

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 523
T.A. No.

1989

DATE OF DECISION 15.10.90

Basheer Thottoli Applicant (s)

Mr. V. P. Mohan Kumar Advocate for the Applicant (s)

Versus

Supdt. of Post offices, Manjeri Respondent (s)
Division and others

Mr. TPM Ibrahim Khan Advocate for the Respondent (s) 1 to 3

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 approached this Tribunal challenging Annexure-F order cancelling his provisional selection to the post of Extra Departmental Sub Post Master, Thirurkad Sub Post Office without hearing him or issuing any notice prior to cancellation.

2. The applicant's case is that he was sponsored by the employment exchange for a regular appointment to the post of EDSPM, Thirurkad Sub Post Office and he was interviewed on 8.8.1988 along with six other candidates. Since he was found to be fully qualified for selection, the second respondent by Annexure-C letter dated 10.8.88 informed him that he was provisionally selected. But thereafter no appointment order was issued to him. Hence he submitted Annexure-D to the Director,

Postal Services requesting him to hand-over charge as EDSPM, Thirurkad. No action was taken by him. The applicant reliably understood that the respondents conducted a further selection on 31.10.88 with reference to the records and one Shri Mohamed Aslam was selected. But without appointing him the fourth respondent was posted as EDSPM, Thirurkad. Then the applicant submitted Annexure-E representation to the third respondent on 3.11.88. In the mean time the 1st respondent issued the impugned order Annexure-F dated 7.11.88. The fourth respondent's appointment was also terminated by the first respondent ~~xxxxx~~ and later ^{he} appointed the fifth respondent as EDSPM. He is presently holding the post. The applicant challenges Annexure-F cancellation of his provisional appointment on various grounds. He also prays for a direction to the respondents 1 to 3 to appoint him in the vacant post in terms of the earlier selection at Annexure-C relieving the present incumbent ^{the fifth respondent} / who is now holding the post.

3. The respondents 1 to 3 have filed a detailed counter affidavit denying all the allegations raised by the applicant. They have submitted that after the interview on 8.8.88 there were several complaints from candidates who competed with the applicant. Accordingly an enquiry was conducted through the Vigilance Unit. The enquiry revealed that four candidates were eliminated from the selection on the ground that they did not satisfy income qualification prescribed by the relevant instructions. The selection was made ignoring the guidelines issued by the Post Master General. So according to the respondents 1 to 3 the proceedings by which the applicant was selected were patently irregular and justice demanded cancellation of the order. Hence they have issued the impugned order at Annexure-F. They also

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admitted that a fresh selection was made. But nothing was mentioned in the counter affidavit about the selection and appointment of respondents 4 and 5.

4. Even though notice was issued to Respondents 4 and 5 they have neither filed any counter affidavit nor did they appear before us at the time of hearing.

5. Having heard the matter and after perusing the records we are of the view that a regular selection which was held on 8.8.88 considering the claims of six other candidates and consequent communication Annexure-C given to the applicant informing him that he was provisionally selected for the post cannot subsequently be cancelled or at least recording the reasons without prior notice and hearing/even if there is some irregularity in the selection proceedings and there were complaints against such selection. If the respondents really wanted to conduct enquiry on the basis of some complaints the same could have been conducted after giving notice to the applicant also.

6. In this case files reveal that further selections of some persons viz. one Sri Mohamed Aslam, R-4 and the fifth respondent were also made by the first respondent for the same post after the interview and selection of the applicant on 8.8.88 by going through the applications and connected documents originally filed by the candidates. These were also done without any notice to the applicant. Therefore all these selections were attacked by the applicant on the ground that they are not proper selection according to the prescribed procedure after giving appointment to the applicant. From the perusal of the records it is evident that the appointing authority was confused and not very clear about the rules and procedure


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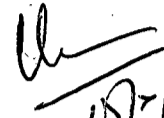
to be followed with regard to the selection. However, one thing is clear that all these selections were made in an unsatisfactory manner and without affording an opportunity to the applicant and that the original selection of the applicant held on 8.8.88 was cancelled without hearing him or assigning any reasons. For the reasons already indicated above the selection proceedings taken by the respondents for selection and appointment of the fifth respondent cannot be supported. In the light of the complaints and allegations against the selection of the applicant held on 8.8.88, it would be fair and proper to set aside his selection also especially when the first respondent decided to cancel that selection and passed the impugned order at Annexure-F. We do so.

7. Having regard to the facts and circumstances of the case, justice requires a further selection to the post of Extra Departmental Sub Post Master at Thirurkad Extra Departmental Sub Post Office, to be conducted in which the applicant as well as the other six candidates whose names were considered in the earlier selection held on 8.8.88 should also be allowed to participate in such selection. Accordingly we direct the respondents 2 & 3 to appoint an ad hoc appointing authority, other than the first respondent, to conduct a fresh selection for the post of EDSPM, Thirurkad on the basis of the existing records ~~in respect~~^{of} of all the seven candidates in accordance with law. We dispose of this application with the above direction. This direction shall be complied within a period of three months from the date of receipt of a copy of this judgment and till then the fifth respondent will continue on a provisional basis. However, we make it clear that his continuance in the post will not

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confer on him any special right in this behalf. The application is allowed to the extent indicated above. There will be no order as to costs.


" 15.10.90
(N. Dharmadan)
Judicial Member


15/10/90
(N. V. Krishnan)
Administrative Member

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