

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
~~XXXXXX~~

12

1990

DATE OF DECISION 8.10.1990

Thressiamma Vincent Applicant (s)

M/s DV Radhakrishnan & Advocate for the Applicant (s)  
K Radhamani Amma  
Versus

Sub Divisional Inspector, Respondent (s)  
of Post Offices, Palai Sub Division,  
Palai - 686 575

Mr. TPM Ibrahim Khan (for R1-4) Advocate for the Respondent (s)

Mr. Mathew John (for R.5)

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? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

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

This is the third round of litigation between the applicant, a provisional Extra Departmental Branch Postmaster, Kodumpidi and the Postal Department. Shorn of details, the facts of the case can be briefly stated as follows.

2. The applicant was provisionally appointed as Extra Departmental Branch Postmaster, Kodumbidi with effect from 24.4.1987 in the vacancy caused by putting off duty of the regular incumbent, Smt. K.N. Chellamma.

Since then the applicant <sup>has been</sup> continuing in that post. The applicant has passed the Pre-Degree Examination of the University of Kerala and has got independent source of income. She is residing within the delivery jurisdiction of Kudumpidi Post Office and has got current registration with the Employment Exchange, Palai. When the department initiated proceedings for selection of candidates for regular appointment to the post <sup>of</sup> Extra Departmental Branch Postmaster, Kodumpidi, calling for nominees from Employment Exchange within the age limit of 30 years, the applicant filed OA K-434/88 praying for a declaration that she is entitled to continue in service as a regular hand <sup>and</sup> ~~for~~ consequential benefits. The applicant ~~had~~ also submitted an application for the post of regular selection. The OA K-434/88 ~~which~~ was disposed of by this Tribunal directing that the applicant should also be considered for regular selection along with other candidates. In spite of the above direction, as the applicant was not called for the interview, she filed OA K-598/88 for a declaration that she was eligible to be considered for selection. This OA was disposed of by this Tribunal by order dated 15.11.1989 declaring that the applicant was not over-aged for being considered for the selection for the post of Extra Departmental Branch Postmaster. It was further directed that the result of the interview should be declared by the respondents and if the applicant was found to be the best among the candidates, she should be regularised in the post

of Extra Departmental Branch Postmaster, Kodumpidi. The applicant was called for interview on 13.12.1988, but the 5th respondent has been selected and the impugned order Annexure-A3 has been issued by the Sub Divisional Inspector of Post Offices, Palai, stating that the 5th respondent had been provisionally selected and directing that he might be given training in Post Office work. The applicant has challenged the selection of the 5th respondent on the ground that the process of selection was not proper. It is the case of the applicant that to select the 5th respondent solely on the ground that he has secured <sup>the</sup> highest marks in the SSLC Examination is wrong, illegal and against the provisions of Section 25 H of the Industrial Disputes Act. It is claimed that, since the applicant had been working in the post for more than two years, she should have been given preference under Section 25 H of the Industrial Disputes Act. Therefore, the applicant prays that the impugned order Annexure-A3 may be quashed. She has also prayed for quashing the directions contained in the Ext.A5 letter of the Post Master General, Kerala, that the criteria for the selection should be the percentage of the marks obtained in the Matriculation/SSLC and that the candidate who has secured the highest marks will have the best chance of selection.

3. The respondents 1 to 4 in the reply statement have resisted the application and have justified the selection of the 5th respondent because he was found to be the most eligible candidate in accordance with the norms regarding selection. The

5th respondent has also filed a statement contesting the claim of the applicant.

4. We have heard the arguments of the learned counsel on either side and have also gone through the documents produced.

5. The case of the applicant is that the instructions contained in the Annexure-A5 letter, that the marks in the SSLC/Matriculation Examination is the criteria for selection, and that the person who has obtained the highest marks would have the best chance for selection is illegal and unjustifiable. The learned counsel for the applicant argued that ~~in~~<sup>in</sup> order to decide whether a person is fit to work as an Extra Departmental Branch Postmaster his ability <sup>the</sup> to do <sup>work</sup> should be the criterion, and that ~~the mere fact that~~ <sup>the</sup> the person has obtained one or two marks more than others in the SSLC Examination will not make him better qualified to work as an Extra Departmental Branch Postmaster. The learned counsel further argued that the experience in the field should not have been discarded. According to the learned counsel, by reason of her experience as Extra Departmental Branch Postmaster for more than two years, the applicant must be held to be a much better candidate than the 5th respondent who has obtained a few marks more in the SSLC Examination. But nowhere in the rules regarding the ED Agents or in the instructions in that behalf, it is stated that previous experience for two years or little

more than that should be considered as a preferential qualification. Selections are being made by the Departmental Officers in accordance with the rules and instructions on the subject. The decision of the respondents 1 to 4 in selecting the 5th respondent who was considered to be the best candidate in their view, because he has secured the highest mark in the SSLC Examination cannot therefore be faulted. The learned counsel for the applicant further argued that under Section 25 H of the Industrial Disputes Act, a retrenched employee is to be given the first choice for employment, and that in that view of the matter the applicant should have been appointed before anybody else is considered. We are not in a position to agree with this contention either, because the applicant who has not yet been retrenched from service cannot claim the benefit of Section 25 H as she is still in service.

6. For the reasons mentioned in the foregoing paragraphs we find no merit in the application and hence we dismiss the same without any order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

 8.7.90  
(S.P. MUKERJI)  
VICE CHAIRMAN

8.10.1990