

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 87/91
~~P.A. No.~~

100

DATE OF DECISION 13-7-92

C. Gangadharan Applicant (s)

Mr. K. Ramakumar Advocate for the Applicant (s)

Versus

Union of India represented Respondent (s)
by the Director General of
Posts, New Delhi & 6 others.

Mr. P. Sankarankutty Nair, ACGSC for R. 1 to 4 Advocate for the Respondent (s)
Mr. P. Ramakrishnan for R. 5 to 7

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, 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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant who is the 5th respondent in an earlier Original Application No. 131/90 filed by M/s. C.A. Unnikrishnan and M.C. Shanavas is challenging Annexure-E notice issued by the Sub-Divisional Inspector of Posts, Guruvayoor inviting applications from candidates for regular appointment to the post of EDMC, Kakkassery.

2. The facts are as follows: The applicant was appointed as EDMC in Kakkassery Post Office under the 3rd respondent with effect from 1.2.1987 on provisional basis. Since he was continuing regularly from the date of appointment he submitted a representation for regularising his appointment. By considering the representation Annexure-A order was issued appointing the applicant as Extra Departmental Mail Carrier, Kakkassery Branch Post Office with effect from 1.9.1989. In the mean time the

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3rd respondent also notified to the Employment Exchange for sponsoring names to fill up the post after regular selection. Then M/s. Unnikrishnan and Shanawas filed O.A.131/90 impleading the applicant as 5th respondent for quashing the appointment order of the applicant and for further directions. This Tribunal heard the parties and by Annexure-B judgment dated 18.9.90 quashed the appointment order Annexure-A and directed the 3rd respondent to conduct a fresh selection in accordance with law considering the claims of the 5th respondent (applicant herein). A review petition filed by the applicant herein was dismissed as per Annexure-C. Pursuant to the judgment, six other candidates sponsored by the Employment Exchange were interviewed along with the applicant on 20.11.1990. After the interview the 3rd respondent did not declare the result. On enquiry, it is understood that the applicant was the only candidate who satisfied the conditions for regular appointment but without appointing the applicant the 3rd respondent issued Annexure-E notice for conducting a fresh selection. According to the applicant this is illegal and it is liable to be quashed. He further prayed that a direction should be issued to respondents 1 to 4 to appoint the applicant on regular basis in implementation of the directions in Annexure-B judgment.

3. ~~xxx~~ Respondents 1 to 4 and respondents 5 to 7 have filed separate reply statements. The 3rd respondent in the reply submitted that after the judgment Annexure-B an interview and test was conducted as directed by the Tribunal. In the selection process none of them was qualified. Hence he has issued Annexure-E notice inviting applications from candidates from open market. In the interview and test conducted pursuant to the direction of the Tribunal

five candidates including the applicant appeared. Out of the five candidates sponsored by the Employment Exchange, three were disqualified on the ground of residential qualification. The remaining two were also not qualified because of the pendency of a criminal case against one of them and other reasons recorded in the proceedings. The applicant was the only other candidate remaining to be considered. He was not selected on the ground that he scored zero marks in the test held on 30.11.1990. Therefore, under these circumstances, the 3rd respondent submitted that a fresh selection is necessary and he issued Annexure-E notice inviting applications from open market.

4. Respondents 5, 6 and 7 also filed separate reply statement. They have contended that the applicant does not possess educational qualification for being selected as an Extra Departmental Mail Carrier.

5. The learned counsel for the applicant submitted that the applicant has studied upto VIth Standard and he has fully satisfied the educational qualification prescribed for the Extra Departmental Mail Carrier. In the Service Rules for Extra-Departmental Staff the qualification for Extra-Departmental Carrier 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."

The applicant fully satisfies the educational requirements under the existing rules. Hence he cannot be disqualified on the ground that he does not possess necessary educational qualifications for the post of Extra Departmental Mail Carrier.

6. The Department in the earlier O.A. No.131/90, in which the applicant herein was the 5th respondent, tried to sustain the applicants provisional appointment to the post and filed a reply statement through the 3rd respondent which is reproduced as Annexure-F.

The relevant statement in the said reply reads as follows:-

"10. Regarding para 5(b) it is respectfully submitted that it was the intention of the 4th respondent to notify and get nominations from the Employment Exchange. But the process had not been completed as the appeal of the 5th respondent, who claimed to have worked for more than 2 years was considered by the 2nd respondent and he was appointed. There is no prohibition that a candidate not sponsored by Employment Exchange should not be selected.

11. Annexure-1-A is not illegal since no rules have been violated. As per the recruitment rules of the Extra Departmental Agents, working Extra Departmental Agents finds a place in the preferential category. The candidate selected has to be given preference by virtue of his service in the post. This preference is also endorsed to working labourers under Industrial Dispute Act.

12. There are no malafides in this appointment and no favouritism was shown except that the appeal of 5th respondent was considered on humanitarian grounds and also to avoid possible litigation on Industrial Dispute Acts."

7. The 3rd respondent specifically admitted in the earlier O.A. that the applicant has worked for more than two years in the post and that there is no prohibition of consideration of applicant along with the candidates sponsored by the Employment Exchange. It is further admitted that a candidate who has prior service in the

same post is entitled to get preference by virtue of service in that post.

8. In the light of these admissions of 3rd respondent in the earlier O.A. about the qualifications and eligibility of the applicant, we see no justifiable reason for denying selection to the applicant relying solely on the ground of his failure in the written test.

9. We fail to understand under what authority the 3rd respondent has conducted a test in this case. The Tribunal has only directed to conduct a selection in accordance with law. The rules framed by the Department as contained in the service rules for the Extra Departmental staff do not prescribe as part of selection procedure a written test. The respondents have not produced any executive order or direction from the higher authority making it obligatory on their part to conduct a written test as part of the selection procedure. The steps which were taken by the 3rd respondent for conducting a written test as part of selection process is contrary to the service rules for the Extra Departmental Staff and cannot be accepted as valid.

10. The different stand of the 3rd respondent in this application than the one which he has taken while defending the O.A. 131/90 also cannot be appreciated. The departmental officers should be consistent in their stand. The 3rd respondent who filed the reply statement through another officer has no justifiable reason to take a different stand in respect of the same issue concerning the applicant and denying him selection when it was found that all other persons who contested along with him are disqualified.

12. We ~~are~~ also failed to understand as to how the 3rd respondent failed to apply the law laid down by the Full Bench in O.A. 29/90 and deny the weightage of prior service to the applicant particularly when he has taken a stand in O.A. 131/90 ^{consistant with it} ~~that~~ the applicant is entitled to preferential treatment on account of his prior service in the post.

13. Having regard to the facts and circumstances mentioned above we should have allowed the application after setting aside the Annexure-E notice but for the fact that we have a feeling that the 3rd respondent has not complied with the direction of our earlier judgment in O.A. 131/90. We are inclined to dispose of this application solely for the purpose of 3rd respondent to comply with our direction in our judgment in O.A. 131/90 so that he may conduct a fresh selection in accordance with law and consistent with his own stand in O.A. 131/90, giving preference to the applicant based on the Full Bench decision referred to above.

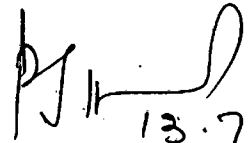
14. In this view of the matter we are inclined to dispose of the application with the similar direction which we have already issued in Annexure-B judgment in O.A. 131/90. He may proceed with the selection already initiated pursuant to Annexure-E and complete the same strictly in accordance with law taking into consideration the above said observations in the judgment. This shall be done within a period of two months from the date of receipt of a copy of this judgment. Till the regular selection and appointment the applicant will continue in terms of our interim order already passed in this case.

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..... 7/-

15. Accordingly, the application is disposed of.
There will be no order as to costs.


13.7.92

(N.DHARMADAN)
JUDICIAL MEMBER


13.7.92

(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

v/-