

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 28-6-1990

Present

Hon'ble Shri SP Mukerji, Vice Chairman
&
Hon'ble Shri AV Haridasan, Judicial Member

Original Application No.518/89
&
Original Application No.563/89

DA-518/89

Rani.K.D.

Applicant

v.

1. Sub Divisional Inspector of Post Offices, Guruvayoor-680 101.
2. Superintendent of Post Offices, Trichur Division, Trichur-680 002.
3. Director of Postal Services, Calicut.
4. Union of India, represented by its Secretary, Ministry of Communications, New Delhi.
5. Chief Post Master General, Kerala Circle, Trivandrum.
6. Shri EJ Thomas, Edakkalathur House, P.O. Orumanayur, Trichur District

Respondents

M/s OV Radhakrishnan,
K Radhamani Amma &
KS Gopimohanam Nair

Counsel for the applicant

Mr P Santhoshkumar, ACGSC

Counsel for the respondents 1-5

Mr K Ramakumar

Counsel for the respondent-6

OA-563/89

E.J.Thomas

- Applicant

v.

1. Union of India represented by the Director General of Posts, New Delhi.
2. The Post Master General, Department of Posts, Kerala Circle, Trivandrum.
3. The Superintendent of Post Offices, Trichur Division, Trichur.
4. K.D.Rani, Extra Departmental Branch Post Master, Madu-680 512. - Respondents

M/s VR Ramachandran Nair & P Nandakumar

- Counsel for the applicant

Mr TPM Ibrahimkhan

- Counsel for the respondents 1-3

Mr OV Radhakrishnan

- Counsel for the respondent-4

JUDGEMENT

(Shri AV Maridasan, Judicial Member)

Since the parties to both these applications are common and as the causes of action are closely related, these two cases are being heard jointly and are being disposed of by this common order.

2. Smt Rani.K.D. the applicant in OA-518/89 has filed the above said application for a declaration that she is fully eligible and qualified to be appointed as Extra Departmental Branch Post Master, Madu and that her services are not liable to be terminated and for a direction to the respondents not to terminate her services on the basis of

the impugned orders at Exhibit-A4 and A8. This application was filed by her in the following background. She was provisionally selected for appointment as EDBPM by the second respondent by memo dated 5.4.1989. She was deputed for a training for one week and after successful completion of the training, she was provisionally appointed as EDBPM, Madu Post Office vide memo of the first respondent dated 8.5.1989. She executed a fidelity bond and was functioning as EDBPM, Madu. While the applicant was thus working as EDBPM, she was served with a notice(Exhibit-A4) dated 14.8.1989 issued by the second respondent purportedly under Rule 6 of the Extra Departmental Agent(Conduct and Service) Rules, 1964 stating that on enquiry made in regard to the conduct of the selection on the basis of a complaint, certain irregularities were revealed and requiring her to submit her representation, if any, as to why her services should not be terminated.

The irregularities alleged to have been noted were:

- "1. Neither income condition nor residence condition is satisfied.
2. Selection of the BPM violates all norms - residence, income and marks in SSLC".

The applicant submitted a detailed representation stating that the allegations had no factual foundation, that she satisfied the residence qualification, educational qualification and all the requirements and that therefore her services were not liable to be terminated under Rule 6. A copy of the said representation is at Exbt.A7. On receipt of this representation

the first respondent issued the impugned order at Exbt.A8 stating that the explanation was not satisfactory and that it was proposed to terminate her services. Challenging the impugned orders Exbt.A4 and A8 the applicant has filed ~~for~~ this application under Section 19 of the Administrative Tribunals Act. She has stated that she being the most eligible candidate among those considered having the requisite educational, residential and income qualifications had been validly selected and appointed and that on the basis of some baseless complaint, her services are not liable to be terminated ~~and~~ ^{that} Rule-6 of the Extra Departmental Agents (Conduct and Service) Rules cannot be invoked for terminating her services.

3. The respondents 1 to 5 are the Sub Divisional Inspector of Post Offices, Guruvayoor, Superintendent of Post Offices, Trichur Division, Director of Postal Services, Calicut, Union of India represented by the Secretary, Ministry of Communications and Chief Post Master General, Kerala Circle, Trivandrum. The 6th respondent is one Shri EJ Thomas who got himself impleaded in the proceedings filing M.P.51/90 claiming that he was entitled to be selected and appointed as EDBPM, Madu in the place of the applicant since her appointment was irregular. On behalf of the respondents 1 to 5 a reply statement was filed stating that on receipt of complaints regarding irregularities in selection, the third respondent, the Director of Postal Services, Calicut made enquiries in the

matter, that in the enquiry it was revealed that neither income condition nor residence condition was satisfied, that the selection violated all norms of residence, income and marks in the SSLC, that the applicant was not a resident of the delivery jurisdiction of the Madu Extra Departmental Post Office, that she was a resident of Orumanayur village, the that therefore/decision of the respondents to terminate the services of the applicant under Rule-6 of the E.D.Agent (Conduct and Service) Rules being just and proper, the applicant is not entitled to the reliefs claimed. The 6th respondent in a separate statement filed by him has contended that the decision of the authorities to terminate the services of the applicant under Rule-6 is just and proper as she was selected in violation of the rules regarding recruitment and that therefore the application is liable to dismissed.

4. During the pendency of this application OA-518/89, the 6th respondent therein has filed OA-563/89 impleading the Union of India represented by Director General of Posts, New Delhi, the Post Master General, Kerala Circle, Trivandrum, the Superintendent of Post Offices, Trichur Division, Trichur and KD Rani, EDBPM, Madu(the applicant in OA-518/89). In this application Shri Thomas has alleged that he, a resident of Orumanayur Panchayat having passed SSLC examination and earning an independent income by engaging in part-time job as an autorikshaw driver was the most eligible candidate to be selected, that the selection and appointment of the 4th

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respondent herein who is the applicant in OA-518/89 being illegal inasmuch as it has been made in violation of the rules and that regarding selection, *it is necessary that the appointment of* the 4th respondent is declared illegal and praying that the 1 to 3 respondents *may be directed to appoint him in that post.*

5. On behalf of respondent 1 to 3, the learned Additional Central Government Standing Counsel has filed a statement stating that since the appointment of the 4th respondent has been set aside and as the 4th respondent has filed OA-518/89 challenging that order, this application is devoid of any merit. The 4th respondent who is the applicant in OA-518/89 has filed a reply statement stating that her selection and appointment being validly made are not liable to be annulled and that the allegations made in the application are devoid of any bonafides.

6. Since the decision in OA-518/89 will decide the question involved in OA-563/89 also, we heard the learned counsel for all the parties in these two cases together and we have also carefully gone through the documents produced on the respective sides. Smt.KD Rani, the applicant in OA-518/89 was appointed provisionally as EDBPM, Madu by Exbt.A3 order dated 8.5.1989 by the Sub Divisional Inspector of Post Offices, Guruvayoor after completion of one week's training as directed by his order dated 24.9.1989 at Exbt.A2. While she was thus working as EDBPM, Madu she was served with the Exbt.A4 memo which reads thus:

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"On receipt of complaints alleging irregularities in the selection of BPM Madu, DPS Calicut made enquiries into the case. The enquiries revealed the following irregularities:-

1. Neither income condition nor residence condition is satisfied.
2. Selection of the BPM violative all norms - residence income and mark in SSLC

Hence it is proposed to terminate your services under Rule-6 of the ED Agents (conduct and Service) Rules 1964, You may forward your representation should be received here within ten days of receipt of this letter".

Smt.KD Rani submitted her representation dated 23.8.1989 (Exbt.A7). In this representation she had stated that she was residing in Building No.9/95 in Madu in Kadappuram Panchayat from June 1988, that prior to that she has been residing with her parents in Orumanayur village, that she had on 16.2.1989 purchased $1\frac{1}{2}$ cent of land in R.S.No.163 - 9 constructed a house there and started living there permanent thereafter, that she therefore satisfies the residential qualification, that she has a personal income of Rs.3,600/- per annum, that she has secured 250 marks in the aggregate in the SSLC Examination and have completed Pre Degree Course, that out of the 9 candidates who were considered, only 3 including her satisfied the residence condition, that the other 2 candidates were not qualified because one was overaged and ^{the} other Mr Kumaran was a brother of a working EDDA in the same Post Office and that she being the most eligible candidate for appointment as EDBPM, Madu has been validly and properly selected and appointed. On receipt of this representation, the Superintendent of Post Offices, Trichur, the second respondent has passed the impugned order at Ext.A8 which reads as follows:

"The representation cited above has not been signed by you. However, I have gone through the same and your explanation is not satisfactory. It is proposed to terminate your services."

This order does not make clear as to how the explanation submitted by the applicant was found to be unsatisfactory.

Having given the applicant an opportunity to show cause against the proposed termination of her services under Rule 6 of the ED Agent(Conduct and Service) Rules, it is incumbent on the authority concerned to consider her representation carefully and to give a speaking order if the explanations was not satisfactory explaining how and why the explanations were found unsatisfactory and as to why the action proposed was justified.

We are of the view that Ext.A8 not being a speaking order cannot be sustained. Further, we have gone into the merits of the controversy involved in this case. The learned counsel appearing for the 4th respondent in this application who is the applicant in OA-563/89 vehemently argued that the applicant was not a resident of the delivery jurisdiction of Madu E.D.B.Post Office and that therefore in view of the instructions of the P.M.G., Kerala on this aspect, the applicant was not entitled to be considered for selection. In the reply statement filed by the respondents 1 to 5 reference has been made to a D.O.letter No.Tech/11-1/86-II dated 11.6.1986 which would indicate that it was decided that in Kerala to be entitled for appointment as BPM/SPM one should be a permanent resident within the delivery jurisdiction of the concerned Post Office. On the basis of this statement, the learned counsel for the 4th

respondent and the learned counsel for the respondent 1 to 5 argued that as the applicant was not a resident within the delivery jurisdiction of the Madu E.D.B.P.O. though a resident of Orumanayur village of which delivery area of E.D.B.P.O., Madu is a part, she did not satisfy the residential qualification. But it has been admitted in the statement of the respondent 1 to 5 that the applicant was a permanent resident of Orumanayur village with her parents and that as per the instructions contained in DG P&T's letter No.43-84/80-Pen. dated 30.1.1981 and corrigendum dated 29.3.1981, the BPM/EDSPM should be/a resident of the village where the Post Office is located. It has also been mentioned in the reply statement that the method of recruitment of E.D.Aagents is governed by the instructions contained in the above said letter of the DG P&T and the corrigendum thereon. That being so the PMG who is an authority subordinate to the DG P&T cannot prescribe a different residential qualification for the EDBPM/SPM for the Kerala Circle alone without authority from the DG P&T. The learned ACGSC for respondents 1 to 5 fairly conceded that there is nothing to show that the DG P&T has authorised such a prescription of residential qualification specially for the Kerala Circle. In a recent ^{decision} ~~OA-525/89~~ decided by this Bench of the Tribunal to which both ^{as} us were parties OA-525/89, we have held that it is not open for the PMG to prescribe a residential qualification different from what is prescribed in the instructions issued by the Director General

who is the competent authority to prescribe qualification for EDDAs and that though not resident within the delivery area of the Post Office if the candidate is a resident of the village in which the Post Office is situated ^{she} he would satisfy the residential qualification in regard to the EDBPM. There is no reason for us to deviate from this view taken by us in the above said case. However, it is borne out from the pleadings and is also admitted by the respondents 1 to 5 that the applicant has purchased a plot and constructed a building within the delivery jurisdiction of the Madu EDBPO. The requirement of residential qualification is prescribed with a view that the incumbent should be available to discharge the functions of EDBPM in time. The applicant has been functioning as the EDBPM and there/absolutely no complaint that on account of her being a resident of Orumanayur village of which Madu is a part, she is not punctual in attending to her official duties. Therefore the contention of the respondents that the applicant did not satisfy the residential qualification has no legs to stand. The next ground on which the applicant is said to be ineligible/that she did not satisfy the income qualification. Exbt.A5 is a certificate issued by the Tehsildar, Chavakkad certifying that Smt.KD Rani, D/o Kanjirathinal Domini Orumanayur Village, Chavakkad Taluk has an annual personal income of Rs.3,600/- and the source of the above income is the salary received from Suja School of Commerce. Exbt.A6 is another certificate issued by the Tehsildar, Chavakkad

certifying that enquiry showed that ^{the} annual family income of
Smt Rani K.D. W/o Mandumpal George Guruvayur Village, Chavakkad
Taluk is Rs.7,600/-. These documents reveal that the applicant
has apart from a family income of Rs.7,600/-, a personal income
of Rs.3,600/- annually. Independent income in regard to the
EDBPM would mean only the income which is the independent of
what she would earn by way of allowance as an E.D.Agent. This
is prescribed with a view that even without the job of E.D.Agent
the incumbent should be able to maintain himself or herself.
We are convinced that with a family income of Rs.7,600/- and
with a personal income of Rs.3,600/- per annum, the applicant can
be said to be having adequate means of livelihood even without
being employed as an E.D.Agent. Therefore the contentions
raised by the respondents that the applicant did not satisfy
the income qualification is also devoid of any merit. The
next contention is that the applicant did not satisfy the
condition regarding marks in SSLC examination. It has been
specifically stated in the application that the applicant had
secured 250 marks in the aggregate in the SSLC examination.

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There is no case/the respondents that any other candidate
had obtained more marks than the applicant. As per the instruc-
tions on the subject regarding the method of recruitment, the
persons who has obtained the highest marks is to have a better
chance for selection. Here as there is no case that any other
candidate had obtained more marks than the applicant, it cannot
be said that in regard to the selection of the applicant, the

rules regarding the marks in the SSLC have been violated.

Therefore on a careful consideration of all the facts and circumstances, we are convinced that there is absolutely no foundation for the allegation that there has been any irregularity in the manner in which the applicant was selected and appointed as an EDBPM. Therefore we are of the view that the respondents cannot be justified in terminating the services of the applicant on the basis of some bald allegations which have no factual foundation. Therefore the impugned orders Exbt.A4 and A8 in OA-518/89 are liable to be quashed and set aside.

7. Since the selection and appointment of the applicant in OA-518/89 is not liable to be set aside and as she is entitled to continue in office being properly and validly selected and appointed, the applicant in OA-563/89 has no legitimate cause of action.

8. In view of what is stated in the foregoing paragraphs we allow the OA-518/89, declare that the applicant therein has been validly selected being fully qualified and eligible for appointment as EDBPM, Madu Post Office and direct the respondents to allow her to continue in service and not to terminate her services as proposed in the impugned orders at Exbt.A4 and A8. The application OA-563/89 is dismissed. The parties to both these applications are directed to bear their own costs.

(AV HARIDASAN)
JUDICIAL MEMBER

28/6/90

(SP MUKERJI)
VICE CHAIRMAN

28.6.90