

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 89/2001

Monday this the 16th day of September, 2002

CORAM

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

K.T.Xavier
S/o Late K.J.Thomas
ED Packer, Manjoor P.O., Kottayam
Residing at "Kalariparampil House"
Manjoor P.O., Kottayam.

Applicant.

(By advocate Mr.Shafik M.A.)

Versus

1. Union of India rep. by
Secretary
Department of Posts, Ministry of
Communications, New Delhi.
2. The Poost Master General
Central Region, Kochi.
3. The Senior Superintendent of Post Offices
Kottayam.
4. Smt.S.Sunithamol
Extra Departmental Branch Post Master
Kuruppumthara, Kottayam.

Respoondents.

(By advocate Mr.P.J.Philip, ACGSC (R1-3)
(By Ms. K.Indu for R4)

The application having been heard on 16th September, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who is working as E.D. Packer, Manjoor P.O., Kottayam applied for appointment by transfer as ED Branch Post Master, Kuruppumthara. Aggrieved by A-1 transfer and posting order issued to the 4th respondent by the 3rd respondent, in preference to him, allegedly in violation of the existing rules and regulations on the subject, he filed this Original Application seeking the following reliefs:

- (i) To call for the records relating to A-1 to A-8 and the files relating to the selection of the 4th respondent as EDBPM, Kuruppumthara and quash A-1.

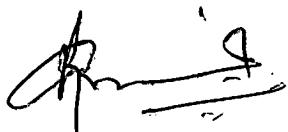


- (ii) To declare that the applicant is eligible and entitled to be appointed as EDBPM, Kuruppumthara in preference to the 4th respondent as per A-8 and to direct the respondents 1 to 3 to immediately appoint the applicant as such if he is otherwise eligible.
- (iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case;

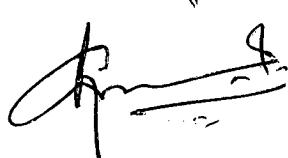
and

- (iv) To grant the costs of this Original Application.

2. According to the averments of the applicant in the OA, Kuruppumthara Post Office was a non-delivery post office manned by a single staff, i.e. the Branch Post Master. The Manjoor Post Office did all the delivery of the Kuruppumthara Post Office. According to the applicant, Kuruppumthara Post Office was in the account of the Manjoor Post Office and he was a person living within the delivery jurisdiction of both these offices. He claimed that he was eligible and entitled to be considered for a transfer to the post of Branch Post Master, Kuruppumthara. He made a request in that behalf. When a notification was issued for filling up the post, apprehending that the same would be finalized without considering his claim, he filed OA No.911/2000 after filing A-3 representation dated 10.8.2000. By A-4 order of this Tribunal dated 7.11.2000, respondents were directed to consider the candidature of the applicant also. He received A-5 letter dated 15.11.2000. Learning the that 4th respondent was selected, he filed this OA seeking the above reliefs. According to the applicant, he had to be considered first because he was working in the main office at Manjoor in whose jurisdiction Kuruppumthara post office was situated before considering any person from any other post office. He filed A-6 representation dated 28.12.2000. He also filed A-7 representation before the second respondent. Inspite of that, the impugned order had been issued by the 4th respondent.



3. Respondents 1 to 3 filed reply statement resisting the claim of the applicant. They referred to R-1 letter dated 12.9.88 and submitted that the transfer of working ED agent from one post to another was permissible only in the case of surplus ED Agents. While the applicant filed OA No.911/2000, 4th respondent also filed OA No.893/2000 before this Tribunal for getting transfer as EDBPM, Kuruppumthara. Both the applications were separately disposed of by this Tribunal directing the 2nd respondent in the OA to consider the request of the concerned applicants for appointment to the post of EDBPM, Kuruppumthara by R-2 order dated 27.9.2000 in OA 893/2000. In accordance with the directions of this Tribunal, both the applicant and the 4th respondent were considered for transfer and as the 4th respondent was found having more marks in SSLC, i.e. 397 out of 600, she was selected and appointed as EDBPM, Kuruppumthara with effect from 5.1.2001. The applicant was having only 253 marks in the SSLC examination. Selection to the post of EDBPM/SPM was to be decided on the basis of the marks obtained in the matriculation examination, if the candidate satisfied the eligibility conditions as per R-3 clarification dated 28.8.96. The 4th respondent having given an undertaking to the effect that she would reside at Kuruppumthara by R-4, she had been appointed. According to them, there was no preference to ED Agents residing within the delivery jurisdiction of the Branch Office concerned over others and recruitment to the post of BPM by way of transfer had to be done in accordance with the existing rules and as per the rules for the post of Branch Post Master, Division was the recruiting unit as had been observed by this Tribunal in the order in OA 893/2000. Since both the applicant and the 4th

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respondent were working in the same recruiting unit, the applicant as ED Packer and the 4th respondent as Delivery Agent, the 4th respondent was selected as Branch Postmaster, Kuruppamthara for the reason that the latter got higher marks in SSLC than the applicant.

4. 4th respondent filed separate reply statement resisting the claim of the applicant.

5. We heard learned counsel for the parties. Mr. Shafik M.A., learned counsel for the applicant after taking us through the factual aspects relied on clarification No.1 given in the DG (Post)'s A-8 letter dated 28.8.96 and submitted that in accordance with the clarification No.1, ED Agents who were working in the same office have to be preferred for transfer before considering the senior most ED agents in the same recruiting unit. In this particular case, Kuruppumthara was a single man branch post office and all the staff and assistants required for the said office were being given by the sub post office at Manjoor. The two offices are to be considered as one post office and as per clarification No.1 (b), the applicant should have been appointed and the question of considering the applicant and the 4th respondent simultaneously did not arise.

6. Learned counsel for the official respondents reiterated the points made in the reply statement. Smt. Indu, learned counsel for the 4th respondent referred to A-8 clarification given by the DG (Post) and submitted that in accordance with the said clarification, the 4th respondent possessing higher marks than the applicant had been correctly selected.

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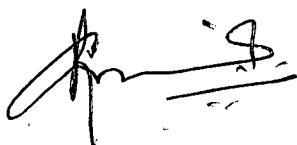
7. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have also perused the documents brought on record.

8. As all parties are relying on the clarifications given by the DG (Posts), we are of the view that it is worthwhile to reproduce the said clarifications given in A-8 dated 28.8.96:

	<u>QUERY</u>	<u>CLARIFICATIONS</u>
(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 senior most ED agent in the same recruitment unit may be given preference in that order. The resultant vacancy, if any can also be offered in the same manner.
(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 are otherwise satisfy the eligibility criteria. (b) For other ED posts, preference may be given to seniors if they otherwise satisfy the eligibility criteria."



9. Learned counsel for the applicant submitted that in accordance with the clarification query No.1, the first preference for transfer was to be given to surplus ED agents as clarified in 1 (a) above and in the absence of surplus ED Agents, the senior most ED agent working in the same office should be considered for transfer and then the senior most ED agent in the same recruiting unit should be considered. The 4th respondent's case is that for selection to the post of EDBPM/SPM, the criteria is the marks obtained in the SSLC examination irrespective of whether the recruitment is by way of transfer or by way of inviting applications from open market and if the interpretation as given by the counsel for the applicant is accepted, this criteria would not get operated at all. On carefully considering the submissions and perusing the materials placed before us, we are of the considered view that the clarification under (1) is a general one and the clarification under (2) is a specific one as far as EDBPM/SPM is concerned. We are of the view that whenever two clarifications are available, one general and the other specific, the specific clarification would apply to the specific category of posts, in this particular case the category of EDBPM/SPM. In that view of the matter, we hold that the action taken by the respondents cannot be faulted in selecting from among the ED Agents who had applied for transfer. That ED Agent who was having the highest marks in SSLC as per clarification No.2 given in A-8 letter. Moreover, this Tribunal by its order in OA 911/2000 and 893/2000 directed the respondents to consider the request of the applicant as well as the 4th respondent for appointment by transfer to the post of EDBPM, Kuruppumthara if they were otherwise qualified along with other similarly placed

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candidates if any who had applied. It is pursuant to these directions that the department had considered both the applicant and the 4th respondent. This Tribunal had not held that consideration had to be done only if none had applied from the same office.

10. In the light of the above, we hold that the applicant is not entitled for the reliefs sought for. Accordingly, we dismiss this OA with no order as to costs.

Dated September 16, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

aa.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Memo No.B6/319 dated 20.12.2000 issued by the 3rd respondent.
2. A-2: True copy of the Order EDP/Manjoor dated 28.9.81 issued by the Sub Divisional Inspector, Kottayam West.
3. A-3: True copy of the representation dated 10.8.2000 submitted before the 3rd respondent.
4. A-4: True copy of judgement dated 7.11.2000 of this Hon'ble Tribunal in OA 911/2000.
5. A-5: True copy of the letter No.B6/319 dated 15.11.2000 issued by the 3rd respondent.
6. A-6: True copy of the representation dated 28.12.2000 submitted before the 3rd respondent.
7. A-6a: True English Translation of Annexure A-6 representation.
8. A-7: True copy of the representation dated 28.12.2000 submitted before the 2nd respondent.
9. A-7a: True English Translation of Annexure A-7 representation.
10. A-8: True copy of the Order No.17-60/95-Ed & TRG dated 28.8.96 issued by the 1st respondent.

Respondents' Annexures:

1. R-1: True copy of instructions of Director General (Posts) (No.43-27/85-Pen (ED&Trg) dated 12.9.1988.
2. R-2: True copy of judgment in OA No.893 of 2000 dated 27.9.2000 of this Hon'ble Tribunal.
3. R-3: True copy of the clarification issued by the Ministry of communications, Department of Post No.17-60/95-KD & TRG dated 28.8.96.
4. R-4: True copy of undertaking given by the 4th respondent to the Superintendent of Posts, Kottayam Division, Kottayam on 22.11.2000.
5. R-5: True copy of letter from Senior Supdt. of Post Officers, Kottayam to Shri K.T.Xavier No.B7/KTM/W/SO dated 22.1.01.

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