision, though not finalised, is to the effect that the applicant would have been selected, but for the departmental instruction prohibiting the consideration of candidates not sponsored by the employment exchange . The Tribunal is consistently taking the view that non-consideration of a candidate

simply because his name was not sponsored by the employment exchange is not a ground for excluding the candidates otherwise qualified from the field of choice.

5 However, in the light of the minutes of selection produced before us this case can be disposed of without deciding any of the issues, but with the following direction having regard to the facts and circumstances of this case. The first respondent may finalise the selection, notwithstanding the fact that the applicant was not sponsored by the employment exchange and declare the result and make the appointment in accordance with law. This application is disposed of as above.

There will be no order as to costs.


10.8.90
(N Dharmadan)
Judicial Member

Hon'ble Shri NV Krishnan, Administrative Member

6 I agree with the directions in para 5 of my learned brother's judgment but for the following special reasons.

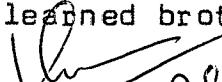
7 The applicant commenced his service as EDDA on 1.12.88 as a mere substitute of the regular incumbent Shri M Balakrishnan. I am of the view that if, while a substitute is engaged, the post falls vacant and the process of regular selection to fill up that post is initiated, there is no obligation on the part of the department to consider the candidature of the substitute

unless his name has been sponsored by the Employment Exchange.

8 The case of a person provisionally appointed by the Department itself pending selection is different. We have held that the Department is obliged to consider his name for regular selection, even if it is not sponsored by the Employment Exchange.

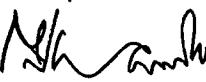
9 In the present case, the regular incumbent was on leave for more than 180 days from 1.12.88 and thereby ceased to be an ED Agent in accordance with the standing instructions. As the applicant continued to hold the post of EDDA even after the expiry of 180 days, he cannot, after such expiry, be treated as a substitute. Obviously, the department has suffered his continuance, even if he was not appointed provisionally. Hence, after the expiry of 180 days from 1.12.88 the applicant should be deemed to be a provisional appointee of the Department for the purpose of being considered for selection even though his name is not sponsored by the Employment Exchange.

10 Hence, I concur with the direction given in para-5 of the judgment of my learned brother.


(NV Krishnan)

ORDERS OF THE BENCH

The application is disposed of with the directions in para-5 supra.


(N Dharmadan) (o. 8:96)

Judicial Member


(NV Krishnan)

Administrative Member