

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXX

202/ 1990

DATE OF DECISION 20.9.90

Treasa Irish _____ Applicant (s)

Mr MR Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India represented by
Secretary to Government, Respondent (s)

Ministry of Communications, New Delhi and 3 others

Mr TPM Ibrahim Khan, ACGSC Advocate for the Respondent (s)
(R1, 2 and 4)

Mr KS Madhusoodhanan (R3)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

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? 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
(Hon'ble Shri N.Dharmadan, Judicial Member)

Apprehending termination of service the applicant approached

this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to quash Annexure III order by which the 2nd respondent provisionally appointed the 3rd respondent as EDBPM, Vallarpadam Post Office in the place of the applicant.

2. The short facts are as follows:- The applicant was provisionally appointed as EDBPM, Vallarpadam as per Annex.I memo dated 6.3.89. She is presently working in the same post. When steps for regular selection were initiated by R2 without considering the preferential rights of the applicant she approached this Tribunal by filing OA 156/89. This case was heard along with another application, OA 157/89, and disposed of by a common judgment at Annex.II. Both the applications were allowed directing the 2nd respondent to consider the claims of the applicants in both the cases

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and make selections in accordance with law.

3. Thereafter, pursuant to the direction of this Tribunal, a regular selection was conducted on 9.3.90 after complying with all the statutory formalities. The 3rd respondent was selected and she was provisionally appointed as EDBPM, Vallarpadam Post Office as per order dated 9.3.90(Annexure-III).

4. The applicant is now attacking this selection of respondent No.3 on the ground that she does not possess any property of her own and there is no evidence to prove any independent income for her. The applicant has a case that she is better qualified having satisfied all the eligible criteria for selection. But she was not selected solely on the ground that the income certificate produced by her does not satisfy the requirements; it shows the income of her family and not her personal independent income.

5. Respondents 1 and 2 have filed two counter affidavits in this case. Respondent 3 also filed a separate reply. In the first counter filed on behalf of Respondent 1 and 2, the selection of the 3rd respondent is sought to be supported on two grounds:-

(i) the income certificate produced by her is valid, but the certificate produced by the applicant does not satisfies the requirements.

(ii) that the 3rd respondent is entitled to preference being a member of Scheduled Caste community. This post is to be filled with a SC/ST candidate. But in the second counter dated 23.8.90 they had abandoned the second ground and made it clear that no preference has to be given for SC/ST candidates in the selection, because they are over-represented in this division.

6. On the facts and circumstances of this case, the only question remains to be considered is whether the

selection made by respondent 2 satisfies all the requirements for a proper selection and it is valid to be upheld in the light of the circulars issued by the Department. The case of the applicant is that she produced the income certificate issued by the Village Officer, Mulavukad in the printed form without scoring the word "Kudumba".^{Hence it was treated as the name of the family.} In fact this certificate is pertaining to the independent income of the applicant. When the second respondent refused to accept this certificate the applicant produced the title deed of her property with a correct certificate from the same Village Officer at 3 P.M on 9.3.90. But this was also not accepted by the 2nd respondent.

7. The applicant produced Annexure-IV, the circular issued by the Postmaster General dated 31.8.84, which contains the following clauses dealing with the scrutiny of the application.

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" While applications are scrutinised, care should be taken to see that they are not rejected on flimsy grounds and candidates should be given reasonable opportunity to produce any wanting documents if its production would make him eligible for selection.

xx xx xx"

The applicant submitted that the 2nd respondent ought to have given her an opportunity to produce necessary documents when he noticed defects for want of production of required documents on scrutiny. Though the above provision does not make specific mention as to whether this is to be done at the time of interview or at any time prior to it, one thing is clear that it is necessary in the interest of justice, especially in the light of the provision in Annexure IV, that the candidates should be given sufficient opportunity for curing the defects,

if any, on account of the non-production of any wanting document. The right of the candidates to be considered in the selection in a fair manner is ensured by Annexure IV. In this case, according to the applicant, some defect about the income certificate was noticed by the 2nd respondent. But the applicant produced the title deed of her property with correct income certificate on the very day of the interview at 3 P.M before respondent 2, even though no time was given to her in compliance of the provisions in Annexure IV. But they were not accepted. Consequently the applicant was not selected. This is illegal. The selection of the 3rd respondent without properly and fairly considering the claims of the applicant is also, on the same ground, illegal.

8. For our satisfaction we have perused the files of the selection. From the tabular form prepared by the 2nd respondent, during the selection after considering the respective merits of the candidates on the date of the interview, it is clear that the applicant has the highest mark of 274 out of 600 among the candidates. But the selection appears to have been made by the 2nd respondent solely on the basis of the income of the candidates without giving the applicant sufficient opportunity to rectify the defect, if any, in the income certificate. We are of the view that the procedural provisions contemplated in Annexure IV have not been scrupulously followed by respondent 2 in the selection. We are satisfied that the applicant's personal income has been established by means of the production of correct certificate with the title deed on the date of the interview itself; but they were not adverted to or considered by the respondent 2 by passing appropriate orders. There is no application of mind by the 2nd respondent.

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9. We have also heard ^{by} respondent 3. Her only argument is that the income certificate produced by the applicant is defective. It is with regard to her family income and not her personal independent income and so according to respondent 3, the applicant is disqualified. This argument cannot be accepted for the reasons already indicated above.

10. The learned counsel for respondent 1 and 2 submitted that even at the time when the notice for interview was issued to the applicant, it was specifically stated that she should produce a certificate showing ^{her} independent and personal income. But the applicant did not comply with the direction in the intimation. She did not make any request for curing the defect in the certificate of income. So the respondent 2 has not committed any irregularity in the selection process. It is not obligatory on the part of respondent 2 to give suo-motu opportunity for rectifying the defect noticed at the time of the interview. We find ourselves unable to accept this argument because it is clear from Annexure-IV that it envisages a sort of scrutiny and giving an opportunity to the candidates in case of defects due to non-production of wanting documents even without any request from the candidates. Such an opportunity has not been given to the applicant. This is illegal. The further irregularity committed by the 2nd respondent is the refusal to accept the correct certificate with the title deed of the property and consider her case also when she has produced them at 3 P.M on the date of interview. Hence, the action of the 2nd respondent in having rejected the income certificate of the applicant and selected respondent 3 cannot be sustained.

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11. Accordingly, on the facts and circumstances of the case, we are of the view that this application deserves to be allowed and we do so by quashing Annexure-III. We also direct the respondents 1 and 2 to consider the applicant for regular appointment as EDBPM, Vallarpadam Post Office in terms of the selection held on 9.3.90.

12. There will be no order as to costs.

N.Dharmadan
(N.Dharmadan)

20.9.90

Judicial Member

20.9.90

N.V Krishnan
(N.V Krishnan)

Administrative Member

N.V Krishnan
20.9.90

n.j.j