

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

164

199 0

DATE OF DECISION 3.6.1991

P.G.Nandakumaran Applicant (s)

Mr.T.Ravikumar Advocate for the Applicant (s)

Versus

UOI rep. by Secy., Min. of Respondent (s)
Communications, New Delhi & 4 others

Mr.TPM Ibrahim Khan, ACGSC (R1-4) Advocate for the Respondent (s)
Mr.MV Joseph (for R.5)

CORAM:

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

and

The Hon'ble Mr. A.V.Haridasan - 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? *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.A.V.Haridasan, Judicial Member)

The applicant, who is a candidate ^{for} ~~to~~ the post of Extra Departmental Delivery Agent at Avinissery and a person belonging to the Scheduled Caste has filed this application praying that the order dated 21.2.1990 of the Assistant Superintendent of Post Offices, Trichur South Sub Division, appointing the 5th respondent, M.S.Jayarajan as EDDA, Avinissery may be quashed, and that the respondents may be directed to consider the applicant for appointment to that post. The case of the applicant is that, though he has been

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working as EDDA, Avinissery on a provisional basis from 1.4.1988, and though he had applied for selection for regular appointment to that post, the 4th respondent has by his order dated 21.2.1990, at Annexure-D appointed the 5th respondent without conducting an interview and without considering his superior claim as a working ED Agent and also as a member of the Scheduled Caste.

The third
2. respondent, Sr. Superintendent of Post Offices, Trichur has in the reply statement filed on behalf of the respondents 1 to 4 sought to justify the selection and appointment of the 5th respondent on the ground that the 5th respondent has obtained the highest marks in the SSLC Examination. It has been contended that the selection is ^{not} to be made on the basis of any grading at a written test or interview, and that the interview is required only to assess the suitability of the person concerned. Regarding the claim of the applicant as a member of the Scheduled Caste, it has been contended that the Scheduled Caste quota in the ED category had already been exhausted and the incumbent in the ED cadre are much in excess of the required quota. Therefore, according to the respondents there is no merit in the contention of the applicant that the selection and appointment of the 5th respondent is irregular. The 5th respondent has filed a statement wherein he has contended that, he being the person who has obtained highest marks in the

SSLC Examination was rightly selected, and that as 76 among the 176 EDD Agents in Trichur South Circle belong to the Scheduled ~~Caste~~ and Scheduled Tribes, no more preference need be given to Scheduled Caste in this sub division for the time being. The respondents have also contended that the claim of the applicant that he had been working from 1.4.1988 continuously on a provisional basis is not true to fact that he had been working on provisional basis only for 89 days while during the rest of the period he was working only as a substitute of the EDDA who was on leave.

3. We have heard the arguments of the counsel on either side and have also gone through the documents. The case of the respondents that the 5th respondent had obtained the highest marks in the SSLC Examination is not disputed by the applicant. Among persons who are matriculates, selection of a person who has the highest mark cannot be faulted unless the applicant is entitled to preference as a member of the Scheduled Caste. The instructions contained in DGP&T letter No. 43-117/80-Pen., dated the 8th October, 1980 reads as follows:

"It has been observed that filling up posts of ED Agents according to point system, particularly when ED Agents are supposed to be local residents employed for part-time work having other avocations and not transferable from one Branch P.O. to another, will be impracticable for the Administration. Keeping in view the Government policies of giving the representation to these communities and

to ensure at least the minimum fixed percentage as laid down for other Groups 'C' and 'D' cadres for these communities in employment of ED staff, if not more, the orders referred to in Para.6 were issued.

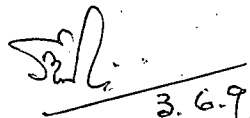
The representation of SC and ST candidates in the employment of ED staff should at least be kept to the prescribed minimum limits as in the Groups 'C' and 'D' posts in the Department. These instructions may be brought to the personal notice of all Divisional Heads for their guidance and for assessing the position on Divisional basis."

according to
So ⁴ the instructions where the representation of SC and ST candidates in the ED cadre is less than the prescribed minimum preference should ~~xxxx~~ be given to the candidates belonging to SC and ST communities. Regarding the nature of preference to be given in the DGP&T's letter No.43-246/77-Pen., dated the 8th March, 1978, it has been clearly stated that, if the candidates belonging to SC and ST possess the minimum educational qualification and satisfy the eligibility criterion, preference should be given to them over the candidates belonging to other communities even if they are educationally better qualified. So, if in the Trichur South Sub Division the representation of SC and STs in the ED posts is less than the minimum percentage prescribed, then though the 5th respondent had obtained higher marks than the applicant, the applicant being a member of the Scheduled Caste should have been given preference. But the respondents have categorically contended that the representation of the

SC and ST candidates in ED Category has exceeded the minimum percentage prescribed. The applicant has not contraverted this averment. The 5th respondent has given the data regarding the number of posts occupied ^{indicating that more than 40% of the ED posts have been filled up by SC/ST EDA's.} by the Scheduled Castes. Therefore, as the persons belonging to SC/ST cannot claim any more reservation or preference for appointment in the ED category in Trichur South Sub Division for the time being, there is no merit in the contention of the applicant that the respondents have gone wrong in not giving preference to him over the 5th respondent. As the selection is not based on any grading at the interview the complaint of the applicant that the selection was not based on any interview also cannot stand. Hence, from the pleadings and documents available, we find that the selection and appointment of the 5th respondent who has admittedly obtained the highest marks among the candidates is valid and proper.

4. In view of what is stated in the foregoing paragraph, we find no merit in the application and dismiss the same. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

3.6.1991