

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 545 of 1992.

DATE OF DECISION 15.12.1992

R. Ganga Devi Applicant (s)

Thomas Mathew Advocate for the Applicant (s)

Versus

Sub-Divisional Postal Inspector, Respondent (s)
Central Sub-Division, Trivandrum
and 3 others.

Mr. A.A. Abul Hassan, (R. 1 - 3) Advocate for the Respondent (s)
Mr. R. Rajasekharan Pillai (R. 4)

CORAM :

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

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

MR. N. DHARMADAN, JUDICIAL MEMBER

The rival claims of the applicant and the 4th respondent for appointment to the post of ED Stamp Vendor, PMG Junction Post Office, arise for consideration in this case. The applicant is aggrieved by Annexure-A6 by which the 4th respondent was appointed after terminating the provisional service of the applicant and declaring the result of the regular selection.

2. According to the applicant she had been working as ED Stamp Vendor and ED Packer in various Post Offices in the Trivandrum Division from 1983 to 27.4.91. She has put in 760 days of service. She worked as an ED Agent in the PMG

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Junction PO for 274 days in 1990 and 282 days in 1991.

She was continuously working in the said Post Office with effect from 29.4.1991 in the vacancy of one Shri Anil Kumar who was the regular incumbent of the post and was later selected and appointed as Postal Assistant in the sports quota. While the applicant was continuing as such the 1st respondent has taken steps for conducting regular selection without considering the superior claim of the applicant for regularisation. Hence she filed OA 1835/91 which was heard and disposed of by the Tribunal at the admission stage with the direction to consider the applicant also as a candidate for selection even though her name has not been sponsored by the Employment Exchange and that the service of the applicant may not be terminated until the appointment of the regularly selected person and in accordance with law. The applicant also submitted Annexure-A3 before the 1st respondent requesting him to give due weightage for the past service and experience gained by her, in the selection and regular/appointment pursuant to the direction in Annexure-A2. Applicant was called for an interview and written test held on 12.3.92. According to the applicant she possess all the requisite qualifications and conditions prescribed for the selection as ED Stamp Vendor. She has also registered in the Employment Exchange in the year 1981. Immediately after the interview and written test by Annexure-A6 proceedings dated 18.3.92 4th respondent was appointed as ED Stamp Vendor ~~after~~ terminating the services of the applicant. The procedural formalities provided under Chapter V (A) of the Industrial Disputes Act, 1947 have not been complied with. The applicant submitted that the selection of the 4th respondent without considering due weightage to the applicant for her past service in the light of the law laid down by the Full Bench of this Tribunal

in G.S.Parvathy vs. The Sub-Divisional Inspector (Postal) and others, 1992 (1) SLJ (CAT) 540, cannot be sustained. Thus, according to her, appointment of the 4th respondent is illegal, so also the termination of the applicant.

3. Respondents 1 to 3 have filed reply statement. Learned Counsel Shri Rajasekharan Pillai appeared on behalf of the 4th respondent. The respondents have opposed the application on the ground that the selection was duly made and there is no illegality in the selection and appointment of 4th respondent. The applicant was only a substitute and she is not entitled to any weightage in terms of the law laid down by the Tribunal in Full Bench decision. The termination of the applicant is valid in the light of the observation of this Tribunal in Annexure-A2 judgment.

4. Having heard the learned counsel on all sides the questions which emerge for consideration are:-

- (i) whether the applicant was working as ^aprovisional hand or a substitute before the regular selection in the same Post Office;
- (ii) whether the selection conducted is in accordance with the procedure provided under the rules and in accordance with law; and
- (iii) whether the termination of the applicant is valid and legal.

5. The respondents 1 to 3 in the reply statement submitted that though Shri P.T.Anilkumar, the regular incumbent for the post of ED Stamp Vendor, was selected as Postal

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Assistant he applied for leave without allowance for a period of 30 days from 29.4.91 to 28.5.91. He nominated the applicant as a substitute. Subsequently he applied for extension of leave without allowance from 29.5.91 to 29.2.92 on different spells nominating the applicant as substitute. So the applicant was working in the same Post Office as substitute upto 29.2.92. It is admitted that the applicant was continuing in the Post Office even after 29.2.92 till her termination as per the impugned order dated 18.3.92. Hence the service of the applicant from 29.2.92 till the interview on 12.3.92 was provisional service. It is to be noted in this connection that the applicant had prior service and experience in the work from 1983 onwards. The respondents have not denied the fact that the applicant worked for 274 days in 1990 and 282 days in 1992 in the same Post Office. She has also registered in the Employment Exchange and it is clear from Annexure-A5. Hence, under these circumstances, the applicant is entitled to weightage as per the Full Bench decision of this Tribunal in G.S.Parvathy vs. The Sub-Divisional Inspector (Postal) & Ors. (supra). The denial of weightage in the regular selection prejudicially affected the applicant. This is admitted by the respondents 1 to 3 in the reply when they have given the following statement in para 5:-

"5. It is true that the applicant has given a representation claiming weightage for the past service in the post as the substitute, but the rules do not envisage giving any weightage for service rendered as substitute."

6. We have gone through the selection proceedings and the minutes produced by the learned counsel for respondents 1 to 3 for our perusal. Before the disposal of OA 1835/91 on 27.11.91 as per Annexure-A2 judgment an interview had

been conducted for making regular selection of ED Stamp Vendor, on 15.11.91. Later, as per the direction in Annexure-A2 judgment, a further interview and written test was conducted on 12.3.92 by the 1st respondent, Sub-Divisional Postal Inspector. In that interview the applicant alone was interviewed and asked to sit for the test. This interview and test was attacked by the applicant on the ground that under the Rules the 1st respondent has no authority to conduct a test and that the conduct of the test and interview for the applicant alone without allowing others also to participate in the test and interview is illegal. Though the applicant alleges malafide against 1st respondent in the matter of selection of the 4th respondent she did not press the same at the time of final hearing. However, after going through the proceedings we are not satisfied about the method adopted by the 1st respondent in conducting the selection as directed by this Tribunal. In Annexure-A2 judgment we have only directed the respondents to conduct the selection in accordance with law. Even though on 15.11.91 the test and interview were conducted the respondents would have conducted a fresh test in which all the candidates would have been given uniform opportunity to establish their merit. The method of having conducted written test on 15.11.91 and a separate interview and written test for the applicant alone on 12.3.92 does not appear to be a correct procedure. The selection proceedings and the minutes disclose that the selection was made solely on the basis of the marks obtained in the written test. It does not appear from the selection proceedings and the minutes that the respondents have followed the selection procedures mentioned in the Rules.

7. Having regard, to the facts and circumstances of the case we are satisfied that the 1st respondent has not conducted the selection of the 4th respondent in accordance with the procedures under the Rules and the directions in the judgment, Annexure-A2. We have no other alternative except to set aside the appointment of the 4th respondent and direct 2nd respondent to conduct a fresh selection in accordance with law. Accordingly, we quash Annexure-A6 and direct the 2nd respondent to conduct a fresh selection to be held by competent superior authority other than ^{the} 1st respondent in accordance with law in which the applicant and the 4th respondent should be allowed to participate. This shall be done within a period of three months from the date of receipt of a copy of the judgment till which date the 4th respondent shall be allowed to continue as ED Stamp Vendor in the PMG Junction PO on a provisional basis on condition that she shall yield place to the selected candidate *as case she is not selected. 2*

8. The application is allowed to the extent indicated above.

9. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

15.12.92..


(S.P. MUKERJI)
VICE CHAIRMAN

15.12.92

v/-