

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 172/90
XXX XXX

X199

DATE OF DECISION 29-6-1990

Ravindran.M Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India & 2 others Respondent (s)

Mr TPM Ibrahimkhan Advocate for the Respondent (s) 1&2

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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 AV Haridasan, Judicial Member)

The applicant was engaged as a substitute Extra Departmental Mail Carrier in Irimpanam Post Office as a substitute of one Mr. Anil Kumar who had applied for leave from 27.5.1989 till 10.2.1990. As the leave applied for by Mr Anil Kumar was not granted and as Shri Anil Kumar resigned from the post, the applicant was continuing as E.D.M.C., Irimpanam Post Office as a provisional hand. He had previous experience as E.D.M.C. with for a long time/intermittent breaks.. As he was working as E.D.M.C. on ^a provisional basis, normally he should have been considered for regular appointment and in any event, he would

have been entitled to continue until a regular appointment was made to the post. But without resorting to a process of regular appointment, the third respondent was put incharge of the post of E.D.M.C., Irimpanam on 1.3.1990 simultaneously outsiding the applicant from service. Aggrieved by the termination of his services, the applicant filed this application to declare that the termination of his services w.e.f. 1.3.1990 is null and void and to quash the appointment of the third respondent and to direct the respondents 1&2 to regularise him in service considering him in the process of regular selection giving weightage for his past services as E.D.Agent. In the application it is alleged that the termination of his services abruptly and ^{the} induction of the third respondent in that post is violative of the principles of natural justice and also the provisions of Chapter V-A of the Industrial Disputes Act. As the process of regular selection was commenced immediately after filing of this application, the applicant amended the application incorporating a prayer for^a direction to the respondents to consider the applicant for regular appointment.

2. The application is resisted by the respondents 1&2. In the reply statement, it has been been contended that the applicant who was only a substitute to Mr Anil Kumar and was allowed to continue after resignation of Mr Anil Kumar only as a stop-gap arrangement has no right to continue in service and that the appointment of the third respondent on a temporary

basis was quite in order. It is contended that the applicant is not entitled to any relief. By order dated 8.5.1990, we had directed that the applicant should also be allowed to participate in the interview held for the purpose of selecting a regular hand to the post of E.D.M.C., Irimpanam. Pursuant to this order, the applicant was interviewed. When the matter came up for hearing, the learned counsel for the respondents 1&2 produced the proceedings of the selection process held for recruitment to the post of E.D.M.C., Irimpanam.

3. We have gone through the pleadings, heard the arguments and have also perused the file relating to the selection of E.D.M.C., Irimpanam produced by the learned counsel for the respondents 1&2 for our perusal. It is seen that ^{none of} ~~the~~ candidates sponsored by the Employment Exchange had passed the SSLC Examination while the applicant has passed the same with a total of 268 marks. It is evident from the file that the post is not reserved for Scheduled Castes or Scheduled Tribes and that the same had to be filled solely on ^{the basis of} ~~merit~~. Going by the educational qualification, the applicant stands first. But in the selection proceedings it has been recorded that the applicant who is a resident of Irimpanam and not a resident of Tripunithura, did not satisfy the residence condition and hence he is not eligible for appointment. The learned counsel for the respondents 1&2 invited our attention to the requirements of residential qualification in the case of E.D.M.C. extracted in Swamy's

Compilation of Service Rules for Extra Departmental Staff in Postal Department, Fourth Edition at page 58. Here it is seen stated as follows:

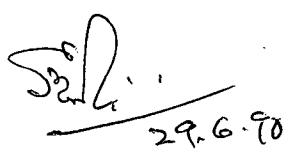
"...E.D. Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherefrom mails originate/terminate, i.e., they should be permanent residents of the delivery jurisdiction of the post office."

The applicant is admittedly a permanent resident of Irimpanam where the Irimpanam Post Office is situated and therefore he ~~✓~~ satisfies the condition of being a permanent resident in [✓] the delivery jurisdiction of the Post Office in which he seeks consideration for appointment as E.D.M.C. The learned counsel for respondents 1&2 vehemently argued that the mails to the E.D.Post Office, Irimpanam originate from Tripunithura Post Office and therefore as the applicant is not a resident of Tripunithura Post Office, he cannot be considered to be satisfying the residential qualification. This in our view, is an incorrect interpretation of the qualification prescribed. It is clearly stated that the E.D.M.C. etc. should reside in the station of the main Post Office or stage wherefrom mails originates/terminate and it has been clarified that they should be permanent residents of the delivery jurisdiction of the Post Office. The mail to the E.D.Post Office, Irimpanam originates in the Tripunithura Post Office and terminates in the Irimpanam Branch Post Office. The applicant is a resident of Irimpanam which is the delivery jurisdiction of the Irimpanam E.D.P.O. Therefore, there is absolutely no meaning in the contention of the respondents that the applicant does not satisfy the residential

qualification. Since the applicant, according to us, satisfies the residential qualification and even according to the data available in the selection proceedings, the applicant is the most qualified person, the action of the respondents in considering him for appointment as E.D.M.C., Irimpanam on the basis of a misreading of the prescription of residential qualification, to our mind appears to be a malicious attempt to deny the applicant his legitimate right to be considered for selection to the post. Since the applicant has been working as E.D.M.C. in the very same E.D.B.P.O. though not sponsored by the Employment Exchange, we are of the view that he is also eligible for consideration for selection.

4. In view of what is stated in the foregoing paragraph, we direct the respondents 1&2 to consider the applicant for regular appointment as Extra Departmental Mail Carrier, Irimpanam on the basis of his superior qualification among the candidates and taking that he satisfies the residential qualification prescribed and to appoint him to that post, if he is otherwise found suitable, within a period of one month from the date of communication of this order. There is no order as to costs.


29.6.90
(AV HARIDASAN)
JUDICIAL MEMBER


29.6.90
(SP MUKERJI)
VICE CHAIRMAN

29-6-1990

trs