

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 130/2001

Tuesday this the 29th day of October, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.K.Devarajan
S/o K.S.Kumaran
Extra Departmental Delivery Agent II
Perumthuruthu P.O.
Kottayam District.
Residing at "Koladaparambu"
Perumthuruthu P.O.
Kallara, Kottayam.

Applicant.

(By advocate Mr.Shafik M.A.)

Versus

1. Union of India represented by
The Secretary
Department of Posts
Ministry of Communications
New Delhi.
2. The Post Master General
Central Region
Kochi.
3. The Senior Superintendent of Post Offices
Kottayam.
4. Viju V.K.
Extra Departmental Delivery Agent
Amayannur P.O.
Kottayam District.

Respondents.

(By advocate Mr.C.Rajendran, SCGSC for R1-3)
(By Ms. K.Indu for R4)

The application having been heard on 29th October, 2002,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A-1 order dated 24.1.2001 issued by
the 3rd respondent by which the 4th respondent had been appointed
to the post of Extra Departmental Branch Postmaster (EDBPM),
Perumthuruthu by conducting a selection from among the ED Agents
who had applied for transfer to the said post on the basis of
their SSLC marks, filed this Original Application seeking the
following reliefs:..



- (i) To call for the records relating to Annexure A-1 to A-5 and the files relating to the selection of the 4th respondent as EDBPM, Perumthuruthu and quash A-1, being illegal, arbitrary and violative of the Rules.
- (ii) To declare that the applicant is eligible and entitled to be appointed as EDBPM, Perumthuruthu in preference to the 4th respondent as per A-5 and to direct the respondents 1 to 3 to immediately appoint the applicant as such if he is otherwise eligible.
- (iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case, and
- (iv) To grant the costs of this Original Application.

2. According to the applicant, he was working as EDDA-II of the Perumthuruthu post office and had passed SSLC and was having independent income and all other qualifications to be appointed as an EDBPM/EDSPM. He had joined the services of the respondents as EDDA-II with effect from 1.8.87 having been appointed to the said post by an order of the Sub Divisional Inspector, Vaikom and had been continuing in the said post. In the meanwhile, the post of EDBPM, Perumthuruthu fell vacant. Applicant preferred A-2 request dated 20.12.2000 to the 3rd respondent for a transfer against the said post. He also preferred a similar representation. Third respondent issued A-3 letter dated 12.1.2001 intimating an interview for selection to the post of EDBPM, Perumthuruthu, calling all those candidates who had applied from the same recruiting unit. A selection was conducted on 22.1.2001 and the applicant came to know that the 4th respondent had been selected on the basis of higher SSLC marks. Aggrieved by the proposal to appoint the 4th respondent, the applicant submitted A-4 representation dated 23.1.2001. Before the said representation was considered, third respondent issued the impugned order and appointed the 4th respondent. Aggrieved, the applicant filed this OA seeking the above reliefs. According



to the applicant, A-1 issued was in violation of the existing rules and instructions on the subject issued by the Director General (Post) in his letter dated 12.9.88 and letter dated 28.8.96 (A-5).

3. Respondents filed reply statement resisting the claim of the applicant. They relied on letter dated 28.8.96 issued by the Director General (Post) and the clarifications issued under the said letter. 4th respondent filed separate reply statement resisting the claim of the applicant.

4. Heard learned counsel for the parties. On a careful consideration of the submissions made by the learned counsel for the parties, and the rival pleadings, we find that this Tribunal had dealt with identical issue in OA No.89/2001. This Tribunal in its order in OA 89/01 held as follows:

"We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have also perused the documents brought on record.

As all parties are relying on the clarifications given by the DG (Posts), we are of the view that it is worthwhile to reproduce the said clarifications given in A-8 dated 28.8.96:

	<u>QUERY</u>	<u>CLARIFICATIONS</u>
(1)	Whether preference can be given to the EDAs for transfer against a vacant ED post working in the same office or whether the request of senior EDA should be given preference?	(1) The transfer request may be considered in the following orders of preference:- (a) Surplus ED Agents whose names for deployment appear in the waiting list.



(b) If surplus ED Agents are not available, the senior most ED Agent working in the same office and/or the senior most ED agent in the same recruitment unit may be given preference in that order. The resultant vacancy, if any can also be offered in the same manner.

(2) Whether EDAs having higher marks can be given preference for transfer irrespective of their seniority in the existing post? (2)(a) Preference may be given to ED Agents having higher marks in matriculation examination when selection is made for the post of EDBPM/SPM if they otherwise satisfy the eligibility criteria.

(b) For other ED posts, preference may be given to seniors if they otherwise satisfy the eligibility criteria."

Learned counsel for the applicant submitted that in accordance with the clarification query No.1, the first preference for transfer was to be given to surplus ED agents as clarified in 1 (a) above and in the absence of surplus ED Agents, the senior most ED agent working in the same office should be considered for transfer and then the senior most ED agent in the same recruiting unit should be considered. The 4th respondent's case is that for selection to the post of EDBPM/SPM, the criteria is the marks obtained in the SSLC examination irrespective of whether the recruitment is by way of transfer or by way of inviting applications from open market and if the interpretation as given by the counsel for the applicant is accepted, this criteria would not get operated at all. On carefully considering the submissions and perusing the materials placed before us, we are of the considered view that the clarification under (1) is a general one and the clarification under (2) is a specific one as far as EDBPM/SPM is concerned. We are of the view that whenever two clarifications are available, one general and the other specific, the specific clarification would apply to the specific category of posts, in this particular case the category of EDBPM/SPM. In that view of the matter, we hold that the action taken by the respondents cannot be faulted in selecting from among the ED Agents who had applied for transfer. That ED Agent who was having the highest marks in SSLC as per clarification No.2 given in A-8 letter. Moreover, this Tribunal by its order in OA 911/2000 and 893/2000 directed the respondents to consider the request of the applicant as well as the 4th respondent for appointment by transfer to the post of EDBPM, Kuruppumthara if they were otherwise qualified along with other similarly placed candidates if any who had applied.



It is pursuant to these directions that the department had considered both the applicant and the 4threspondent. This Tribunal had not held that consideration had to be done only if none had applied from the same office.

In the light of the above, we hold that the applicant is not entitled for the reliefs sought for. Accordingly, we dismiss this OA with no order as to costs."

5. As the issues involved and the pleadings and submissions in this OA and OA No.89/01 are identical and similar, following the findings of this Tribunal in OA No.89/01 as referred to above, this OA is only to fail. Accordingly we hold that the applicant is not entitled for the reliefs sought for in this OA.

6. In the result, we dismiss this OA with no order as to costs.

Dated 29th October, 2002.



K.V. SACHIDANDAN
JUDICIAL MEMBER

aa.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Memo No.B6/4/P-08 dated 24.1.2001 issued by the 3rd respondent.
2. A-2: True copy of the representation dated 20.12.2000 submitted before the 3rd respondent.
3. A-3: True copy of the letter No.B6/4/P-08 dated 12.1.2001 issued by the 3rd respondent.
4. A-4: True copy of representation dated 23.1.2001 submitted before the 2nd respondent.
5. A-5: True copy of the Order No.17-60/95-Ed&TRG dated 28.8.96 issued by the 1st respondent.

Respondents' Annexures:

1. R-1: True copy of the Directorate of Postal Department Letter No.17-60/95-ED & TRG dated 28.8.1996.
2. R-2: True copy of the order dated 27.9.2000 of the Central Administrative Tribunal, Ernakulam Bench in OA No.893/2000.

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