

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.216/99

Monday this the 16th day of July, 2001

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

B.Indira Devi,
Extra Departmental Branch Post Master,
Pallarimangalam,
Mavelikkara Division,
Mavelikkara.Applicant

(By Advocate Ms. K.Indu)

vs.

1. The Director General of Posts,
Dak Bhavan, New Delhi.
2. Post Master General,
Central Region,
Kochi-16.
3. Superintendent of Post Offices,
Mavelikkara Division,
Mavelikkara.
4. K.Bhaskaran,
Extra Departmental Messenger,
Thekkakara Post Office,
Mavelikkara.
5. K.Reghu, Extra Departmental Delivery Agent,
Kappil East Post Office,
Mavelikkara Division,
Mavelikkara.
6. Sobha, Group D
Alappuzha North Post Office,
residing at Sreekrishna Bhavanam,
Charumuddu, Kadannakuzhi P.O.,
Alappuzha District.Respondents

(By Advocate Shri George Joseph, ACGSC(For R.1-3)
(By Advocate Shri M.R.Rajendran Nair (R-6)

The Application having been heard on 16th July 2001, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant who was recruited as an Extra
Departmental Agent w.e.f. 5.4.76 and claims to be at S1.No.52
in the gradation list of ED Agents, has filed this application

for a declaration that she is entitled to be promoted against the existing vacancy of Group D cadre in Mavelikkara Division in accordance with A2 instructions and for a direction to the 3rd respondent to fill up the existing vacancy of Group D cadre in Mavelikkara Division according to the instructions contained in A2 and not to fill up the existing vacancy of Group D by effecting Rule 38 Transfer. It has been alleged in the application that with a view to defeat the right of the applicant for being promoted to a Group D post, the department has taken steps for making Rule 38 transfer and that the respondents 4 and 5 though as seniors to the applicant are not interested to get appointment as Group D.

2. The respondents 4 and 5 though served with notices, have not entered appearance. Though R6 has appeared, no reply statement has been filed by R6. Official respondents 1 to 3 have filed a reply statement. The respondents do not contest the claim of the applicant that the appointment of ED Agents to Group D post is to be made according to A2 orders on the basis of their seniority, but they contend that the applicant not being the seniormost has no right to be promoted. The respondents further contend that while the ED Agents are entitled to be appointed to Group D post on the basis of their seniority and suitability, making transfers under Rule 38 is also permissible and that one Smt.D.Saraswathy Amma has been ordered to be allotted to Mavelikkara Division by order of the CPMG dated 31.12.90 which have been kept in abeyance because of the interim order. The respondents contend that the O.A. itself is devoid of any merit and is liable to be dismissed.

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3. We have heard the rival contentions of the parties. According to A2 orders, vacancies of Group D should be filled up by appointment of ED Agents on the basis of the seniority and suitability without any literacy test. Even going by the averments in the application, the applicant is not the seniormost among the ED agents. Therefore the prayer of the applicant for a direction to the respondents to promote the applicant as ED Agent in the existing vacancy at Mavelikkara Division cannot be granted. However, the contention of the respondents that the appointment by transfer of a Group D employee from another Division to Mavelikkara Division is always permissible under Rule 38, cannot be fully accepted because Rule 38 stipulates that such transfer can be made only without prejudice to the rights of others. The applicant being one of the seniormost ED Agents in Mavelikkara Division has a right to be considered for appointment against Group D vacancy that exists or would arise in that division. If that vacancy is filled up by Rule 38 transfer, that would be prejudicial to the rights of the applicant and similarly situated ED Agents. Therefore, transfer of a Group 'D' employee from another unit to Mavelikkara Division, defeating the rights of the ED Agents of that Division, including the applicant, cannot be justified.

4. In the light of what is stated above, the application is disposed of with the following declarations and directions.

The applicant as one of the seniormost ED Agent in the Mavelikkara Division, is entitled to be

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considered for promotion in the existing vacancy in Group D cadre in Mavelikkara Division, the 3rd respondent is directed to consider the applicant on the basis of her seniority as ED Agent for appointment to the post in Group 'D' cadre which is existing in Mavelikkara Division and not to fill up the vacancy by resorting transfer under Rule 38.

5. No costs.

Dated the 16th July 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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A-2: True copy of the relevant portion of Director General,
Posts, letter No.44-31/87-SDB-I dated 28.8.90.