IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 131/90   199
T.A.X.No.

DATE OF DECISION 18-9-90

C.A. Unnikrishnan & another __ Applicant (s)

M/s M. Ramachandran & _____ Advocate for the Applicant (s)
         PV Abraham
                Versus

U.O.I. rep. by Director Genl. Respondent (s)
Posts, New Delhi and 4 others

Mr. TPM Ibraham Khan, ____ Advocate for the Respondent (s) (1 to 4)
Mr K Ramakumar   for Respondent-5

CORAM:

The Hon'ble Mr.   N.V. Krishnan, Administrative Member

The Hon'ble Mr.   N. Dharmadan, Judicial Member

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

JUDGEMENT

(Shri NV Krishnan, Administrative Member)

The applicants have challenged the Annexure-1-A order

dated 1.9.89 by which the 5th respondent has been appointed as

ED Mail Carrier, Kakkasseri Post Office, w.e.f. the same date.

2.   The applicants' grievance is that on the occurance of a

vacancy of EDMC, there was a notice (Annexure-I) in the local

newspaper about the vacancy stating that the candidates satis-

fying the qualifications mentioned therein may appear before the

District Employment Office. The applicants, accordingly,

appeared before the Employment Officer, Trichur, and presented

their applications.

..2..

3. Nothing was heard about the selection till the impugned Annexure-1-A appointment order was issued.

4.   The first applicant then made a representation as at Annexure-II to the Senior Superintendent of Post Offices, Trichur, Respondent-3, in which besides stating the above facts he also mentioned that the name of the 5th respondent was not sponsored byxxxk the employment exchange as he did not have the requisite educational qualification. In answer, he was informed by Annexure-III letter that Respondent 5 was appointed as EDMC, Kakkassery by the SDO, Guruvayur after taking into consideration the long work and experience in the post which gives a 'legal title' as ordered by the Director of Postal Services, Calcutta.

5.   The respondents 1 to 4, Department, for short, have filed reply in which it is stated that a vacancy arose on 1.2.87 due to the promotion of the then incumbent. To facilitate his relief, he was asked to proceed on leave without allowances for 89 days after appointing the 5th respondent as his substitute.

6.   There was some delay in deciding to fill up the vacancy as the question whether this post could be combined with another post was under consideration. Ultimately, it was decided on 5.1.89 to continue this post and hence a requisition was made on the Employment

Exchange, Trichur, on 28.2.89 to send names of eligible candidates to fill up this post. The list from the Employment Exchange was received on 5.4.89.

7. In the meanwhile, the 5th Respondent addressed an appeal to Respondent-2 on 23.3.89 stating that in view of his long service, he should not be terminated from the post held by him. This was favourably considered by the 2nd Respondent who decided to appoint him regularly as E.D. Mail Carrier, Kakkasseri P.O. and the Annexure-1 order is a consequence of that decision.

8. It is also admitted in the counter affidavit that the names sponsored by the Employment Exchange did not include the name of the fifth respondent.

9. We have heard the counsel of the applicant and the Department and also perused the records. The 5th Respondent has not filed any reply nor was he either present or represented by counsel today when we heard the case finally.

10. Whatever be the reasons for which the appeal of the xx 5th Respondent was favourably considered and allowed by the second respondent, the existing instructions do not provide for any such compassionate appoint-

ment to a vacant post and his action is contrary to
these instructions. In fact, it is to minimise the
chances of such arbitrary selection that the Departmental
Instructions provide that for filling up of a vacancy on
a regular basis, names will have to be called for from
the Employment Exchange and selection made therefrom.
That being the case, the impugned order cannot be sus-
tained as second respondent has no authority to deviate
from the departmental procedure.

10.   We cannot also admit that the long work experience
had by the 5th respondent gives him a legal title for
regular appointment as stated in the impugned Annexure-III
order. The 5th respondent started, no doubt, as a subs-
titute, but when there occured a firm vacancy, his
appointment is to be treated as a provisional appointment
approved by the Department. In that capacity, his only
right is to be considered for selection when a regular
appointment is to be made.

12.   In the circumstances, we quash the Annexure-1A
appointment order. We direct Respondent-3 to proceed
with the selection already initiated earlier in accordance
with law and consider the cases of all the persons whose
names have been sponsored by the Employment Exchange.
We also direct the third respondent to consider the

claims of the fifth respondent, subject to his being otherwise eligible for consideration.

13.   With the above directions, the application is disposed of as above.   There will be no order as to costs.

(N. Dharmadan)   (N.V. Krishnan)
Judicial Member   Administrative Member

18.9.90

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

RA No.125/90 · O.A. No. 131/90 · 199x

DATE OF DECISION___30-11-90___

C Gangadharan ___Review___ Applicant (s)/R-5 in O A

Mr K Ramakumar _____ Advocate for the Applicant (s)

Versus

CA Unnikrishnan and 5 others ___ Respondent (s) in RA /Applicants & R 1-4 in the OA

Mr P Ramakrishnan for _____ Advocate for the Respondent (s)1 & 2

Mr TPM Ibrahim Khan · (for Respondents 3 to 6)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
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JUDGEMENT

Shri NV Krishnan, Administrative Member

The only ground is that the applicant (Respondent-5) did not file a reply or did not appear, not due to laches or negligence, but due to failure to be informed by the advocate's clerk.
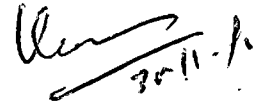
2   All other grounds are on merits and not good grounds for review.

3   Regarding non-filing of reply, he had a number of opportunities before the Registry also, which he did not avail himself of.

4   No injustice is caused to him, as in the fresh selection he is directed to be considered, if eligible.

5   The Review application is, therefore, dismissed.

(N Dharmadan) 30·11·90
Judicial Member

(NV Krishnan)
Administrative Member

30-11-90