

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.61/98

Monday the 28th day of August, 2000.

CORAM

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Jayaprakash
S/o Narayanan Vaidyar
Extra Departmental Delivery Agent
Manassery P.O.
residing at Kunummal,
Manassery P.O. Applicant.

By advocate Mr. M.R.Rajendran Nair

Versus

1. The Senior Supdt. of Post Offices
Kozhikode.
2. S.Chandran
Extra Departmental Branch Postmaster
Manasseri P.O.
3. The Chief Post Master General
Kerala Circle
Trivandrum.
4. Director General of Posts
Department of Posts
New Delhi.
5. Union of India represented by the
Secretary to Govt. of India
Ministry of Communication
New Delhi.

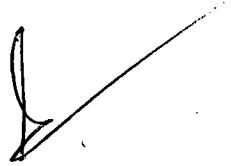
By advocate Mr Govind K.Bharathan, SCGSC
Mr. K.S.Bahuleyan for R.2

The application having been heard on 28th August, 2000, the Tribunal on the same day delivered the following:

O R D E R

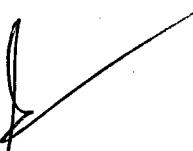
HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-6 & A-7, to set aside the selection and appointment of 2nd respondent as Extra Departmental Branch Post Master, Manassery and to declare that he is entitled to be considered for appointment as Extra Departmental Branch Post Master, Manassery by transfer in



terms of the Director General's letter dated 12.9.88 in preference to total outsiders sponsored by employment exchange.

2. Applicant was appointed as Extra Departmental Delivery Agent, Manassery Post Office with effect from 16.4.85 as per A-1. He has passed SSLC examination. One Balan who is working as Extra Departmental Branch Postmaster, Manassery was promoted as postman and was relieved on 22.6.94. Prior to that, the said Balan was on leave and the applicant was working as Extra Departmental Branch Postmaster. He approached the first respondent and requested for appointment as EDBPM. On 25.8.94 he submitted a representation to the first respondent requesting that he may be granted appointment by transfer as EDBPM, Manassery. He was called for interview on 28.4.95 along with candidates sponsored by employment exchange. As per the Director General (Posts) letter No.43-27/85 Pen.(EDC & TRG) dated 12.9.88 when an ED post falls vacant in the same office, and if one of the existing ED agents prefers to work against that post, he may be allowed to be appointed against that post without coming through the employment exchange provided he is suitable for the other post and fulfills all the required conditions. As per order No.B.3/ED/R1g. dated 20.9.94 from the directorate when a vacancy arises and the request of a working ED agent is already registered for the post, there is no need of notification to the employment exchange. The appointing authority can straight away fill up the vacancy by giving transfer as per request. As per A-6 the request of the applicant was rejected.



3. Official respondents resist the Original Application contending that the selection of the second respondent was opposed by the applicant in his two earlier OAs, OA Nos. 743/95 and 917/95. The said selection was not held as illegal while disposing of those two OAs. The claim of the applicant is barred by res-judicata. The request of the applicant was considered but he could not be selected for the reasons stated in A-6.

4. Second respondent contends that non-consideration of the candidate sponsored by employment exchange would be violative of the Article 14 & 16 of the Constitution. The applicant after having participated in the selection is not entitled to challenge the same when he has become aware that he has not been selected. The order appointing the second respondent has not been produced in this Original Application. In the OA under the heading "Particulars of the order against which the application is filed", the order appointing the second respondent has not been shown. The applicant has submitted a representation for consideration for appointment by transfer only after issuance of the notification for filling the post of EDBPM, Manassery and it is also after receipt of the list sponsored by employment exchange. In OA No.1038/94, this Bench of the Tribunal directed the official respondents to consider one Komalavalli, the applicant therein also for selection and appointment to the post of EDBPM, Manassery.

5. One of the reliefs sought in this Original Application is to set aside the selection and appointment of the second respondent as EDBPM, Manassery. Under the heading for furnishing the "particulars of the order against which the application is filed" there is no reference to the selection

and appointment of the second respondent. Learned counsel appearing for the applicant submitted that the applicant was not provided with a copy of the order appointing the second respondent. It is not known what is the obligation cast on the official respondents to serve a copy of the order of appointment of the second respondent on the applicant. If the applicant is aggrieved by the selection of the second respondent and is challenging the same and is not in possession of the copy of the order appointing the second respondent, the applicant is not left without any remedy. It is not for the Tribunal to suggest remedies and remedies available should have been availed of. There is no prayer in the OA or even made orally across the bar to direct the official respondents to make available a copy of the order appointing the second respondent to the applicant.

6. It is contended that the Original Application is barred by res-judicata. The applicant herein approached this Bench of the Tribunal earlier by filing OA No.917/95. The second respondent herein was the second respondent therein also. One of the reliefs specifically sought therein as borne out by A-5 is to set aside the appointment of the second respondent as EDBPM, Manassery. Though such a relief was sought for this Bench of the Tribunal refused to grant any such relief while disposing of the OA No.917/95. When a specific prayer was made and there is no order passed granting the same or nothing is specifically stated as to whether it is refused or not, there cannot be any doubt that what is not specifically granted is refused in such case. If the applicant was aggrieved, he should have taken up the matter before the higher forum. Admittedly that was not done. The



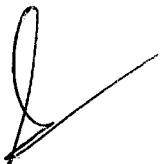
relief which was sought in the earlier Original Application and was not granted cannot be allowed to be agitated in a subsequent Original Application.

7. Applicant says that he applied for appointment by transfer to the post of EDBPM, Manassery as early as in May 1994. Official respondents have denied receipt of any such representation. The applicant has not produced a copy of the same. There is no material to show that the applicant has applied for the post of EDBPM, Manassery in May, 1994.

8. Applicant says that subsequently he applied on 25.8.94 for the same post. Official respondents admit receipt of the same. He was called for interview. Learned counsel appearing for the applicant argued that the applicant ought not to have been interviewed along with employment exchange sponsored candidates and should have been exclusively interviewed as a candidate applying for appointment by transfer and in this case it was not so done. In this context, it is relevant to note that the applicant filed O.A.No.743/95 for the first time before this Bench of the Tribunal. There he sought a declaration that he is entitled to be appointed as EDBPM, Manassery P.O. in the light of the order of the Department dated 20.9.94 referred to ^{as} A-4 therein. In the second OA filed by him numbered as 917/95 also, the said letter is referred to and marked as A-4. In this OA also, reference is made to the same. In the said letter dated 20.9.94 issued by the Senior Superintendent of Post Offices, Calicut Division based on the latest orders of the Directorate regarding transfer from one ED post to another within the same recruiting unit, it is stated that the ED agents who are desirous of a transfer to any ED post within the recruiting unit in which they are working can make requests well in advance, even when there are

no vacancies, to the Divisional Superintendent in the case of transfer to the post of EDBPM/EDSPM and to the Sub Divisional Inspectors in the case of transfer to other ED posts, that such requests will be registered by the concerned authorities for consideration when vacancies arise, that when a vacancy arises and the request of a working ED agent is already registered for the post, there is no need of notification to the employment exchange, that the appointing authority can straight away fill up the vacancy by giving transfer as per request, provided all the existing conditions on transfer are satisfied and that requests received after notifying the vacancies to the employment exchange can only be considered along with employment exchange nominees.

9. The applicant is fully well aware of this order and has referred to in para 4.7 of the OA stating that when a vacancy arises and the request of a working ED agent is already registered for the post, there is no need of notification to the employment exchange and the appointing authority can straight away fill up the vacancy by giving transfer as per request. When an order of the Department is quoted, it should be quoted as it is without leaving any portion. It cannot be the case of quoting a portion which is palatable to the applicant and ignoring remaining portion which is unacceptable to him. The said order specifically states that ED Agents desirous of transfer within the same recruiting unit can request well in advance even when there are no vacancies and that requests received after notifying the vacancies to the employment exchange can only be considered along with employment exchange nominees. Those portions are conveniently left out in the OA. In the light of the said order, the arguments advanced by the learned counsel for the applicant that the applicant ought not to have been

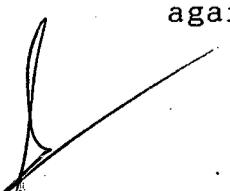


considered along with the employment exchange sponsored candidates and should have been interviewed separately cannot be accepted for a moment.

10. The notification was issued in this matter for filling up the post of EDBPM, Manassery on 1.6.94. The list of employment exchange sponsored candidates was received by the authority concerned on 18.7.94. Admittedly, the representation of the applicant was dated 25.8.94. That being so, the applicant's case can be considered in the light of the said order only along with the employment exchange sponsored candidates and that has what transpired in this matter.

11. From the order in OA 1038/94 of this Bench of the Tribunal, it is seen that one Komalavalli was also an aspirant for the post of EDBPM, Manassery and as she was apprehending that her candidature would not be considered for want of sponsorship by the employment exchange, she approached this Bench of the Tribunal and this Bench of the Tribunal directed that she also be considered along with other eligible candidates when selection is made to the post of EDBPM, Manassery. It is submitted that she was also a participant in the selection in which the applicant was also a participant.

12. There is no challenge against the order of Senior Superintendent of Post Offices, Calicut Division dated 20.9.94 referred to in para 4.7 of this OA and produced as A-4 in A-3 as well as in A-5. That being the position A-4 is to be followed. That apart, in A-3 the specific request of the applicant was to declare that he is entitled to be appointed as EDBPM, Manassery in the light of the said order. That being so, the applicant cannot now turn back and say anything against the said order.



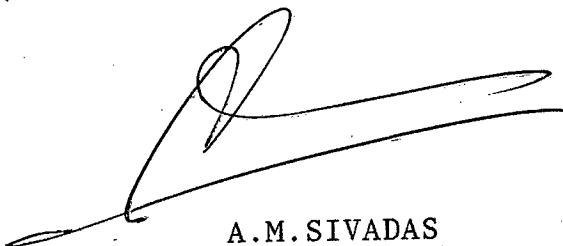
13. Learned counsel appearing for the parties submitted that A-7 has already been quashed as per the order in OA No.45/98 of this Bench of the Tribunal. That being so, it is not necessary to quash the same again.

14. For the reasons stated, the applicant is not entitled to the reliefs sought. Accordingly, the Original Application is dismissed. No costs.

Dated 28th August, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-6: True copy of letter No.B3/OA 917/95 dated 6.11.97 issued by the 1st respondent.
- A-7: True copy of the letter dated 14.2.97 No.19-72/96-ED & Trg. issued by the 4th respondent.
- A-1: True copy of the order No.DA/35 dated 16.4.85 issued by the Sub Divisional Inspector (Postal), Kunnamangalam to the applicant.
- A-3: True copy of the order in OA No. 743/95 dated 20.6.95 by this Tribunal.
- A-4: True copy of the representation dated 21.6.95 submitted by the applicant to the first respondent.
- A-5: True copy of the order in OA No.917/95 dated 8.9.97 by this Tribunal.