

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
F. A. No.

11

199 2

DATE OF DECISION 4.9.92

A. P. Babu

Applicant (s)

Mr. T. A. Rajan

Advocate for the Applicant (s)

Versus

Union of India represented by  
Secretary, Ministry of Communications,  
New Delhi and 3 others

Respondent (s)

Mr. George C.P. Tharakan, SCGSC

Advocate for the Respondent (s) 1 & 3.

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? <sup>4/9</sup>
2. To be referred to the Reporter or not? <sup>h</sup>
3. Whether their Lordships wish to see the fair copy of the Judgement? <sup>h</sup>
4. To be circulated to all Benches of the Tribunal? <sup>h</sup>

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

Applicant is aggrieved by the refusal of the third respondent to appoint him as E.D. Agent in the existing vacancy considering his service as casual mazdoor from 13.4.89

2. According to the applicant, he was initially engaged by the third respondent as a casual mazdoor on 13.4.89 and he is continuing in that post without any break. He has put in more than 240 days and he is eligible to be considered for a posting as E.D. Agent which arose in the post office in which he is working as casual labour. When the post of E.D. Mailman became vacant, the applicant being fully eligible and qualified requested third respondent to consider him for the same. He has also filed Annexure A representation to the third respondent on 24.12.91. Without considering his claim or disposing of the representation,

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Received  
02/10/92  
P. S. Habeeb Mohamed

fourth respondent who is working as casual mazdoor in the Sub Record Office, Iringalakkuda was considered for appointment on the ground that he has got more service and that he is a approved casual mazdoor. It is under these circumstances that the applicant has filed this application under section 19 of the Administrative Tribunals' Act with the following reliefs:

- i) to declare that the action of the third respondent to appoint the 4th respondent as ED Mailman in the Sub Record Office, Trissur is illegal.
- ii) Direct the respondent 1 to 3 to appoint the applicant in the existing vacancy of ED Mailman in the Sub Record Office, Trissur.
- iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant."

3. Respondents 1 to 3 in the reply statement have stated that the fourth respondent is an approved mazdoor who was <sup>shown</sup> engaged before 7.6.88, the crucial date for consideration/ in Ext. R-1 produced along with the reply statement. According to the respondents, casual mazdoors who were recruited prior to 7.6.88 will be absorbed in the regular vacancy even in spite of the fact that they are not sponsored by the Employment Exchange. This was granted as per Ext. R-1 as a one time measure. Fourth respondent is fully qualified and senior to the applicant, he is eligible to be posted as ED Mailman in the existing vacancy under the third respondent. They have further stated in the reply that the applicant is neither an approved mazdoor nor selected through Employment Exchange but he is working in the post office from April, 1989 for 5 hours daily on a regular basis.

4. We have considered the arguments advanced by learned counsel for both parties. Learned counsel for applicant submitted that in the Sub Record Office at Trichur separate seniority is being maintained. As per the seniority maintained at SRO, Trichur, the applicant is the only

person who is fully eligible and qualified to be appointed as ED Mailman. Fourth respondent is taken from ~~the~~ seniority list maintained in the Iringalakkuda SRO and whenever a vacancy arises in that office, he can stake his claim. He cannot be allowed to be absorbed in the present vacancy when casual labours like the applicant is available for engagement. Applicant also stated this fact in para 2 of the application, but they were not denied by the respondents 1 to 3 in the reply statement.

5. Fourth respondent has <sup>neither</sup> appeared before us nor filed any statement denying <sup>the</sup> averments and allegations made by the applicant.

6. At the time when the case came up for admission on 2.1.92, we directed third respondent to prepare a panel of at least two candidates and produce the proceedings of selection before us. When the case came up for further direction on 24.1.92, it was submitted that applicant is the <sup>be</sup> only person who can/ appointed in the present vacancy, since <sup>the only</sup> he is/eligible candidate in the list maintained in the SRO Trichur. In view of the statement, we directed the third respondent to maintain status quo regarding filling up of the vacancy of ED Mailman, Trichur. Accordingly status quo is maintained and the post remains vacant.

7. Learned counsel for respondents 1 to 3 produced for our perusal the minutes of the selection. Third respondent has conducted a selection by holding a written test and interview. In the <sup>found</sup> selection, both the applicant and the fourth respondents were/ equally meritorious but fourth respondent was selected because of the fact that he is senior to the applicant.

8. Seniority of fourth respondent over the applicant cannot weigh before the third respondent for giving appointment to the existing vacancies in the SRO, Trichur

because separate seniority lists are being maintained in both SROs. If any vacancy arises at Iringalakkuda, fourth respondent can make a claim for posting to that vacancy but his seniority in the SRO at Iringalakkuda cannot be considered for comparing with the seniority of the applicant which is maintained in another SRO.

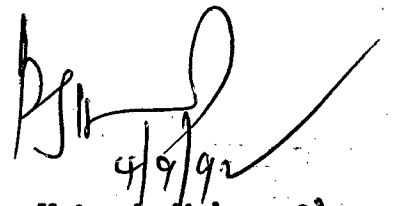
9. In this view of the matter, we are of the view that the applicant is fully qualified and eligible for appointment notwithstanding the selection already made by the third respondent. Accordingly, we allow the application and declare that applicant is an eligible person to be appointed as ED Mailman, under the third respondent in preference to the fourth respondent. We direct third respondent to appoint applicant as E.D. Mailman under him.

10. Application is allowed.

11. There will be no order as to costs.



(N. Dharmadan)  
Judicial Member



(P.S. Habeeb Mohamed)  
Administrative Member

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