

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.

525/89

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DATE OF DECISION 31.5.1990

R.Ramesa Kammath _____ Applicant (s)

O.V.Radhakrishnan &
K.Radhamani Amma _____ Advocate for the Applicant (s)

versus

Sub Divisional Inspector of _____ Respondent (s)
Post Offices, Shertallai &
3 others.

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

CORAM:

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

The Hon'ble Mr. A.V.Haridasan, Judicial Member

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

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 31.8.89 filed under section 19 of the Administrative Tribunals Act, the applicant who has been working as an Extra Departmental Delivery Agent (EDDA) at Sri Narayana Puram Sub Post Office has prayed that the protection and benefits under Chapter V-A of the Industrial Disputes Act should be made available to him and that the respondents be directed to give him preferential right under section 25-H of the I.D.A. and Rule 78 of the I.D.Rules for regular selection and appointment to the aforesaid post. The brief facts of the case are

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as follows:

2. The applicant was appointed as EDDA of Sri Narayana Puram Sub Post Office as a substitute of the regular incumbent with effect from 30.7.85 and when the regular incumbent resigned he was provisionally appointed to the post with effect from 1.2.86. Ever since then he has been working as EDDA in that capacity. According to him he is fully qualified for regular appointment to that post, as he had passed SSLC and had registered with the concerned Employment Exchange since 1979. He is also residing within the delivery jurisdiction of that Post Office. When for regular appointment names were called for from the Employment Exchange, in the list of 7 candidates sponsored by the Employment Exchange, his name was not included. The respondents have challenged his statement that he is a resident of the delivery jurisdiction ~~of Sri Narayana Puram Sub Post Office~~ of Sri Narayana Puram Sub Post Office, but state that he is a permanent resident within the delivery jurisdiction of Sethulakshmi Puram Sub Post Office. According to the respondents, since in the Kerala Circle, by the instructions of the Post Master General at Exbt. R-1, an EDDA has to be resident of the delivery jurisdiction of the Post Office, the applicant was not eligible. The applicant, however, states that, in accordance with the instructions of the Director General, Posts & Telegraph, residence

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within the delivery jurisdiction is not mandatory and what is prescribed is that, to be eligible, one may, as far as possible, reside in or near the place of work. When the applicant's name was not included by the Employment Exchange, he moved this Tribunal in challenging sponsoring of some names by the Employment Exchange OAK 124/87 which was dismissed but he was also subjected to interview. The applicant also has claimed that as a workman he will be entitled to the benefits under Chapter V-A of the I.D.Act, notably sections 25-F, 25-H, 25-J, etc. and that his services cannot be terminated without notice, without retrenchment benefits and that he is entitled to be given preferential treatment for regular appointment. According to the respondents, since the applicant is governed by Extra Departmental Agents (Conduct and Service) Rules, 1964, the Industrial Disputes Act is not applicable to him. The applicant has been interviewed provisionally under the interim directions of this Tribunal and the results have been kept in a sealed cover.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is admitted that the applicant is resident of the village in which Sri Narayana Puram Sub Post Office and Sethulakshmi Puram Sub Post Office are situated. The applicant, however, is resident in an area which though in the same village falls within the delivery zone of Sethulakshmi Puram Post Office and not Sri Narayana Puram Post Office, as a road divides the delivery zones of these

of the same village. Sub Post Offices. It is, however, not denied that the applicant is residing at a place very near to the Sri Narayana Puram Post Office. According to the applicant, the residential qualification has been prescribed by the D.G. himself in his letter dated 30th January, 1981 as corrected on 29th March, 1981. A copy of this is at Exbt. A-2. The relevant extracts about residential qualifications prescribed are as follows:

"4. Residence:

- (i) The ED BPM/ED SPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which need not be adapted to suit his convenience or his main avocation.
- (ii) ED Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherefrom mails originate terminate, i.e. they should be permanent residents of the delivery jurisdiction of the post office.
- (iii) ED Agents of other categories may, as far as possible, reside in or near the place of their work. (Letter No.5-9/72-EL Cell, dated 18.8.73, and 43-312/78-Pen. dated 20.1.79, stand modified to this extent.)" (emphasis added)

From the above it is clear that EDDA would fall under clause (iii) above and accordingly they are to be, as far as possible, resident in or near the place of their

work. As against the D.G's letter, the respondents have referred to the letter of the Post Master General Kerala Circle dated 22.2.80 (Exbt. R-1) according to which, so far as Kerala Circle is concerned, EDDAs "should be permanent residents of the villages where they are appointed and that this should be understood to mean that they should be permanent residents within the delivery area of the Post Offices concerned". The respondents have stated that Exbt. A-2 has become obsolete in the Kerala Circle because of Exbt. R-1.

4. We are not at all convinced by the aforesaid argument of the respondents. The Director General is the competent and higher authority in prescribing the qualifications for EDDAs and his later directions dated 29th March 1981 cannot be deemed to have become obsolete by the earlier instructions of the Post Master General dated 22.2.80. A lower authority cannot by an earlier instruction render the later instructions of a higher authority obsolete. Since the applicant is resident of the same village in which the Post Office is situated, the applicant cannot be considered to be ineligible for regular appointment in accordance with the residential qualification prescribed. The Director General. In the judgement of this Tribunal dated 30.3.90 in OA 30/90 even in the case of an EDBPM it was held that since the applicant therein resided in the same

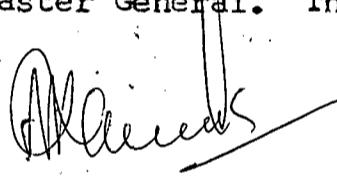
locality as the Branch Post Office he could not be disqualified for regular recruitment. In another case in OA 60489 where the applicant after marriage left the village which was in the delivery zone of the Post Office and started residing with her husband in the neighbouring village, it was held that the condition of residential qualification was intended only to facilitate easy availability for work and cannot be held to disqualify the applicant so long as she is easily available.

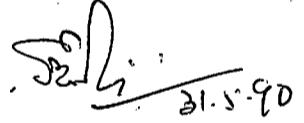
5. As regards preferential treatment claimed by the applicant, in the judgement of this Tribunal dated 22.12.89 in OA 360/86 it was held that persons already working in the Post Office as ED Agents are entitled to preferential treatment under section 25-H of the Industrial Disputes Act and if the eligibility conditions are satisfied, they should be considered for regular appointment even if they are not sponsored by the Employment Exchange. Reference was also made to the instructions of Post Master General, Kerala Circle in his letter dated 7th November, 1978 (page 68 of Swamy's Compilation of E.D. Agents (Conduct & Service) Rules 1964, 1987 edition), according to which Agents, if they otherwise satisfy the eligibility

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conditions, have to be given priority over all other categories except retrenched ED Agents.

6. In the conspectus of facts and circumstances, we allow this application with the direction that the applicant should be considered to be eligible for appointment as EDDA so far as residential qualification is concerned and that he should also be considered for regular appointment to the post of EDDA of Sri Narayana Puram Sub Post Office along with other candidates even though he has not been sponsored by the Employment Exchange, in accordance with law and such preferential treatment to which he is entitled under the Industrial Disputes Act and the relevant instructions of the Post Master General. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman
31.5.90