

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.88/2001

Tuesday the 2nd day of April, 2002.

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

L.Sulabhamani Amma
D/o Madhavan Pillai
EDDA, Puliyoorkonam P.O.
Kilimanoor.
residing at 'Chandrahari'
Chalamkonam
Puliyoorkonam P.O.
Kilimanoor.

...Applicant.

(By advocate Mr.S.M.Prasanth)

Versus

1. Union of India represented by the
Secretary to the Ministry of
Communications
New Delhi.

2. The Director General of Posts
Department of Post, Dak Bhavan
Sansad Marg, New Delhi.

3. The Chief Post Master General
Department of Post
Kerala Circle, Trivandrum.

4. Senior Supdt. of Post Offices
Trivandrum North Division
Trivandrum.

5. Smt.S.T.Sunitha, EDBPM
Puliyoorkonam Post Office, Kilimanoor
Trivandrum North Division
Trivandrum.

...Respondents

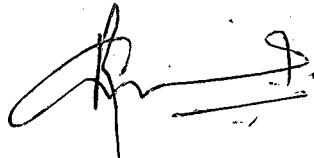
(By advocate Mrs.S.Chithra, ACGSC R1-4)

The application having been heard on 2nd April, 2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

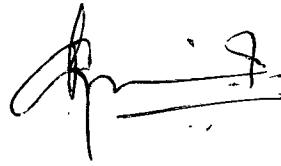
Applicant is working as Extra Departmental Delivery Agent
in Puliyoorkonam Post Office. She was appointed in that post on
9.4.91. She made a request for transfer and appointment to the
post of Extra Departmental Branch Post Master (EDBPM) in the same



post office when it fell vacant. She and other ED Agents who had requested for transfer were called for perusal of their documents and service particulars. By A-1 order dated 17.11.2000 the 4th respondent appointed the 5th respondent to the said post. According to the applicant, prior to this appointment, the 5th respondent was working as ED Packer, Alankode which post she had joined on 25.8.98. Applicant is aggrieved by the appointment of the 5th respondent as EDBPM, Puliyoorkonam and hence she has filed this OA seeking the following reliefs:

- i. To declare that the seniority is the relevant criteria for deciding the inter-se priority of requests for transfer to the vacant post of ED Agents.
- ii. To call for the records leading up to A-1 and quash the same.
- iii. To call for the records leading up to A-2 and quash the same to the extent that it prescribes that in respect of requesters due to their private circumstances the marks obtained by them in their academic examination making them eligible for their appointment determines their priority for transfer.
- iii(a) To call for the records leading up to A-3 and to quash Clarification No.2 (a) to the extent that it gives preference to those who have secured higher marks in the matriculation.
- iv. To direct the 4th respondent to appoint the applicant who is having the maximum seniority among all the candidates as the EDBPM Puliyoorkonam.
- v. To direct the respondents to pay the cost of these proceedings.

2. Applicant submits that the mode of selection among the requesters for transfer was done on the basis of A-2 letter dated 1.7.97 and that the said order was issued pursuant to the directions of this Tribunal in an OA. The applicant has advanced a number of grounds in support of her reliefs sought for.

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3. Respondents filed reply statement resisting the claim of the applicant. It was submitted that when the post of EDBPM, Puliyoorkonam Branch Post Office became vacant, three working ED Agents including the applicant applied for appointment as Branch Postmaster, Puliyoorkonam on transfer. All of them were called by the 4th respondent for verification of documents etc. and to see whether they fulfilled the eligibility conditions. It was submitted that as per the existing departmental orders, preference was to be given to ED Agents having higher marks in the matriculation examination if they satisfied other eligibility conditions. Smt.S.T.Sunitha, 5th respondent herein who was working as ED Packer, Alankode Sub Post Office and was having the highest marks in the SSLC examination and who had satisfied all the eligibility conditions for appointment as BPM was selected and appointed. There was no ground for the applicant to feel aggrieved by the appointment of the 5th respondent. As per the Director General of Posts, New Delhi letter dated 28.8.96 [Annexure R4(A)], '(a) preference may be given to ED Agents having higher marks in matriculation examination when selection is made for the post of EDBPM/EDSPM if they otherwise satisfy the eligibility criteria, (b) For other ED posts, preference may be given to seniority if they otherwise satisfy the eligibility criteria'. This Tribunal had also taken cognizance of the order in its order in OA 177/98 dated 28.4.99 [Annexure A4(B)]. This Tribunal had also occasion to refer to A-2 letter dated 1.7.97 while adjudicating OA No.57/2000 as could be seen from the order dated 29.3.2000 [Annexure R4(C)]. It was submitted that the selection of the 5th respondent for appointment to the post of BPM, Puliyoorkonam was not based on A-2 letter but it was as per



the clarifications contained against queries (2) and (3) in Annexure R4 (A). The applicant had been working as an EDDA while the 5th respondent had earlier worked as an ED Packer. The experience gained in such posts could never be a criterion for being posted as EDBPM or EDSPM. Applicant could not argue that for transfer, seniority alone should be the criterion just because it suited her case. There was nothing wrong or arbitrary in prescribing the marks secured in the qualifying examination as the basis for the selection. Choosing a better meritorious person could not be said to be arbitrary or discriminatory. Being more meritorious, the 5th respondent was selected.

4. Applicant filed rejoinder reiterating the points made in the OA.

5. Heard the learned counsel for the parties. Learned counsel for the applicant submitted that the criteria prescribed in clarification under item No.2 in A-3 has no nexus with the objects sought to be achieved under the scheme and hence the same is violative of Articles 14 & 16 of the Constitution. Hence the said clarification being violative of Articles 14 & 16 was liable to be set aside and quashed. Further, ED Agents, according to the respondents, formed one category and all ED Agents come under one seniority list and as per S1.No.2 clarifications in A-3 for EDSPM/EDBPM and for ED Agents, two different criteria had been prescribed, in that, for EDSPM and EDBPM, the criteria laid down were marks obtained in the matriculation examination whereas for other posts, service seniority was prescribed as criteria. The counsel submitted that this was discriminatory. It was further

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submitted that this Tribunal had held in OA 45/98 that serving ED Agents were entitled to transfer without being subjected to further selection process. Though the Department challenged the decision of this Tribunal before the Hon'ble High Court of Kerala, the decision taken in OA 45/98 was upheld and while holding so the Hon'ble High Court was pleased to observe that the 'may' appearing in the orders of the department relating to the transfer should be read as 'shall' and therefore the department has no option but to grant transfer to the serving ED Agents when they request for transfer. He submitted that under such circumstances, the official respondents could not adopt any further selection process for granting transfers. According to him, para 3.1 of A-2 order says that in respect of requesters for transfer, due to their private circumstances, the marks obtained by them in the academic examination making them eligible for their appointment determine their priority. Once an ED Agent is inducted into the service the mark secured by him for the qualifying examination has no much relevancy at all for deciding the eligibility for transfer. It was also submitted by him that when surplus ED Agents are accommodated by transfer, service seniority has been prescribed as a criteria whereas when it is on request transfer, marks had been decided as a criteria. This is again discriminatory. Learned counsel for the respondents took us through the reply statement and submitted that in OA 45/98 this Tribunal had held that ED Agents are eligible for transfer when ED posts fall vacant and for EDBPM and EDSPM matriculation is the prescribed qualification and among the ED Agents who apply for transfer merit is determined as per the marks obtained in the

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matriculation examination. Learned counsel for the applicant also submitted that the respondents' contention that those who secure higher marks in SSLC possess higher intellectual capacity cannot be accepted because the difference of a few marks does not indicate higher intellectual capacity.

6. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings, and have perused the documents brought on record. From A-3 letter, we find that the basic order under which transfer of ED Agents was permitted is the letter of Director General of Posts dated 12.9.88. In the context of certain clarifications sought for in that letter, the Dept. of Post, Ministry of Communications clarified those points as follows:

On the clarification No.2, a query is raised and the clarifications given are as follows which is impugned in this OA:

<u>QUERY</u>	<u>CLARIFICATION</u>
2) Whether EDAs having higher marks can be given preference for transfer irrespective of their seniority in the existing post?	2(a) Preference may be given to ED Agents having higher marks in matriculation examination when selection is made for the post of EDBPM/SPM, if they otherwise satisfy the eligibility criteria. b) For other ED posts, preference may be given to seniors if they otherwise satisfy the eligibility criteria.

7. In our view, before reading this clarification, the first query should also be seen. The first query and the clarification are as follows:



1) Whether preference can be given to the EDAs for transfer against a vacant ED post working in the same office or whether the request of senior EDA should be given preference?

(1) The transfer request may be considered in the following orders of preference

(a) Surplus ED agents whose names for deployment appear in the waiting list.

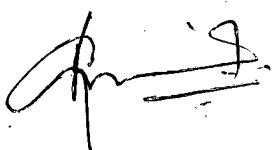
(b) If surplus ED agents are not available, the senior most ED agent, working in the same office and/or the same recruitment unit may be given preference in that order. The resultant vacancy, if any, can also be offered in the same manner.

8. This would clearly indicate that the normal criteria for transfer of ED Agents other than the surplus ED Agents is seniority. Respondents have made a specific deviation in the clarification 2 as far as EDBPM/EDSPM posts are concerned.

9. Respondents say that the seniority alone cannot be made a criterion for selection as BPM/EDSPM. They should be reasonably educated so as to acquire theoretical knowledge of the rules and instructions issued by the Department from time to time and to perform their duties effectively. It is well accepted now that the qualifications prescribed for different posts are to be laid down by the executive and normally in judicial review such qualifications laid down are not interfered with by the Tribunals/Courts. We find from R4(d) letter annexed along with the reply statement that from 1993 the Department had laid down the minimum educational qualification for EDDA/Stamp Vendor and other categories of EDAs as 8th standard and for ED Sub Postmasters and Branch Postmasters, the qualification had been laid down as matriculation. It is also laid down therein that selection for the post of EDSPM/EDBPM should be based on the marks secured in the matriculation or equivalent examinations. It is specifically provided that no weightage need be given for



any qualifications higher than matriculation. In OA 45/98, this Tribunal interpreting the letter of 12.9.88 and the clarifications issued by the Member (Personnel) had held that the clarifications issued by the Member (Personnel) was against the basic order issued by the Director General on 12.9.88 and that the letter dated 12.9.88 provided for appointment to the post of ED Agents by transfer and hence ED Agents were eligible for consideration for appointment by transfer against posts of EDA when the posts become vacant. It was also laid down that only if any of the existing ED Agents who apply for transfer was found ineligible or unsuitable that recruitment from open market should be resorted to. Till this pronouncement, the department was holding the view that ED Agents did not have the right for transfer against a vacant ED post and they had to compete with open market candidates for selection against ED posts. This Tribunal in OA 45/98 held that the EDAs shall not be subjected to selection along with outsiders and they are entitled for appointment by transfer. Thus, while the Tribunal held that ED Agents are entitled for appointment by transfer, the question that comes up for consideration is that when more than one ED Agent apply for the same post, what should be the criteria that should be adopted by the department for selecting the most suitable person. The applicant's contention is that the same should be on the basis of seniority in service. If the applicant's contention is accepted, it would mean that for appointment by transfer, no educational qualifications should be prescribed at all. We cannot accept such a proposition. As we have already held, it is for the executive to decide what should be the qualification for various posts. In this case, the

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department has laid down that for EDSPM/EDBPM, the qualification is matriculation. As regards the question that when more than one ED Agent who possess the matriculation qualifications apply for the post of an EDSPM/EDBPM by transfer which has fallen vacant, the selection should be done according to the department's instructions, on the basis of the marks obtained in the matriculation examination. We are of the view that marks in an academic examination can be treated as an objective criteria for evaluation of comparative merit of candidates and such a criteria exists for selection by direct recruitment. When the department has laid down such a criterion for selection the most suitable candidate for the post of EDSPM/EDBPM, by transfer, in our opinion, the same cannot be faulted. May be any other criteria like the service seniority would have also not gone unchallenged may be on the ground as to why it should be service seniority and why not the date on which the applicants make their applications. Public interest requires that the most suitable person should be manning the post of EDSPM/EDBPM and in our view, the criterion laid down by the department that the selection should be based on the marks obtained in the matriculation examination does not call for any interference by this Tribunal. In our view, the criteria cannot be also called as discriminatory as even though all the ED Agents are put in one seniority list for certain purposes, ^{for} ~~for~~ EDSPM/EDBPM, a higher educational qualification is prescribed.

10. Further in this particular case, the applicant was fully aware of the criteria based on which the selection would be made because A-3 and A-2 were already in existence when the applicant

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applied for transfer. Having applied for the transfer, knowing fully the conditions under which the transfer application would be considered, the applicant cannot be heard to challenge the very same conditions under which he had applied for transfer. On this ground also we do not find any merit in this OA.

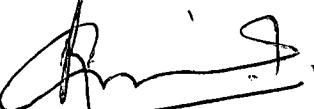
11. In the result, this OA is liable to be dismissed.

12. Accordingly we dismiss this OA with no order as to costs.

Dated 2nd April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1 : True copy of the order No.BIC/97 dated 17.11.2000 of the 4th respondent to appoint the 5th respondent.
2. A-2 : True copy of the order No.19-8/97-ED& TRG dt.1.7.97 of the 2nd respondent.
3. A-3 : True copy of the letter No.17-60/95-ED&TRG dt.28.8.96 issued by Wing Director General Posts on Transfer of ED officials.

Respondents' Annexures:

1. R-4(A): True copy of letter No.17-60/95-ED&TRG dt.28.8.96 issued by Wing Director General Posts on Transfer of ED Officials.
2. R-4(B): True copy of order in OA 177/98 dt.28.4.99 of this Tribunal
3. R-4(C): True copy of order in OA 57/2000 dt.29.3.2000 of this Tribunal.
4. R-4(D): True copy of DG Posts letter No.17-3666/91 ED&TRG dated 12.3.93.

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