

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
T. A. No.

92

1990

DATE OF DECISION

10.8.90

V. G. Balakrishnan

Applicant (s)

M/s. M. K. Damodaran &

Advocate for the Applicant (s)

Alexander Thomas

Versus

UOI rep. by Secretary,

Respondent (s)

Communications, New Delhi

Mr. TPM Ibrahimkhan, ACGS

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr.

S. P. Mukerji, Vice Chairman

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

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The grievance of the applicant in this case is that he was not given opportunity to compete for a regular selection, when the second respondent conducted regular selection for filling up two of the vacant posts of Extra Departmental Mail Man (for short EDMM) in RMS TV Division, Changannacherry.

2. According to the applicant when two vacancies of EDMM arose the second respondent decided to conduct a regular selection and fixed up a date for selection viz. 8.2.88 and issued letters for interview to all

candidates including the applicant. Annexure-I is the said letter. But on 8.2.88 the interview was not conducted. It was postponed without fixing any further date for interview and the applicant was informed by Annexure-II letter dated 4.2.1988 that the recruitment to the aforesaid post is postponed and ^{the} date for reporting to the office for interview will be intimated to the applicant later. According to the applicant for the next two years there was no such intimation to the applicant by the second respondent. Later he came to know only in February, 1990 that the fourth respondent was appointed in one of the vacant posts. The applicant submitted that the fourth respondent is not legally entitled to be appointed to the post as per the rules. He does not satisfy the required qualifications for appointment as provided in the relevant rules.

3. Under these circumstances the applicant approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 to quash the selection and appointment of 4th respondent and also for a direction for, the selection and appointment to the respondents to conduct a fresh interview to the post of EDM in RMS, Changannacherry.

4. The respondents 1 & 2 have filed a detailed counter affidavit producing some documents, particularly Annexure R-2(c) judgment in O.A.K. 62/88, and contended that in the light of the directions in the judgment in

R-2(c) without conducting an interview the post could be filled up and accordingly they filled up one of the posts with the applicant in O.A.K. 62/88 and the other post with the fourth respondent in similar manner without conducting any further interview. They have also submitted that they have duly complied with all the formalities for selection. The applicant filed a rejoinder. But the fourth respondent even though was served with the notice, neither appeared before us nor did he file any counter affidavit xxxxxxxxxxxx denying the averments of the applicant in this case.

5 Having heard the matter, we are of the view that on the admitted facts, this application can be allowed. The applicant's specific case in this application is that the second respondent proposed to fill up the two vacant posts of EDMM by conducting a regular selection xxx after interviewing the candidates, who xxxxxxxxxx were xxxxxxxx sponsored by the employment exchange and applied for the post, on 8.2.1988. For some reason or the other this interview could not be held on the date proposed by the second respondent. Accordingly he further decided to postpone the interview and issued necessary intimation to candidates including the applicant. Annexure-II is such an intimation issued to the applicant. These facts are admitted by the

respondents 1 to 3.

6. But they had not given any satisfactory explanation for having changed this stand and filled up these two vacant posts without conducting the interview, except by placing reliance on the judgment at Annexure R-2(c). The interpretation given by the second respondent to this judgment cannot be accepted. He submitted that in the light of the direction given by this Tribunal in Annexure R-2(c) judgment it is not necessary for him to conduct any interview and he has got the freedom to fill up both the posts without conducting any interview. We are unable to accept this contention. There is no such direction in Annexure R-2(c) judgment. In the operative portion of the judgment this Tribunal only stated that

"we are closing the application with the direction that the second respondent would permit the applicant also to participate in the interview proposed to be held for recruitment of EDM and if the applicant is entitled to any preference on account of his service under the second respondent such preference also should be given to him."

So this Tribunal made it clear that it is incumbent upon the second respondent to make a further selection after conducting the regular interview. Admittedly such an interview has not been conducted. The explanation given by the respondents 1 & 3 is against the facts.

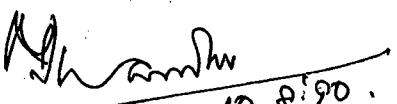
Hence, the appointment of the fourth respondent without any interview deprived the chance of the applicant to compete with others in the selection especially when he

24th chance

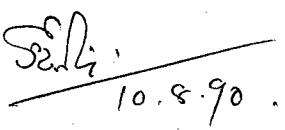
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has a case that the fourth respondent does not possess the required qualifications as per the relevant rules of selection. This has caused injustice to the applicant, for he was unable to present himself for the selection.

7. In the light of these facts and circumstances of this case, we are of the opinion that the application is to be allowed. Accordingly, we quash the appointment of the fourth respondent and direct the respondents ^(do 3 4) to ¹ conduct a fresh selection for filling up the remaining one post of EDMM, RMSATV Division, Changanacherry in accordance with law giving opportunity to the applicant and all other persons who have been sponsored by the Employment Exchange and who applied for the post at the time of Annexure-II including the fourth respondent. The respondents shall comply with this direction within three months from the date of receipt of copy of the judgment. Till a proper selection and regular appointment is made in accordance with law by the second respondent as directed in this judgment, the fourth respondent should be allowed to continue in the post provisionally subject to the outcome of regular selection. The application is allowed. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

kmm


S. P. Mukerji
Vice-Chairman

10.8.90