

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 162 1990
T. A. No.

DATE OF DECISION 26.10.90

P. P. Koshi Applicant (s)

Mr. O. V. Radhakrishnan Advocate for the Applicant (s)

Versus

Sub Divisional Inspector of Post Offices, Chengannur & three others Respondent (s)

Mr. TPM Ibrahim Khan ACGSC for R-1 to 3 Advocate for the Respondent (s)
Mr. K. Karthikeya Panicker for R-4

CORAM:

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant who is working as provisional Extra Departmental Delivery Agent, Ala E.D. Sub Post Office, has approached this Tribunal challenging the selection and appointment of the fourth respondent as a regular E.D.D.A. According to the applicant he has preferential claim, but the first respondent selected the fourth respondent without considering the better right and eligibility of the applicant.

2. The applicant commenced his service as a substitute from 3.11.1986. Later the first respondent appointed him on a provisional basis w.e.f. 23.1.1987 as per Annexure-A-1 order. He was also called for the interview held on 23.1.1989 along with others for the selection

of a regular E.D.D.A. The first respondent selected the fourth respondent solely on the basis of the marks obtained in the S.S.L.C. examination.

3. The applicant filed O.A. 72/89 for setting aside the selection. The first respondent had not considered the relevant factors for the selection and preferential claim of the applicant. According to the applicant this is illegal and the selection is liable to be set aside.

4. We disposed of O.A. 72/89 after advertizing to the fact that the fourth respondent's selection was made in a hasty manner without considering the preferential claim of the applicant. Hence we directed the applicant to file xxxx a detailed representation before the first respondent, raising all the grounds against the selection and appointment of the fourth respondent, who may dispose of the same within three months from the date of receipt of a copy of the order after considering the same in accordance with law. Accordingly the applicant filed Annexure A-6 representation. The first respondent called the applicant before him at 1500 hours on 21.12.1989 and gave Annexure A-7 questionnaire and obtained the answers. Thereafter on 27.2.90 he passed Annexure A-8 order informing the applicant that his claim for appointment as E.D.D.A., Ala cannot be entertained and he was ordered to be relieved from the charge of E.D.D.A. Ala with immediate effect.

5. The applicant is challenging this final order at Annexure A-8 and the order Annexure A-4 appointing the fourth respondent as regular E.D.D.A. He also seeks for a declaration that he is entitled to the protections under Chapter-VA of the I.D.Act, 1947.

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6. The respondents 1 to 3 filed a statement on 15.3.1990 immediately after the admission of this application. They also filed a detailed reply statement dated 22.5.90 in which they have admitted that the selection of the fourth respondent was on the basis of the marks in the SSIC. They have also stated that since there are no binding instructions for giving preference to those who had officiated in the post provisionally, the same was not considered as a relevant consideration for regular selection and the E.D. Agents are governed by P & T E.D. Agents (Conduct and Service) Rules. The provisions of I.D. Act would not apply to them. The fourth respondent also filed a separate counter affidavit denying all the allegations made by the applicant.

7. Having heard the arguments and after perusing the records we feel that the first respondent has failed in the discharge of his duties. He had not correctly understood the contents of our judgment Annexure A-5 and he has not made an earnest attempt to consider the applicant's preferential right and dispose of Annexure A-6 representation in accordance with law. Hence the final order Annexure A-8 cannot be sustained.

8. It is settled principle that the provisions of I.D. Act will apply to the E.D. Agents also. In R. Padmanabhan Nair vs. Supdt. of Post Offices and Another (A.T.R. 1990(1) CAT 215 we, the same bench, have held as follows:

"The next contention very strenuously urged before us by the learned counsel for the respondents is that the petitioner being only a substitute EDSMP is not a regular workman of P & T eligible to the protection of Chapter V-A of the Act even if it is accepted that Chapter V-A applies to P & T. We are afraid that this is also not well founded argument in order to be accepted for rejecting the claims of the petitioner in this case. The industrial jurisprudence has developed considerably and expanding day by day.

Consequently, the Courts are anxious to widen the scope of the term 'workman' with a view to confer more and more benefits to the working class in this country in the interest of justice so that the unequal position which prevailed for long between the employer and employee can be reduced considerably and thereby to bury deep in the fathoms the 'hire and fire' principle. The Courts are thus paving the way for effective negotiations and settlements of industrial disputes at the industrial level itself, solely by collective bargaining process without the intervention of any third agency like the Industrial Tribunal or Courts just as in the case of industrially advanced countries like England, USA, France, Japan etc."

In M. A. Bukhari Vs. Union of India and others (A.T.R. 1989(1) C.A.T. 162) the Ahmedabad Bench of the Tribunal following the decision of Justice M. P. Menon in Kunjan Bhaskaran and others Vs. Sub Divisional Officer, Telegraphs, Changanassery (1983 Lab. I.C. 135) held that the P & T Department is an industry specifically covered by the provisions of I.D. Act, 1947.

In the light of these decisions there is no scope for any doubt as to the application of the provisions of I.D. Act to E.D. Agents.

10. We, the same bench, have considered same issue in O.A. 140/87 and held that persons who are having some service in the post office as an E.D. employee is entitled to the (preferential) rights to be considered in regular selection. The relevant portion is extracted below:

"Identical question has come up for consideration before this Tribunal and we have taken the view that persons working on provisional/ad hoc basis in the same post office are entitled to preferential treatment when the regular selections are made to the post by the postal department. Recently we have held (same bench) in O.A. 574/89 as follows:

"This Tribunal has taken the view in similar cases that the existing incumbent holding a post for a considerable period of service should also be considered for regular appointment along with other candidates and should not be excluded on the sole ground of not being sponsored by the Employment Exchange."

In the instant case the respondents 1 to 3 not only not considered his preferential claims of the applicant, but also terminated his service without following the procedural formalities of Chapter-V-A of the Industrial Disputes Act and appointed the 4th respondent in his place. The entire action of the respondents 1 to 3 is illegal and unsustainable in the light of our decision in similar matters. Hence, we set aside the order of termination of the applicant. Since the 4th respondent is at present working in the post we are not directing the respondent to reinstate the applicant with all backwages and other benefits.

As indicated above on the facts and circumstances of this case, the selection of the 4th respondent without considering the applicant's claim cannot be sustained."

11. After hearing the applicant and the respondents including the fourth respondent, we passed Annexure A-5 judgment observing that the selection of the fourth respondent was made in a hasty manner without considering serious allegations raised by the applicant against the selection and his own (preferential) claim for the appointment. We could have quashed the selection of the fourth respondent and directed a fresh selection; but we felt that the first respondent may correct his mistake, if he is given an opportunity for doing the same. Accordingly, we directed the applicant to place his grievance against the appointment of the fourth respondent so that he may have an opportunity to meet the contentions of the applicant and take appropriate corrective steps and make a selection in accordance with law. But he did not do the same. All the proceedings taken by him after the judgment and the final order passed in this case are not supportable. It is seen that pursuant to the direction he has only called XXX the applicant before him at 1500 hours on 21.12.1989 and gave Annexure A-7 questionnaire, obtained answers therein and passed a mechanical order rejecting the representation without, however, considering the question whether the applicant

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is entitled to any preferential right for consideration in the regular selection. He has taken the view that there is no provision in Annexure A-3 for granting any preference to the applicant. This is a wrong approach. The first respondent has not strictly complied with our direction.

12. During the course of hearing on 14.8.90 a suggestion was made at the Bar that further vacancy if available under the first respondent~~xxxi~~ both the applicant and the fourth respondent can be provided so that the matter can be settled out of court without inviting a decision in this case. Accordingly we granted time to the learned counsel for the respondents 1 to 3 for ascertaining and submitting the decision of the first respondent. But it was submitted before us on 26.9.90 that the department ^{for}~~xxv~~ is not willing to provide the applicant by adopting the course suggested at the bar. We have no other alternative but to consider the legality of the impugned orders and render our decisions.

13. The fourth respondent strenuously contended that his selection is ~~xx~~ valid. It was made strictly in accordance with Annexure A-3 guidelines laying down the method of recruitment of E.D. Agents and since these guidelines are not challenged the applicant is not entitled to any fresh consideration and the application is to be dismissed. It is true that Annexure A-3 has not been challenged. It is after considering these guidelines that we have held in a number of cases that the preferential claim of E.D. employees who are working provisionally in the post for ~~xx~~ which a regular selection is being made should also be considered by the appointing authorities while making regular selection. There is no substance in the contention of the fourth respondent.

14. Having regard to the facts and circumstances of the case we are of the view that a fresh selection is to be made in accordance with law considering the claims of all persons who appeared in the interview held on 23.1.89. Accordingly we set aside Annexure A-4 and Annexure A-8 and direct the first respondent to conduct a fresh selection to the post of EDDA at Ala Sub Post Office in accordance with law in the light of the above observations within a period of two months from the date of receipt of a copy of this judgment. Till finalisation of such selection and regular appointment to the post the status quo as on today be maintained with regard to the applicant.

15. The application is allowed to the extent indicated above. There will be no order as to costs.



(N. Dharmadan)
Judicial Member

26/1/90



(S. P. Mukerji)
Vice Chairman

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