

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 92 of 2000

Friday, this the 12th day of April, 2002

CORAM

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

1. P. Sasidharan,
S/o Divakaran Nair,
Extra Departmental Delivery Agent,
Kolazhi, Trichur Dist.
residing at Pandiyat House,
Choolissery PO, Trichur Dist.Applicant

[By Advocate Mr. P. Ramakrishnan]

Versus

1. Union of India, represented by the
Director General, Department of Posts,
New Delhi.
2. The Assistant Superintendent of Posts,
Trichur North Sub Division,
Trichur - 680 001
3. The Sub Divisional Inspector of Post Offices,
Trichur North Sub Division, Trichur.Respondents

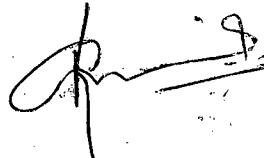
[By Advocate Mr. M. Rajendrakumar, ACGSC]

The application having been heard on 12-4-2002, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application has been filed by the applicant against A5 notification dated 15-12-1999 issued by the 2nd respondent inviting applications from eligible candidates for filling up the post of Extra Departmental Delivery Agent at Kolazhy Post Office reserved for OBC. He sought the following reliefs through this Original Application:-



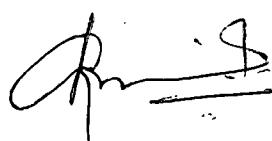
- "a) an order quashing/setting aside Annexure A5 in so far as it reserves the post of EDDA Kolazhi for OBC;
- b) an order directing the respondents to consider the applicant for appointment to the post of EDDA Kolazhi;
- c) such other orders and directions as are deemed fit in the facts and circumstances of the case."

2. According to the averments of the applicant in the Original Application, he was working as Extra Departmental Delivery Agent (EDDA for short), Kolazhi post office on a provisional basis since 1-5-1997 in terms of his appointment letter A1 dated 1-5-1997. He claimed that prior to his appointment as EDDA Kolazhi, he had worked for a number of days as Extra Departmental Agent in Trichur City post office and Choolissery post office commencing from 11th of January, 1988. In support of the same, he produced A2, A3 and A4 certificates issued by the Sub Postmaster, Trichur City Post Office. He also averred that he had worked for 62 days as EDDA, Choolissery between 1995 and 1997. A regular post of EDDA, Kolazhi became vacant when the incumbent on that post had been dismissed from service. A5 notification was issued calling for candidates for filling up the vacancy. In the said notification, it had been stipulated that the vacancy was meant for OBC. According to the applicant, A5 notification in so far as it reserved the vacancy for OBC was arbitrary and illegal. He claimed that there was no direction whatsoever to make reservation in Extra Departmental posts for OBC and there was no roster system followed for filling up the vacancies. When 6 vacancies were notified during September-October, 1999 in different post offices in Trichur Division, all were reserved for SC, ST and OBC. He listed the 6 vacancies as ED Packer Vellanikkara, ED Packer Pallikad, ED Packer Ollurkara, ED Packer Agricultural University PO, RD Mail Carrier Kuttanalloor PO and ED Mail Carrier Trichur City PO. According to him, even

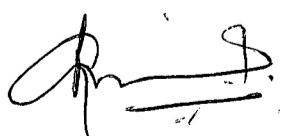


if there were instructions for following the principles of reservation for OBC, the same ought to be on a point system. It was also submitted by him that there was excessive reservation for backward candidates amongst the Extra Departmental posts. The applicant having fully qualified for appointment as EDDA Kolazhi and having passed the SSLC and considerable experience in the post, he was entitled for weightage for his past service and was eligible to be considered for the post of EDDA Kolazhi.

3. Respondents filed reply statement resisting the claim of the applicant. According to them, the post of EDDA Kolazhi was reserved for OBC to make good the shortfall already existed in the Sub Division. Reservation for ED appointments already existed and according to the Director General, Department of Posts letter dated 27-11-1997, for securing uniform application of reservation for SC, ST and OBC in ED appointments, guidelines had been issued for strict observance of reservation orders. Accordingly, a review was made by the 2nd respondent and shortfall under ST/OBC was found and hence, the 2nd respondent decided to reserve the post of EDDA Kolazhi for OBC to make good the shortfall which already existed under the category. It was submitted that the applicant's appointment in the post of Extra Departmental Mail Carrier, Trichur City was against a leave vacancy and it was not a provisional appointment. The applicant was not given any other provisional appointment other than the post of EDDA Kolazhi. A2, A3 and A4 certificates were not issued by the competent authority and A2 was not related to any ED appointment. The certificates do not bear any date of issue. They even doubted the genuineness of the documents and submitted that the same were required to be verified. The Sub Postmaster, Trichur City had no authority to issue such certificates and the reason for issuing the same was



also not known. In terms of R1 letter dated 30-12-1999, even if a person had worked in short spells in different ED posts, the same could not be considered for the purpose of a regular selection. According to them, the total strength of ED posts in Trichur North Sub Division was 169 and on the basis of 27% reservation for OBC, 45 should be manned by OBC against which there were only 36 actually available and hence, to make good the shortfall EDDA Kolazhi post office was reserved for OBC. There was nothing illegal in the same. The same was done in accordance with R2 letter dated 27-11-1997 issued by the Director General (Posts) and there was nothing or arbitrary about the same. As there was no representation of ST in the Sub Division, the 2nd respondent earmarked the posts of ED Packer Pattikad, ED Packer Ollukkara, ED Mail Carrier Kuttanellur and ED Mail Carrier Trichur City for ST community and the post of ED Packer Vellanikkara was filled up by appointing a candidate selected under relaxation of Recruitment Rules on extreme compassionate grounds and the selected candidate belonged to OBC. The post of ED Packer at Kerala Agricultural University post office was filled up by an OC candidate. It was submitted that even if the applicant was considered based on his 10th standard pass and past experience, he would not come in the selection zone. His position in the merit list among the 11 applicants was 11th with 213/600 marks in the SSLC and he was not entitled to any weightage for experience as per R3 letter of the Director General (Posts). The minimum percentage of representation in ED appointments was being ensured in accordance with R4 instructions dated 8-10-1980. The applicant not being an OBC candidate was not entitled for any weightage and was not eligible for being considered. The Original Application was liable to be dismissed.



4. In a statement filed by the learned counsel for respondents on 21-3-2002, it was submitted that the post in question was to be reserved for OBC even as on that day. It was submitted that against the total requirement of 35 OBC, actually in position was only 5 resulting in a shortfall of 30 OBC candidates. The figure shown in the reply statement as 45 was not correct as the total strength was only 130 and the reservation prescribed would be 35 only. The said mistake had occurred while calculating the total strength and various categories of reservation the Postmasters and Branch Postmasters were also counted and this could not be done as these two posts would not fall in this category. It was submitted that the total posts filled during 1999 was 8 and out of which 4 posts were earmarked for reservation category, i.e., only 50% including the post in question.

5. Heard the learned counsel for the applicant on 10-4-2002 and that of the respondents today.

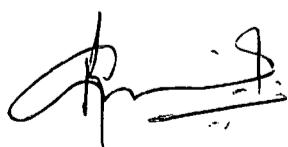
6. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and perused the documents brought on record.

7. The applicant's specific case is that there is excess reservation for SC/ST/OBC and hence, earmarking the post of EDDA Kolazhi is not legal and the impugned order A5 is liable to be quashed on this ground. The other ground advanced by him was that because the post had been earmarked for OBC, he who had worked as a provisional ED Agent was not getting consideration and he also claimed weightage for his past service.



8. It is now well settled that a person working on a provisional basis as an ED Agent is not entitled for any weightage on that count. Moreover, to our query, the learned counsel for the applicant had submitted that before A1 order was issued the applicant was not subjected to any selection along with others and he was appointed without any competition from amongst the candidates invited through the Employment Exchange. This would indicate that his appointment was not in accordance with the Recruitment Rules. In the light of this factual position, we are of the view that the applicant does not acquire any legal right for regular appointment on the date of filing of this Original Application.

9. As regards the question whether the post has to be earmarked for OBC or not, we find that there is contradiction in the respondents' original reply statement and the counsel's statement filed on 21-3-2002. In paragraph 8 of the reply statement, the respondents specifically admit that out of the 6 posts mentioned in Ground 'C' by the applicant in the Original Application, 4 had been reserved for ST candidates and 1 was filled by an OBC candidate on compassionate grounds and the remaining 1 was earmarked for OC. As per the further counsel's statement filed on 21-3-2002, the total number of posts filled up during 1999 was 8. If the total number of posts filled up during 1999 was 8 and 5 posts were earmarked for ST and OBC candidates and the post in question in the Original Application, i.e. EDDA Kolazhi, was also earmarked for OBC, the total reserved posts during 1999 comes to 6, which is far in excess of the 50% limit for reservation laid down by the departmental instructions as well as the dictum laid down by the Hon'ble Supreme Court in Indra Sawhney etc.etc. Vs. Union of India & Others etc.etc. [AIR 1993 SC 477].



10. In view of the above, on the basis of the respondents' own statements in the reply statements, A5 cannot be sustained and the same is liable to be set aside and quashed. We do so accordingly. We direct the 2nd respondent to assess the position of the total number of posts in the Sub Division and re-workout the reserved vacancies to be filled up during 1999 afresh in accordance with law and re-notify the post in question and take further necessary action.

11. The Original Application stands disposed of as above with no order as to costs.

Friday, this the 12th day of April, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.

APPENDIX

Applicant's Annexures:

1. A-1: True copy of memo No.DA II/BO 15 dated 1.5.97 issued by the 3rd respondent.
2. A-2: True copy of certificate dated 9/1 issued by the Sub Post Master, Trichur City.
3. A-3: True copy of letter dated Nil from the Sub Post Master, Trichur City to the 3rd respondent.
4. A-4: True copy of Discharge Certificate dated nil issued by the Sub Post Master Trichur City to the applicant.
5. A-5: True copy of Notification NO.DA/BO/Kolazhi dated 15.12.99 issued by the 2nd respondent.

Respondents' Annexures:

1. R-1: True copy of the letter NO.19/34/99-ED&Trg dated 30.12.99 of Director General, Posts.
2. R-2: True copy of the letter No.19-11/97 ED&Trg dated 27.11.97.
3. R-3: True copy of the letter No.19-43/98 ED &Trg dated 24.6.99.
4. R-4: True copy of the letter No.43-117/80-Pen dated 8.10.80.

npp
19.4.02