

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

561/91

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DATE OF DECISION 25.6.92

Shri P. Damodaran Applicant ~~(s)~~x

Shri M. Sasindran Advocate for the Applicant (s)

Versus

Union of India, Min. of
Communications & others Respondent (s)

Shri Mathew J Nedumpara Advocate for the Respondent (s) 2-4
Shri M.R. Rajendran Nair " " 1

CORAM :

The Hon'ble Mr. N.V. Krishnan - Vice Chairman
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The Hon'ble Mr. A.V. Haridasan - 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?
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Shri A.V. Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant Shri Damodaran has prayed that the order dated 31.1.1991 (Annexure-I) of the 2nd respondent appointing the 1st respondent as ED Mail Carrier, Vellora may be set aside and that the 2nd respondent be directed to appoint him as ED MC, Vellora declaring that he is entitled to be selected and appointed to that post. The facts are like these.

2. The applicant and the 1st respondent were among the 9 candidates sponsored by the employment exchange for

selection to the post of ED MC Vellora. They were interviewed on 17.1.1991. The applicant had obtained 278 marks and the 1st respondent had obtained 267 marks out of 600 in the SSLC examination. But by the impugned order at Annexure-I, the 1st respondent who had obtained lesser marks than the applicant in the SSLC examination was selected and appointed. It is aggrieved by that order that the applicant has filed this application. The applicant has averred that the selection and appointment of the 1st respondent overlooking his superior merit is vitiated by malafides and arbitrariness.

3. The respondents in their reply statement have sought to justify the selection and appointment of the 1st respondent on the ground that the 1st respondent had passed the SSLC examination in the first chance while the applicant had passed the examination in the second chance though the applicant has secured higher marks in the SSLC examination. The respondents 2 & 3 in their reply statement have also contended that apart from passing the SSLC examination in the first chance, they have also took into account the 1st respondent's efficiency in sports and the fact that he resides closer to the Vellora Branch Post Office than the applicant. Therefore, the respondents contend that the selection and appointment of the 1st respondent is perfectly in order.

4. We have heard the learned counsel for the parties and have also perused the pleadings and documents and also the file produced by the learned counsel appearing for

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respondents 2 & 3 relating to the selection and appointment. The appointment of ED Agents in the Department of Posts are being made on the basis of instructions issued in the matter by the DG, P&T. The educational qualification prescribed for appointment to the categories including that of ED MC - according to the instructions issued by the DG, P&T is as follows:-

"Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English."

A pass in the SSLC examination is not even prescribed as a desirable qualification. But while assessing the merits of the candidates of the same educational standards to hold that the person who has obtained higher marks is more meritorious is a safe course. Though SSLC examination is not prescribed as an essential or preferable qualification since the applicant as well as the 1st respondent have the same standard of educational qualification, their inter se merit has to be adjudged on the basis of the marks obtained by them in the SSLC examination. In that process to say that a person who has obtained less marks in the examination is more meritorious than the another who obtained more marks for the reason that the former passed the examination in the first chance while the latter passed examination in the second chance does not appear to be reasonable. The respondents have no case that in the matter of working knowledge of the regional language and simple arithmetics or in the matter of working knowledge of English the 1st respondent was considered better than the

applicant. Proficiency in sports and proximity to the Branch Post Office are not factors to be considered for giving preference to a candidate in accordance with the instructions issued by the DG, P&T. Therefore, the preference given by the respondents 2 & 3 to the 1st respondent for the reason that he was proficient in sports and that he resides closer to the Branch Post Office than the applicant is not justifiable. The selection file discloses that while making the selection, the SDI was influenced by a guideline issued by the Superintendent of Post Offices, Malappuram that while assessing the merits of the candidates, a candidate who has passed the SSLC examination in the first chance should be placed above a candidate who has passed the examination in the second chance even though the latter had obtained more marks in the examination. It was solely on that basis and solely because the applicant passed the SSLC examination in the second chance that the 1st respondent was preferred and was selected and appointed. This is evident from a letter written by the SDI on 27.3.1991 to the Superintendent of Post Offices, Kannur in reply to d.o. letter No.83/PNR dated 19.3.1991 which is available at page 12 of the file relating to the selection. As observed by us earlier, the conclusion that a person who has obtained less marks in the SSLC examination is more meritorious than a person who has secured higher marks for the reason that the former passed the examination in the first chance while the

latter passed it only in the second chance is unscientific and unjustified. Therefore, we are of the view that the selection and appointment of the 1st respondent as ED MC, Vellora overlooking the superior merit of the applicant cannot be sustained.

5. In view of what is stated in the foregoing paragraphs, we set aside the impugned order at Annexure-I and direct the respondents 2 & 3 to appoint the applicant as ED MC, Vellora within a period of one month from the date of communication of this order.

6. There is no order as to costs.

(A.V. HARIDASAN)
JUDICIAL MEMBER

(N.V. KRISHNAN)
VICE CHAIRMAN

25.6.92

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