

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 11 of 1990

T.A. No.

DATE OF DECISION 19.4.1991

P Sreekantan Nair Applicant (s)

Mr.P.Gopalakrishnan Nair
~~xxxxxRxxxxxxxxxxxxxxKxxaxxx~~ Advocate for the Applicant (s)

Versus

The Postmaster General, Kerala Respondent (s)
Circle, Trivandrum & 3 others

Mr.TPM Ibrahim Khan, ACGSC Advocate for the Respondent (s)
(for R.1,2 & 4)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ys*
4. To be circulated to all Benches of the Tribunal? *Ys*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the

Administrative Tribunals Act the applicant has challenged the selection and appointment of the third respondent as Extra Departmental Delivery Agent of Pangappa Post Office and has prayed that a direction may be issued to the first respondent to issue proper direction to the second respondent to appoint him as E.D.D.A. in Pangappa Post Office, Trivandrum.

2. Pursuant to a notification dated 2.9.1987 calling for applications to the post of E.D.D.A. at Pangappa Post Office, the applicant who possess all the prescribed qualifications for the post, submitted his application. Out of the 9 candidates who responded to the notification, the applicant

and the third respondent alone were called for an interview on 30.10.1987. The applicant appeared in response to the above call letter and produced all his testimonials. The third respondent also appeared. Though the applicant obtained more marks in the S.S.L.C. examination than the third respondent, the third respondent was selected and appointed to the post. According to the applicant he having obtained more marks in the S.S.L.C. examination and having had previous experience as E.D.D.A. in the same Post Office was a better candidate than the third respondent who had never worked as an E.D.D.A. Aggrieved by his non-selection and the selection of the third respondent, feeling that he had been discriminated against, the applicant submitted a representation Annexure-A-III to the first respondent requesting him to interfere in the matter and to render justice. As this representation was not disposed of by the first respondent, the applicant filed OAK-293/87 before this Tribunal challenging the selection and appointment of the third respondent. This application was disposed of by this Tribunal by judgement dated 20.8.1989 (copy at Annexure A-IV) directing the first respondent to dispose of the representation submitted by the applicant considering all the aspects within a period of two months from the date of receipt of that order. This representation has been disposed of by the first respondent by his order dated 17.10.1989 at Annexure A-V holding that the inquiry revealed that the selection of the third respondent was quiet in order. Aggrieved by Annexure A-V order, the applicant has filed this application. It is averred in the application that as he had obtained higher

marks in the S.S.L.C. examination than the third respondent, the selection and the appointment of the third respondent, overlooking his superior claim is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution. It has also been averred that the impugned order Annexure A-V is bad for non-application of mind since the first respondent has not even despite the direction from the Tribunal given due consideration to all the aspects mentioned in his representation and stated the reasons for the conclusion arrived at in the impugned order.

3. Though the third respondent was served with notice, he did not appear nor was any statement filed on his behalf.

4. Respondents-1, 2 and 4 in their reply statement have admitted that among the 9 candidates who responded to the notification calling for applications to the post, the applicant and the third respondent were the two persons considered for selection as others did not satisfy the eligibility criteria.

It is further admitted that the applicant had obtained 226 in the S.S.L.C. Examination marks and the third respondent had obtained only 216 marks.

The reason why the applicant was not selected, according to the respondents is that he was found physically unfit and that he tried to influence by political pressure rendering himself unsuitable for appointment. It has also been averred that the third respondent was entitled to preference as a retrenched E.O.Agent.

5. The applicant filed a rejoinder. He has categorically denied the allegations that he tried to exert political

influence. He has also stoutly refuted the contention that he was found physically unfit. The applicant has further averred that all these contentions were raised only as an afterthought by the respondents and that in the earlier application OAK-293/87, the contention raised was only that the third respondent was found more meritorious. Therefore, according to the applicant, the contentions raised in the reply statement are raised without any bona fides.

6. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. It is an undisputed fact that the applicant and the third respondent satisfied all the eligibility criteria for being considered for appointment as E.D.D.A., Pangappa Post Office and that the applicant had got 226 marks out of 600 while the third respondent had got only 216 marks out of 600 in the S.S.L.C. examination. The learned counsel appearing for the respondents conceded that among candidates satisfying the eligibility criterion normally the person who has higher marks in the S.S.L.C. examination has a better chance to be selected than the person who has obtained less marks. Therefore if the applicant was not unsuitable for any other reason as between the applicant and the third respondent, even according to the departmental instructions as conceded by the learned counsel for the respondents, the applicant had a better chance attempts to to be selected. The respondents ~~justify~~ the non-selection of the applicant and the selection of the third respondent on the ground that the applicant was found physically unfit

for the post of E.D.D.A and also for the reason that he tried to exert political influence and thus rendered himself unsuitable for selection and appointment. It has also been contended that the third respondent was a retrenched E.D.Packer who had been working as E.D.Packer in Karyavattom Post Office from 1.1.1986. We had in order to satisfy our judicial conscience directed the learned counsel for the respondents 1, 2 and 4 to make available for our perusal the file relating to the selection and appointment of the third respondent. The document produced by the learned counsel in this regard contained only the applications submitted by the applicant and the third respondent, copies of their mark lists and one sheet containing the names and addresses and other particulars and marks obtained by the 8 candidates who responded to the notification calling for applications. This sheet of paper does not bear the seal of the office nor is there any date in it. In this sheet, the relevant particulars available about the selection of the third respondent and the non-selection of the applicant are the following endorsement:

"Candidate at (1) SSLC passed and PDC failed is the nearest applicant to the P.O. He is holding provisional appointment as ED Packer, DRY. His work and conduct as watched by me is good - Selected (This relates to the third respondent)

Candidate (ii) Has the lowest marks in the SSLC passed candidate - Not eligible (some other candidate)

Candidate (v) is seen rejected by predecessor in the selection of a post of EDDA - Pangappa as he is suffering from epileptic fits - not physically fit to perform the ...6/-

EDDA's work. He also tried to - Not eligible
exert external influence for (This relates
selection." to the applicant)

The A.S.P. who had made the selection had filed the reply statement in OA K-293/87. As this case is an off-shoot of OA K-293/87, we have perused the pleadings in that case also. The person who filed the reply affidavit on behalf of the respondents in that case namely Shri M.Gopalakrishnan is the Assistant Superintendent of Post Offices who had selected the third respondent finding the applicant unsuitable. In the reply statement filed in OA K-293/87 by the aforesaid A.S.P Shri Gopalakrishnan it was not stated that the applicant was physically unfit or that he tried to exert any influence for getting selected.

What was stated about the selection of the third respondent in preference to the applicant in the reply statement in that case was as follows:

"Eventhough nine applications were received, after scrutiny of the applications, the applicant and the third respondent were found to be the most eligible candidates for consideration to the post and as such both of them were called for interview. After interview the third respondent was found most eligible for the post and best among the two. As such he was selected for the post."

Nothing about physical unfitness or other reasons rendering the applicant unsuitable was mentioned. It was also not stated that the third respondent was preferred as he had previous experience, and that he was a retrenched ED Agent.

The contention then was that in the interview the third

respondent was found to be the best. If as a matter of fact the applicant was found physically unfit, if he had rendered himself disqualified by attempting to bring external influence; and if the third respondent as a retrenched EDA was entitled to preference, the ASP who made the selection would in all probabilities have raised these contentions in OA K-293/87. Now that it has come out that the applicant has got more marks than the third respondent in the SSLC Examination, new contentions are seen raised in this case. The learned counsel for the applicant submits that the contentions raised by the respondents 1, 2 and 4 in this case which were not raised in OA K-293/87 have to be rejected. Since these contentions have to be taken as a desperate attempt to justify their illegal action as an afterthought. He also argued that the so called proceedings of Assistant Superintendent of Post Office by which the third respondent was seen selected cannot be relied on, since according to him that must have been concoded to suit the contentions raised in this case. Since the proceedings of the ASP does not bear date or seal, and also because what is seen recorded in the proceedings has not been stated in the reply statement filed in OA K-293/87, we are of the view that there is great force in this argument.

7. In the sheet of paper which is said to be the proceedings of selection regarding the non-selection of

the applicant, the following is seen recorded:

"Candidate V is seen rejected by predecessor in the selection of a post of EDDA- Pangappa as he is suffering from epileptic fits- not physically fit to perform the EDDA's work. He also tried to exert external influence for selection."

So, the selecting authority has decided that the applicant was not eligible, because it was according to him seen that his predecessor had once rejected the applicant on account of physical unfitness, and attempting to exert influence. It has not been stated as to when did his predecessor so reject the applicant, and what attempt was made by the applicant to exert influence. We have seen the applicant who was present in the Court on 2.4.1991. He appeared to be quite healthy. It is not known from where the A.S.P collected the information that the applicant was suffering from epileptic fits. We are also not shown any rule or instruction which states that, a person would be disqualified from appointment as EDDA if he is epileptic. We are convinced that to say that the applicant who appeared to be quite healthy should be disqualified from holding the post of EDDA, even if he is epileptic unless he is physically incapable of walking, reading and delivering postal articles is uncharitable. We are also of the view that the case of the respondents that the applicant became disqualified as he attempted to exert influence is put forth as a second thought, and that it has no factual basis.

If there was any truth in this allegation that should have been the first contention raised in OA K-293/87. The contention that the third respondent was preferred as he was a retrenched EDA is also factually false because in the so called selection proceedings the ASP had stated:

"...He is holding provisional appointment as ED Packer, ORY. His work and conduct as watched by me is good."

This shows that the third respondent had been only working as ED Packer for sometime, and that he was not a retrenched EDA. These circumstances reveal that the ASP has been partial in rejecting the applicant and selecting the third respondent. The applicant had in his representation (Annexure-III) submitted to the first respondent made clear that the selection of Subhash (the 3rd respondent) overlooking his superior claim was not based on merits and had requested for his intervention. In the order in OA K-293/87 this Tribunal had directed the first respondent to consider the representation, after considering all the aspects, and to give the applicant a reply.

Annexure-V is the reply given by the first respondent.

It reads:

"with reference to your representation dated 3.11.87 I am directed to inform you that enquiries made into the matter has revealed that the selection was quite in order."

This reply is cryptic. It does not show that all the aspects mentioned in Annexure-III representation was

considered. In Annexure-III the applicant had made it clear that the selection of the third respondent rejecting him was not on merits. The 1st respondent should have stated in the impugned order, how he came to the conclusion that the selection was in order. He was bound to state how the third respondent was a better candidate than the applicant. Fairness required him to state reason. The applicant was not making a formal enquiry whether the Postal department was making selections properly. He had a specific grievance against the selection of the third respondent overlooking his claim which he considered superior. So, considering the Annexure-III the first respondent was bound to give him a reasoned reply as to how the third respondent was found to be more suitable than him if the selection was made in order. In disposing of the representation alleging unfairness and partiality in selection/^{of} the first respondent was discharging TM a quasi judicial function. Even if it is considered to be purely an administrative function, then also fairness required the first respondent to state the reasons on which he reached the conclusion. In Management of M/s M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, 1990(2) SCC-48, discussing exhaustively the case law on the question whether principles of natural justice are to be observed even in administrative actions, their Lordships have observed as follows:

"18. Citations could be multiplied since there is fairly abundant case law which has come into existence: See, for example, E.P. Royappa V. State of Tamil Nadu and Union of India v. Tulsiram

Patel. More recently in a significant judgement in Charan Lal Sahu v. Union of India learned Chief Justice Sabyasachi Mukharji has referred to almost all the authorities of this Court on this aspect and emphasized that the principles of natural justice are fundamental in the constitutional set up of this country. No man or no man's right should be affected without an opportunity to ventilate his views. Justice is a psychological yearning, in which men seek acceptance of their viewpoint by having an opportunity before the forum or the authority enjoined or obliged to take a decision affecting their right.

19. It may be noted that the terms 'fairness of procedure', 'fair play in action', 'duty to act fairly' are perhaps used as alternatives to "natural justice" without drawing any distinction. But Prof. Paul Jackson points out that 'Such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice but, on the contrary, to refer to a standard of behaviour which, increasingly, the courts require to be followed even in circumstances where the duty to observe natural justice is inapplicable' ("Natural Justice" by Paul Jackson, 2nd edn., p.11)

20. We share the view expressed by Professor Jackson. Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant considerations. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time hallowed phrase "that

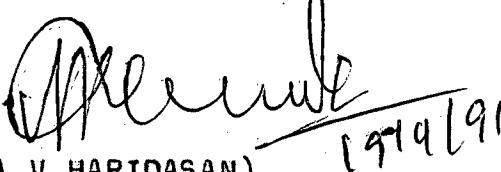
justice should not only be done but be seen to be done" is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. As Lord Pearson said in *Pearlberg v. Varty* (at p.547), fairness does not necessarily require a plurality of hearings or representations and counter-representations. Indeed, it cannot have too much elaboration of procedure since wheels of administration must move quickly."

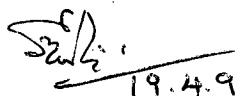
It is quite unfortunate that ^asenior officer like the 1st respondent inspite of clear direction from the Tribunal has not cared to give a reasoned reply to the representation of the applicant. Fairness in administrative action required him to give proper consideration to the facts stated in the representation and to give a speaking order in reply. If the first respondent had cared to go through the selection proceedings and the mark list and other particulars of the applicant *vis-a-vis*, the third respondent, we are convinced that he could not have come to the conclusion that he has reached in Annexure-V. While the respondents in the reply statement say that the applicant was disqualified on account of physical unfitness and also on his conduct of attempting to exert influence, even in Annexure-V such a statement is not seen made. Therefore, we are convinced that the present case of the respondents

put-forth in the reply statement is devoid of bonafides and that, it has to be rejected. The order at Annexure-V being non-speaking has to be quashed. The selection of the third respondent rejecting the applicant who has obtained better marks in the SSLC and who, even according to the respondents satisfies all other eligibility criteria as EDDA at Pangappara, to our mind amounts to discrimination and violation of Articles 14 and 16 of the Constitution of India.

8. In the result, we quash the Annexure-V order and also set aside the selection of the third respondent as EDDA, Pangappara. We also direct the 1st respondent to issue instructions to the second respondent to appoint the applicant as EDDA, Pangappara within a period of one month from the date of communication of this order and to see that the applicant is so appointed within a week on receipt of such instruction by the second respondent.

9. In the circumstances of the case, we direct the parties to bear their own cost.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

19.4.1991