

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 614
T.A. No.

1990

DATE OF DECISION 18-4-91

V. K. Gopalan _____ Applicant (s)

Mrs M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

The Superintendent of Post Respondent (s)
Offices, Irinjalakuda Divi. Trivandrum and 2 others

Mr. T.P.M. Ibrahim Khan Advocate for the Respondent (s)
for R-1 and 2 and Mr. P. Santhalingam for R-3

CORAM:

The Hon'ble Mr. N. V. Krishnan, Member (A)

The Hon'ble Mr. N. Dharmadan, Member (J)

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

N. Dharmadan, Member (J)

The dispute in this case is regarding the appointment to the post of E.D.B.P.M. (Extra Departmental Branch Post Master), Pazhuvil West Post Office. The applicant is an aspirant for the above post. He is aggrieved by the refusal of the first respondent to select and appoint him as EDBPM, Pazhuvil West Post Office, ^{He} is also challenging Annexure-I order by which the 3rd respondent was appointed to the post.

2. Applicant retired on invalidation on 2-7-83 while working as officiating higher selection

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Grade S.P.O.. But in the Certificate granted to him by the Medical Officer it was stated that he is fit for other service of less laborious character than which he had been doing. Later he applied for the post of EDBPM, Pazhuvil West Post Office. Since the first respondent did not consider his application because of the age bar, he filed O.A. 142/88 which was disposed by directing the first respondent to assess the merit of all candidates sponsored by the Employment Exchange including the applicant. Accordingly, the first respondent held an interview on 11-1-1990 in which 6 candidates including the applicant were interviewed. Among the candidates who appeared for the interview the applicant was having the highest marks in the S.S.L.C. Examination (64.5%). But the third respondent who has not passed the S.S.L.C. Examination was selected. The selection is illegal and against DGP&T's letter No.5-9/72 ED CELL dated 18-8-73. It says that matriculates should be given preference over those who have passed 8th Standard for appointment as EDBPM. Therefore, the non-selection of the applicant and the selection and appointment of the third respondent are arbitrary, illegal, discriminatory and violative of Article 14 and 16 of the Constitution of India.

3. The first respondent and 3rd respondent have filed separate counter affidavits. The first respondent in the counter affidavit stated that the applicant is a retired Railway Mail Service Official who was permuturally retired on permanent invalidation. After retirement he sought employment for his son on compassionate ground and his son Shri V.G. Suresh was appointed as a Sorter in the Railway Mail Service in relaxation of normal Recruitment Rules. The applicant who was aged 60 years was found ineligible for the post of EDBPM and hence he was not selected. As directed by the Tribunal in Annexure-II judgment the cases of the applicant and the third respondent were considered on merit along with four others on 11-1-90 and the third respondent who was working continuously for the last four years in the Post Office was selected for appointment as EDBPM.

4. According to the reply statement filed by the third respondent, the applicant is a disabled person having defective eye sight and is not fit for the job EDBPM and that he is aged 61 years on the date of application. He opted for invalid retirement. He is now enjoying all pensionary benefits and requested for an appointment for his son. Considering the invalidity and retirement of the applicant his son Shri V.G. Suresh was given an employment in the Railway Mails Service Department as a Clerk. The applicant does not satisfy

the residential qualification for he is not a resident of the village where the Post Office is situated.

5. We have heard the arguments of the learned counsel appearing on behalf of all the parties and perused the records. The post of EDBPM Pazhuvil West Post Office became vacant when Smt. Remadevan was put off duty pending finalisation of disciplinary proceedings against her in 1985. The third respondent was asked to officiate in that post. Later, on the completion of the disciplinary proceedings, the regular incumbent of the Post was removed from service. The first respondent initiated steps for selection. The third respondent filed O.A.K 86/88 and obtained an interim order on 18-2-88 to interview him also along with others. The applicant also filed OAK 142/88 and obtained similar direction on 6-4-88 to consider the applicant along with other for appointment to the post of EDBPM. Both these cases were disposed of on 25-10-89 and 27-10-89 respectively with the final direction to reassess the merit of all candidates sponsored by the Employment Exchange and the applicants therein. Accordingly the first respondent conducted the interview on 11-1-90 in which 6 candidates were interviewed. The selection files disclose the following decision:

"..All the 6 candidates listed at Sl. below 313/c appeared before me today along with originals of mark lists and ration card. All are found to be physically fit for the post. All of them fulfil the prescribed 3 conditions also for selection. Candidates at Sl. 2, 4 and 5 have no independent income. Out of the rest

of the 3 candidates Sri. Somasundaram P.N. is continuously working as EDBPM Pazhuvil West since 1-10-85. As per Directorate's letter No.43-4/77-Peon dated 18-5-79 he has to be given protection. As such Shri P.N. Somasundaram is selected for appointment as EDBPM, Pazhuvil West..."

6. The learned counsel for the applicant relying on the Recommendation of Madan Kishore Committee for framing E.D.A. Conduct Rules submitted that ' preference should be given, other things being equal, to matriculate for BPMs'. He relies on the above recommendation particularly because the applicant got the highest marks in S.S.L.C. but he was not selected and at the same time the third respondent who failed in the S.S.L.C. was selected and appointed to the post by first respondent. According to him this is illegal and against the departmental instructions on the subject which prescribes preference for candidates who secured highest marks in matriculation/ S.S.L.C.. Hence the applicant ought to have been selected.

7. In the instant case, the applicant, who retired on grounds of invalidation and obtained a job for his son on that ground . . . approached the first respondent for getting the present appointment at the age of 61 years after obtaining direction from the Tribunal for age relaxation. However, the first respondent considered the overall merits of the applicant and the third respondent along with four other candidates sponsored by the Employment Exchange and taken a final decision that the third respondent is the fit person to be posted as EDBPM Pazhuvil West

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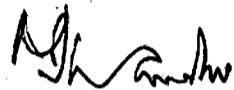
Post Office. Presumably the first respondent might have after considering the merits felt that it would be inequitable under the above circumstances to ignore the claims of the third respondent and select the applicant merely on the basis of the marks secured in the S.S.L.C Examination. This decision cannot be faulted merely on the ground that the applicant was not preferred because of the mark obtained by him in the S.S.L.C. Examination.

A more or less similar question was considered by the same Bench in *V.P. Thressia V. Sr. Supdt. of Post Offices, Trichur and others, OA 381/89* and held as follows:

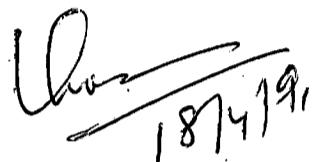
"...The applicant studied upto S.S.L.C. It was after advertizing to this aspect in the light of the notification that she was selected in the regular selection. The first respondent compared the qualifications of the applicant with that of Smt. Tessi Siman and yet decided to select her having regard to the relevant rules in the EDA Conduct (C&S) Rules, 1964. The fact that the applicant was not an SSLC holder and she was not eligible for preferential right as per the rule was also known to the authorities at the time of selection. According to us this can-not be considered as a serious irregularity having considered the qualifications of both the candidates and finding that the applicant was also eligible for the post in the selection it cannot be held that 'the selection was made without considering SSLC Passed candidates'. Preferential, of course,

is a right to be considered for selection along with others when other things are equal and given due weight for the special qualifications prescribed in the notification."

8. We feel that the observations in the above judgment would apply to the facts of this case also. In the result, we are of the view that there is no substance in the application and it is only to be dismissed. Accordingly, we do so. No costs.



(N. Dharmadan) 18.4.91
Member (J)



(N.V. Krishnan)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A. 29/91 in

O.A. No. 614/90

T.A. No.

199

(3)

DATE OF DECISION 5.7.91

V.K. Gopalan _____ Applicant (s)

Mr. M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

The Superintendent of Post Respondent (s)
Office, Irinjalakuda & 2 Ors.

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV 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

SHRI N DHARMADAN, JUDICIAL MEMBER

This review application has been filed on the ground that the Tribunal while disposing of OA 614/90 did not consider the applicant's preferential right under the general rules on the following counts "(i) Preferential qualification of S.S.L.C., (ii) Preferential right of P&T Pensioner, (iii) Highest mark in S.S.L.C." and sustained the impugned order on equitable considerations.

2. In para 6 of the judgment in OA-614/90 we had adverted to the preferential rights and claims of the applicant for selection and found in para 7 as follows: "However, the first respondent considered the overall merits of the applicant and the 3rd respondent

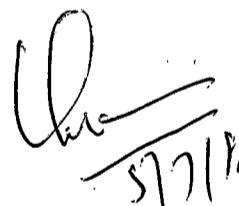
alongwith four other candidates sponsored by the Employment Exchange and taken a final decision that the third respondent is the fit person to be posted as EDBPM, Pazhuvil West Post Office we were taking the view that this decision of the Statutory authority cannot be

Our decision was taken in the light of the general rules applicable for the selection based on the facts and circumstances of the case. Annexure I & II now produced ^{already} with R.A. do not improve the position. The applicant has not made out any ground for review. If he is really aggrieved by the judgment in this case review petition is not the proper remedy. This R.A. is accordingly liable to be rejected.

We do so.


(N Dharmadan) 5.7.91

Judicial Member


(NV Krishnan)
Administrative Member