

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 193 of 1999

Tuesday, this the 14th day of August, 2001

CORAM

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

1. K. Narayanan Pillai,
Extra Departmental Packer,
Clappana PO, Kollam District.Applicant

[By Advocate Mr. O.V. Radhakrishnan (rep.)]

Versus

1. Sub Divisional Inspector of Post Offices,
Karunagappally Sub Division,
Karunagappally.

2. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi.

3. S. Smitha, Mavannoor, Kothampally
Madathikaramma PO, Ochira,
Kollam District.Respondents

[By Advocate Mr. George Joseph, ACGSC (R1 & R2)(rep.)]

The application having been heard on 14-8-2001, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant seeks to quash A-13, to direct the 1st
respondent to give him regular appointment as Extra Departmental
Packer, Clappana in terms of A-9 and A-10, to declare that the
selection and appointment of the 3rd respondent to the post of
Extra Departmental Packer, Clappana are illegal and also to
direct the 1st respondent to pay one month's allowances plus DA
in lieu of notice in terms of Rule 6 of the Extra Departmental
Agents (Conduct & Service) Rules, 1964.

2. The applicant is working as Extra Departmental Packer, Clappana. He was selected provisionally to the post of Extra Departmental Packer/Mail Carrier, Chavara Bridge Post Office for a period of 89 days from 3-1-1994. On expiry of the said period he was again provisionally appointed for a further period of 89 days from 12-4-1994. On expiry of that period he was appointed further for a period of 89 days from 4-8-1994. He was thereafter offered provisional appointment to the post of Extra Departmental Packer, Chavara Bridge Post Office continuously with effect from 28-4-1995. Subsequently the regular incumbent was ordered to be reinstated into service. Thereupon, his services were terminated. He was subsequently offered adhoc appointment as Extra Departmental Packer, Clappana. He was apprehending that his name will not be considered for nomination by the Employment Exchange for regular selection to the post of Extra Departmental Packer, Clappana. He approached this Bench of the Tribunal by filing OA No. 1012/96. In that OA this Bench of the Tribunal directed the 1st respondent therein to consider him eventhough he may not be sponsored by the Employment Exchange along with other eligible candidates for the vacancy of Extra Departmental Packer, Clappana giving him due weightage for his past service in the department. He was called for an interview. No interview was conducted for evaluation of merit and suitability. The 1st respondent selected the 3rd respondent and appointed her to the post of Extra Departmental Packer, Clappana with effect from 18-2-1999 as per A-13. There it is stated that services of the applicant stand terminated with effect from 17-2-1999. A-13 is illegal.

3. Official respondents resist the OA contending that the applicant worked on three different spells during the years 1994-95. The regular incumbent of the post of Extra Departmental Packer, Clappana, when selected for recruitment to

the cadre of Postman, availed leave in the Extra Departmental post at the time of his Postman training and thereafter. The applicant was engaged to work as Extra Departmental Packer, Clappana from 9-7-1996 as substitute of the regular incumbent. Due weightage of 10 marks was given to the applicant, yet he could not get selected. The 3rd respondent who possessed higher marks in the SSLC examination ranked top and she fulfilled all other conditions governing the selection. The applicant was allowed to work as substitute Extra Departmental Packer, Clappana in the leave vacancy of a permanent incumbent from 9-7-1996.

4. The applicant earlier approached this Bench of the Tribunal by filing OA No. 1012/96. There he prayed that till such time the amount due to him was not paid, he should be deemed to be continuing in service with allowances. That OA was disposed of directing the 1st respondent therein to pay the applicant his entitlements in lieu of notice in terms of Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964 and also directing the 1st respondent therein to consider him though not sponsored by the Employment Exchange along with other eligible candidates for the vacancy of Extra Departmental Packer, Clappana Post Office, after giving due weightage for his past service in the department.

5. The learned counsel appearing for the applicant argued that as per A-9 and A-10 the applicant is entitled to get alternate employment and that benefit has not been extended to the applicant. Benefits as per A-9 and A-10 could be available only if one has worked as an Extra Departmental Agent provisionally and was discharged due to administrative reasons and has put in not less than three years service at the time of discharge. According to the applicant, he was working on a

provisional basis for all the time and he has completed three years as a provisional Extra Departmental Agent. This is stoutly denied by the official respondents in their reply statement. They say that the applicant was only a substitute arranged by E. Abdul Rahiman Kunju who was the regular incumbent of the post of Extra Departmental Packer, Clappana. In support of this stand the official respondents rely on R1 and R2. From R1 and R2 it is clearly seen that Abdul Rahiman Kunju has placed the applicant in his place as substitute. There is no attack against R1 and R2. The learned counsel for the applicant submitted that the regular incumbent became a Postman and therefore there was a clear vacancy and it was in that vacancy the applicant was working. If that is so, the applicant should have been appointed by the department. There is absolutely nothing to show that the applicant was appointed by the department, whereas R1 and R2 conclusively show that he was placed in the place of the regular incumbent Abdul Rahiman Kunju as a substitute. That being the position, the applicant does not satisfy the conditions prescribed for availing the benefit under A-9 and A-10.

6. The learned counsel for the applicant submitted further that there was no cycling test conducted which is a prerequisite condition for appointment of Extra Departmental posts attached with outdoor duties. Official respondents have specifically stated in the reply statement that in this case the selection was made after conducting the cycling test by the 1st respondent on 4-2-1999. We do not find any reason to disbelieve the version of the official respondents.

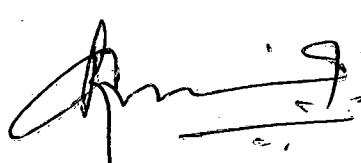
7. Another submission made by the learned counsel for the applicant is that the 3rd respondent has been appointed not on the basis of the merit, but only on the basis that she was the

candidate who had secured highest marks in the SSLC examination among the candidates called for in the interview. Official respondents have stated that since the 3rd respondent who possessed highest marks in the SSLC examination ranked top and she fulfilled all other conditions governing the selection was selected and appointed. So, it does not mean that she was selected purely based on the fact that she possessed the highest marks among the candidates appeared, but she was selected as the best among the candidates appeared and she also happened to be the candidate having the highest marks in the SSLC examination among the candidates appeared.

8. The applicant has, inter alia, sought for a direction to the 1st respondent to pay one month's allowance plus DA in lieu of notice in terms of Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964. Nothing is stated in the OA specifically as to how the applicant is entitled for the same. There is no mention on this aspect in the grounds raised. It is not enough simply to seek for a relief without having the legal basis for the same stated in the OA.

9. Accordingly, the Original Application is dismissed. No costs.

Tuesday, this the 14th day of August, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A-9 True copy of letter No. 43-4/77-Pen. dated 18-5-1979 of the Director General of Post Offices.
2. A-10 True copy of letter No. 43-4/77-Pen. dated 23-2-1979 of the Director General of Post Offices.
3. A-13 True copy of the memo No. EDP/Clappana dated 12-2-1999 of the 1st respondent.
4. R1 The leave application of Sri Abdul Rahiman Kunju for the period from 9-7-96 to 18-7-96 with the order No. EDP/Clappana dated 10-7-96 of Sub Divisional Inspector, Karunagappally sanctioning the leave.
5. R2 The leave application of Abdul Rahiman Kunju for the period from 19-7-96 to 19-9-96 with the order No. EDP/Clappana dated 23-7-96 of SDI, Karunagappally, granting the leave.