

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 160/99

Tuesday this the 21st day of August, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Johnson U.D.
S/o Daniel
Extra Departmental Delivery Agent (Provisional)
Pulikkathotti Branch Post Office
Idukki District
(Urupattu Pulikkathotti P.O. Pin-685 582). Applicant

[By advocate Mr.M.R.Rajendran Nair]

Versus

1. The Sub Divisional Inspector of Post Offices
Thodupuzha.
2. The Post Master
Pulikkathotti Branch Post Office
3. Union of India represented by
The Secretary to Government of India
Ministry of Communications
New Delhi.

Respondents

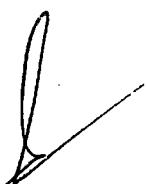
[By advocate Mr.T.C.Krishna]

The application having been heard on 21st August, 2001,
the Tribunal on the same day delivered the following:

O R D E R

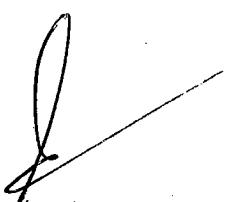
HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to declare that he is entitled to be considered for regularization as EDDA, Pulikkathotti giving due preference as applicable to Scheduled Tribe Candidates, to direct the first respondent to regularize his services and to consider and pass a speaking order on A-2 representation before regular selection and appointment is made to the post of EDDA, Pulikkathotti.



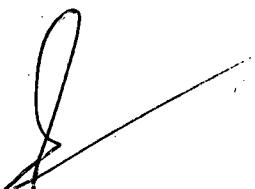
2. Applicant is engaged as EDDA, Pulikkathotti on provisional basis with effect from 11.3.98. He passed SSLC with 285 marks and is fully qualified for regular appointment in the post of EDDA. He belongs to Scheduled Tribe and is entitled to get preference for appointment as EDDA. In A-2 he submitted that he is a workman and his services are not liable to be terminated except in accordance with the provisions of Industrial Disputes Act. A-2 representation is not disposed of. Conducting regular selection and appointment to the post of EDDA, Pulikkathotti without considering his claim for regularization is unjust and arbitrary.

3. Respondents resist the OA contending that the applicant was engaged on the clear understanding that he will be discharged whenever a regular appointee joins duty in the post. Applications for regular selection were called for from Employment Exchange and by circulating open notice. There were 14 applicants out of which 10 were sponsored by Employment Exchange. Applicant responded to the said notice. Six candidates attended interview including the applicant. M.G.Sreenivasan was selected. R-4 is selection list. Selected candidate is not brought in the party array and, therefore, this OA is bad for non-joinder of necessary parties. Provisions of The Industrial Disputes Act are not applicable. If the provisions of The Industrial Disputes Act are applicable, the applicant has to approach the proper forum.

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4. Applicant says that he being a workman, his services can be terminated only in accordance with the provisions of The Industrial Disputes Act. If that is the position he has to approach the proper forum. The Tribunal is not the proper forum to invoke the provisions of The Industrial Disputes Act.

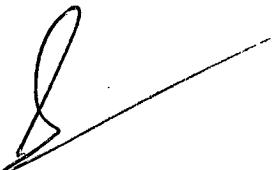
5. Learned counsel appearing for the applicant vehemently argued that the applicant being a Scheduled Tribe as per DG (P&T) letter No.43-246/77 Pen dated 8.3.'78, the applicant is entitled to get preference for appointment as ED Agent and when a qualified candidate belonging to preferential category is available, there is no need to conduct a selection by including candidates who do not come under preferential category. While considering this aspect, a clarification issued by the DG (Posts) letter dated 26th May 1995 cannot be lost sight of. In that clarification it is stated that it is to be seen whether adequate representation is available for candidates belonging to SC/ST in the Recruiting Units concerned and if it is not available then the best course would be to make clear in the notification issued to Employment Exchange itself that preference would be given to candidates belonging to reserved community, for, if this is done there is every possibility that the Employment Exchange may nominate more than one candidate belonging to SC/ST etc. It further says that in such a situation candidates belonging to reserved community will have to compete among themselves and the point that Other Community candidates who secure higher percentage of marks in the matriculation examination should or should not get preference

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is immaterial. R-1 is the copy of the notification issued by the 1st respondent calling applications for the post of EDDA, Pulikkathotti. There there is no mention that preference will be given to candidates belonging to reserved community. In the light of the clarification issued by the DG in the year 1995, the argument advanced by the learned counsel for the applicant based on DG's letter No.43-246/77 Pen dated 8.3.'78 cannot be accepted.

6. The applicant was admittedly appointed on a provisional basis by the Postmaster Pulikkathotti and it is specifically stated in the reply statement that the applicant was appointed as an EDDA at the responsibility of the Postmaster. When the applicant was appointed by the Postmaster at his own responsibility without having been sponsored by Employment Exchange or without having responded to the notification issued in that respect, he now wants to get his services regularized. If this is done it will be really taking away the opportunity available to those candidates who are equally or more qualified than the applicant, even belonging to the very same community to which the applicant belongs. If the prayer of the applicant is granted it will be a denial of equal opportunity to those who are identically placed.

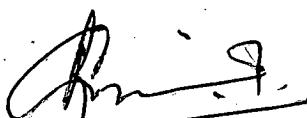
7. Respondents have also taken a specific contention that the OA is bad for non-joinder of necessary parties. For whose absence the OA is bad for non-joinder of necessary parties is specifically stated in the reply statement. The applicant has not brought the selected candidate M.G.Sreenivasan in the party

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array. That being so, the OA is bad for non-joinder of necessary parties. Learned counsel appearing for the applicant submitted that this Bench of the Tribunal by virtue of the interim order has directed that if any appointment made to the post of EDDA, Pulikkathotti during the pendency of this OA, that would be subject to the outcome of the OA and the appointee if any be so informed. Even if it is taken that on this situation it was not incumbent on the applicant to bring M.G.Sreenivasan in the party array, for other reasons we have stated this OA is liable to be dismissed.

8. Accordingly the OA is dismissed.

Dated 21st August, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

A-2 True copy of the representation dated 28.1.99 submitted by the applicant to the 1st respondent.

R-4 True copy of the Selection List.