

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 618/91
XXXXXX 1992

DATE OF DECISION 16.4.1992

Shri O.V. Shalvi _____ Applicant (S)

Shri M. Paul Varghese _____ Advocate for the Applicant (S)

Versus
Sub Divisional Inspector, _____ Respondent (S)
Tripunithura & 2 others

Shri K.A. Cherian, 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? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The applicant, Shri O.V. Shalvi, has filed this application praying that the proposed selection to the post of ED Mail Carrier, Kokkappilly Post office and the resultant termination of his services may be declared null and void as no regular vacancy has arisen or in the alternative to declare that he is entitled to be considered for regular selection to the post of EOMC, Kokkappilly and for a declaration that the proposed termination of his services is violative of the provisions of Chapter V(A) of I.D. Act.

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2. The applicant commenced service as substitute EDMC, Kokkappilly in the place of a regular incumbent in that post Shri OC Joy when he took leave. Subsequently, when Shri Joy was promoted to the post of Postman, the applicant was put incharge with effect from 15.1.1991. The first respondent initiated steps for making regular appointment to the post of EDMC, Kokkappilly and notified the vacancy to the Employment Exchange. A newspaper report regarding the selection appeared in the Mathrubhumi newspaper wherein it was inter-alia stated that the intending candidates should be permanent residents of Thiruvankulam Post Office area. After this, the first respondent relieved the applicant from duty on 13.4.1991 for a day and thereafter reinducted him. The applicant made a representation to the first respondent on 20.4.1991 requesting that he may also be considered for regular selection, apprehending that not being sponsored by the Employment Exchange, he may not be considered. Further, as in the order appointing Shri OC Joy as Postman, it was specifically mentioned that his promotion as Postman was subject to the outcome in OA-58/91. According to the applicant, a regular vacancy in the post of EDMC, Kokkappilly has not so far arisen and, therefore, the respondents have no justifiable reason to make a regular selection. In these circumstances, apprehending that the respondents would without considering the candidature of the applicant, make a selection to the post

of EDMC, Kokkappilly, the applicant has filed this application under Section 19 of the Administrative Tribunals Act.

3. While admitting the application on 22.4.91, the respondents were directed to consider the applicant also provisionally for regular selection to the post of EDMC, Kokkappilly and to maintain the applicant in his assignment until further orders. Pursuant to the interim order, the applicant was also called for an interview on 23.4.1991.

4. The respondents contest the application. It is contended that there is no merit in the case of the applicant that the respondents have no valid reason to make a regular selection to the post of EDMC, Kokkappilly because Shri C Joy having been appointed as a Postman, a vacancy has arisen. It is further stated that though there is a move for abolition of the post of EDMC, Kokkappilly and though the matter has not been finalised, a selection to man / ^{the} post either on a regular basis or on a provisional basis has become necessary and that the applicant has no right to challenge the process of selection. The respondents have further contended that the applicant being only a substitute has no right for being considered for selection to a post. It has also been contended that as the applicant is not a resident of the Thiruvankulam Post Office delivery area where the mail originates and terminates, he is not eligible to be considered for selection even if he is sponsored by the Employment Exchange. The respondents have produced the proceedings of the selection from which it is

seen that the applicant was passed over as he was considered ineligible since he did not fulfil the residential qualification. One Shri Antony who among the eligible candidates secured the highest marks in the SSLC examination has been selected. The respondents, therefore, contend that the application is devoid of any merit and that the same has to be dismissed.

5. We have heard the arguments of the counsel for the parties and have also carefully perused the pleadings and evidence on record. The first prayer of the applicant is that as a regular vacancy of EDMC, Kokkappilly has not arisen, the proposed selection to the said post and the resultant termination of the applicant's services should be declared null and void. This prayer is based on the fact that in the order dated 29th January, 1991 appointing 5 persons including Shri C Joy as Postmen(Annexure-I) it was made clear that the appointment was subject to the outcome of OA-58/91 pending before this Tribunal. For the mere reason that the appointment of Shri C Joy as Postman was made subject to the decision in OA-58/91, it cannot be said that a vacancy has not arisen in the post of EDMC, Kokkappilly. In case on account of the decision in OA-58/91, it should become necessary for the Department to revert Shri C Joy, it is upto the Department to evolve appropriate ways and means to accommodate Shri C Joy. Even if the vacancy in the post of EDMC, Kokkappilly has to be

considered provisional for the reason that there is a move for abolition of this post, it is open for the Department to make a selection on a provisional basis. Therefore, the case of the applicant that the process of selection undertaken by the respondents to fill the post of EDMC, Kokkappilly, is unnecessary and unjustified is without any merit.

6. The applicant has prayed for an alternative relief that the respondents should be directed to consider him also for selection to the post of EDMC, Kokkappilly. The respondents have contended that the applicant has no right to be considered for selection for two reasons: (1) that the applicant is only a substitute; and (2) that he does not fulfil the residential qualification required for the post of EDMC, Kokkappilly. Though the applicant commenced his service only as a substitute of Shri C Joy, after Shri Joy has joined the post of Postman and since the respondents had on 13.4.91 relieved him for a day and reinducted him into service again, his service after that date can only be considered as that of a provisional EDMC. This Bench has been consistently taking a view that a person working as provisional ED Agent though not sponsored by the Employment Exchange is entitled to be considered for regular selection to that post. Therefore, the contention of the respondents that the applicant is not entitled to be considered for regular selection since he has not been sponsored by the Employment Exchange has to be rejected. The next contention that the applicant does not satisfy the residential

qualification required for EDMC does not appear to be correct. As per the instructions of DG, P&T on the question of residential qualification necessary for EDMC what is required is that the person should reside within the delivery area of a Post Office where the mail originates/terminates. Since the post of EDMC is attached to the Branch Post Office, Kokkappilly, the mail terminates in that Office. Admittedly, the applicant is a resident of the delivery area of Kokkappilly Post Office. Therefore, the stand taken by the respondents that the applicant does not fulfil the residential qualification is found to be wrong.

7. Though the applicant was also called for interview on 23.4.1991 on the basis of the interim direction issued in this case, from Annexure R1(a) the proceedings of the selection, it is seen that the case of the applicant was passed over on the ground that he being a resident in the delivery jurisdiction of delivery area of Kokkappilly Post Office and not a resident of Thiruvankulam Post Office, was considered not eligible for selection. So, it is a case where the merits of the applicant as a candidate were not considered on the erroneous conclusion that he was not eligible for selection being a resident of Kokkappilly and not within the Thiruvankulam Post Office area. It is seen from Annexure R1(a) that one Shri V.M. Antony, who had obtained the highest marks among the candidates in the SSLC examination was provisionally selected. The educational qualification

prescribed for the categories of ED Agents including EDMC, is "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 mentioned as a preferable qualification. Even though a pass in the SSLC examination is not essential or a preferable qualification, it is open for the authority concerned to select the best among the candidates on the basis of an overall assessment of merit and suitability. But in such cases, the marks obtained by the candidates at the SSLC examination alone cannot be considered as a decisive factor in determining the merit. In this case, it is obvious from the Annexure-R1(a) selection proceedings that the merit of the applicant has not been considered at all as he has been rejected at the threshold on the erroneous assumption that he did not fulfil the eligibility criterion of residential qualification. To that extent, we are of the view that the selection proceedings are vitiated.

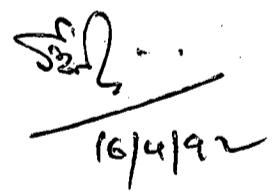
8. In view of what is stated in the foregoing paragraphs, it is necessary to direct the respondents to redo the process of selection from among the candidates interviewed on 23.4.1991 and the applicant, considering that the applicant though not a resident of the delivery area of Thiruvankulam being a resident of village Kokkappilly

within the Branch Post Office is situated, satisfies the residential qualification prescribed. The experience gained by the applicant as an EDMC in that Branch Post Office should also be taken into account.

9. In the result, the application is allowed in part and the respondents are directed to redo the selection ^{also} from among the candidates interviewed on 23.4.1991 and the applicant calling all of them again for an interview and considering that the applicant satisfies the residential qualification and considering his merit including the experience gained by him as a substitute/provisional EDMC. We further direct that action on the above lines should be completed within a period of two months from the date of communication of this order and that till such time a regular selection and appointment is made, the services of the applicant shall not be terminated ~~except in accordance with law~~.

10. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

16-4-1991

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