

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 128/91
XXXXXX

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DATE OF DECISION 29.1.92

PP Madhavi _____ Applicant (s)

Mr VP Mohan Kumar _____ Advocate for the Applicant (s)

The Senior Superintendent of
Post Offices, Kozhikode Division
and another. _____ Respondent (s)

Mr AA Abul Hassan, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.NV Krishnan, Administrative Member
and

The Hon'ble Mr.N Dharmadan, 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? *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

Mr N Dharmadan, J.M

The applicant, who is a Member of the Schedule Caste, has challenged in this application filed under Section 19 of the Administrative Tribunals Act of 1985, the order of appointment of Respondent-2 as EDSPM, Kakkur Post Office.

2 The applicant submits that she has completed the B.Com Course. She has previous experience of LD Clerk from 30.8.79 to 26.11.79 and as Lady Village Extension Officer from 9.7.80 to 4.10.80. In addition, she had also worked as Museum Attendant from 25.11.88 to 23.5.88. She produced Annexure A to C to establish her above previous experience. It is further stated that she is having 20 cents of landed property in Thamarassery Amsom, Maruthadu Desom and

hence she is fully qualified and eligible for the post of EDSPM.

3 When the post of EDSPM became vacant at Kakkur, an intimation was given to the Employment Exchange for sponsoring names of eligible candidates for appointment in ~~that~~ ^{above} post. In that requisition which has been produced as Annexure R1(G), the following statement is given against Co. 6(b)(ii) " Open to SC/ST /OC candidates. Other conditions being equal preference will be given to SC/ST candidates".

4 When the interview ^{was} held on 27.12.90, the applicant was also considered, but was not selected. Thereafter, on getting information that Respondent-2 was selected, ~~appressed~~ ~~xxxxxx~~ the applicant filed this application challenging her selection on various grounds.

5 While admitting this application on 25.1.91, this Bench passed an interim order directing the respondents that any appointment that may be made to the post of EDSPM, Kakkur will be subject to the outcome of this application, and the appointee should be informed specifically about this. Subsequently, Respondent-2 was appointed on 31.1.91 in terms of the interim order and since then she is continuing in the post.

6 Respondents have filed a reply stoutly denying all the contentions and averments in the application. The applicant has also filed rejoinder and additional rejoinder. But the Respondent-2 did not appear through counsel nor did she file any reply in this case.

7 At the time of hearing, the learned counsel for the applicant pressed ^{only 1} ~~one~~ point namely, that the selection to the post was initiated by the Respondent-1 with an indication that preference would be given to the SC candidates in case all candidates are equally placed in the matter of merits. The learned counsel also submitted that the only one SC candidate appeared in the interview and that was the applicant. Since the applicant satisfied all the conditions for the selection and stood equal in every respect with others in the light of the stand already taken by the Respondent-1 for making this selection, the applicant should have been selected giving preference as indicated in the Annexure R1G.

8 The learned counsel for Respondent-1 submitted that the applicant and the Respondent-2 are not equally placed. Respondent-2 having superior merit, she scored higher marks in the SSLC and she has income from property which is a regular income. Moreover, SC candidates are sufficiently represented in this ~~direction~~ ^{deveopm't} ~~direction~~ and there is no necessity of any additional requirements of SC candidates to be selected as EDSPM. The income of the applicant, as given in the certificate produced along with the application is Rs 1200 per year which she is getting from cooli work. This income is likely to be stopped on her appointment. Hence, the applicant is not entitled to be selected. The selection of the Respondent-2 is legal and valid.

9 The learned counsel for the Respondent-1 produced for our perusal the minutes of the selection. We have gone through the minutes in which it is stated that at the time of the interview, only 3 candidates appeared, out of which 2 candidates namely, the applicant and Respondent-2 were alone eligible for consideration. The selection of Respondent-2 was made merely on the basis of the income of the Respondent-2. The 2nd respondent's income is out of the property and according to the Respondent-1 this income is continuing one which she would be getting ~~with effect from~~ ^{with effect from} her appointment. She has also secured higher marks in SSLC. Hence, she was selected. The reason stated in the minute's ~~dates~~ ^{dates} not appear to be a convincing one in the light of the notification at Annexure R1G. There ^{is} was an indication that preference should be given to SC candidates. But in the minutes there is no whisper about the consideration of the claims of the candidates based on the community. The applicant is the only SC candidate. She has also completed B.Com course. She has prior experience in Govt. Offices. She should have been selected in preference to the 2nd respondent, particularly in the light of the statements in Annexure R1G.

O We are of the view that the Respondent-1 initiated the selection indicating that preference will be given to C candidate when ~~competitive merits~~ ^{in respect of} the candidates are equal. But from the files it is seen that no weightage has been given to candidates from SC community as indicated in Annexure R1G while making final selection for this purpose.

This according to us is irregular and a failure on the part of the Respondent-1.

11 In regard to the objection raised by the Respondent-1 that the applicant is not having sufficient income for making selection, we are of the view that the applicant has produced certificate showing her annual income and it has been accepted by the Respondent-1. The stand of the ^{mt M} respondent that the income from property ^{alone} is a permanent income cannot be accepted. The applicant being a member of Scheduled Caste community, it may not be possible to acquire landed property and derive income from the same. But it is stated that even in the minutes that the applicant is having income from manual labour like tailoring which work can be continued by the applicant and get income ^{new M} after appointment as EDSPM which is only a part time job. According to us it cannot be presumed that simply because of the absorption of the applicant as EDSPM, her employment as cooli will come to an end. As indicated above, this being a part time job, the applicant can continue to work and earn atleast the minimum income of Rs 500 per year. Therefore, we reject the contention of the ^{mt M} respondents that the applicant has not satisfied the income qualification.

12 In the result, having considered the matter in detail we are satisfied that the selection of Respondent-2 has not been made properly in accordance with law and it is to be set aside. We set aside the selection and ^{the u}

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appointment of Respondent-2 and direct the Respondent-1 to appoint the applicant as EDSPM, Kakkur in her place if she is satisfying other requirements for the appointment.

13 The application is allowed. There is not order as to costs.

N Dharmadan

(N Dharmadan)
Judicial Member

29.1.92

NV Krishnan

(NV Krishnan)
Administrative Member

29.1.92

① RA-19/92 in CA 128/91

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(10) Mr K P Dandapani - by Oneethi - Petitioner
Mr V P Mohan Kumar - Amicus curiae
Mr A A Abdul Haseen - Respondent -

At the request of counsel, call on

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27/2/92

NVK & ND

(12) Mr KP Dandapani by Preethi for petitioner.
Mr VP Mohan Kumar
Mr AA Abul Hassan by proxy.

The learned counsel for the Department also submits that the department has already filed a review yesterday against our orders rendered in OA 128/91. We are of the view that it would be advantageous to consider the review application filed by Respondent-2 as well as the review application of the Department simultaneously. Therefore, the Registry is directed to take steps to list both the review applications before us on 31.3.92.

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Ms. Preddy
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Orders pronounced in
open court.

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE:

10-4-92

R.A. 36/92 in O.A. 128/91

The Supdt. of Post Offices,
Kasargod and others

Review applicants

Vs.

Smt. P. P. Madhavi &
Manikkamkandy Swayamprabha

Review respondents

Mr. A. A. Abul Hassan
ACGSC

Counsel for review
applicants

Mr. V. P. Mohan Kumar

Counsel for review
respondents

R.A. 19/92 in O.A. 128/91

Smt. Swayamprabha M.K.

Review Applicant

Sr. Supdt. of Post Offices,
Kozhikode and another

Review respondents

Mr. K. P. Dandapani

Counsel for review
applicant

Mr. A. A. Abul Hassan, ACGSC

Counsel for review
respondent

CORAM

MR. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

MR. N. DHARMADAN, JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

These review petitions are filed by the respondents in the Original Application 128/91. The contentions urged by them are almost identical. Hence, they are heard together and disposed of by this common judgment.

2. By our judgment dated 29.1.92 in O.A. 128/91, we quashed the selection of the second respondent as EDSPM, Kakkur Post Office and directed the first respondent to appoint the applicant therein in that post if she

satisfies all the requirement for the post as per rules.

3. The glaring infirmity which we found in the selection conducted by the first respondent was his failure to conduct the selection proceedings after advertizing to the specific clause 6 (b) (2) in Annexure R-1 (G) notification issued by him. The said clause pertains to reservation for SC/ST candidates.

" (2) Reserved for S/Tribe
Priority
Non-priority

Open to SC/ST/OC
candidates. Other
conditions being equal
preference will be given
to SC/ST candidates."

4. At the time of final hearing, the second respondent, the selected candidate neither appeared personally nor through counsel. But the first respondent appeared and sought to sustain the selection furnishing all relevant materials. After hearing the arguments, we perused the minutes of the selection proceedings. When we perused the minutes, we were satisfied that the first respondent has given a go-by to the relevant clause in the notification referred to above. There was no whisper about the consideration of the claim of the candidates based on the community, the selection was made solely on the basis of marks obtained in SSLC and the income from property. We have considered all the aspects and came to the conclusion that the selection made by the first respondent cannot be sustained. Accordingly, we quashed the selection and directed the respondents to appoint the applicant only because two candidates alone were considered in the selection viz. the applicant and the second respondent.

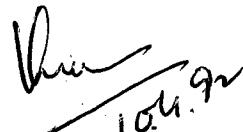
5. In these review applications the main grounds urged by the respondents is that ^bxxxxxxxxxxxxxxxxxxxx

since representation of SC/ST community was exhausted, no weightage to SC/ST candidates need be given in the selection as per DGP's instruction. Since this fact was omitted to be considered by the Tribunal, the judgment in O.A. 128/91 dated 29.1.92 requires to be reviewed and the matter is to be posted for re-hearing.

6. If the statement of the respondents are correct, there is no necessity to indicate in the notification that the selection is open to SC/ST candidates and other conditions being equal, preference will be given to SC/ST candidates. However, the very issue as to whether any weightage can be given to any SC/ST candidate was never adverted to by the first respondent in the selection and it is clear from the selection files. We have considered these contentions raised by the first respondent in the counter affidavit before passing the judgment. Hence, there is no omission or error in this judgment warranting a review and rehearing of the matter. We are fully satisfied that the respondents in the O.A. have not made out a case for review of the judgment already rendered by us in the O.A. 128/91 dated 29.1.92.

7. The review application^{are b} is accordingly rejected.


10. 4.92
(N. DHARMADAN)
JUDICIAL MEMBER


10.4.92
(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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