

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.220/89 & 136/90 199
XXX

DATE OF DECISION 13-7-1990

1. M.I. Johny & Another (applicants in OA 220/89)
2. P.V. Kochu Thresia (applicant in OA 136/90)
Applicant (s)

1. M/s KS Madhusoodhanan & AX Varghese - counsel for applicants in OA 220/89
2. Mr. P Jacob Varghese - Counsel Advocate for the Applicant (s)
For applicant in OA 136/90

Versus

1. PV Kochu Trésia & 2 others Respondent (s)
(respondents in OA 220/89)
2. The Director of Postal Services, Cochin & 2 others
(respondents in OA 136/90)
1. Mr. P. Jacob Varghese Advocate for the Respondent (s)
(counsel for R.1 in OA 220/89)

CORAM: 2. Mr. VV Sidharthan, ACGSC (counsel for R2&3 in OA 220/89)
3. Mr. TPM Ibrahim Khan (counsel for respondents in OA 136/90)

The Hon'ble Mr. N.V. KRISHNAN

- ADMINISTRATIVE MEMBER

AND

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

(Mr. N. Dharmadan, Judicial Member)

These two cases are connected. Hence, they are heard together and disposed of by this common judgement on consent of parties.

2. The appointment of a regular Extra Departmental Branch Post Master (herein after referred to as EDBPM) in Ayyampuzha Post Office is in controversy in these two cases. The applicants in OA 220/89 filed the application challenging the appointment of the 1st respondent, who is the applicant in the subsequent case OA 136/90. The

applicants who competed with the 1st respondent submitted a complaint against her appointment and approached this Tribunal for quashing the appointment on various grounds. But the main ground urged by the applicant is that the first respondent is not a permanent resident within the delivery jurisdiction of the Ayyampuzha Panchayat and hence her appointment is contrary to the regulations dealing with the selection of the permanent EDBPMs. The respondents 2 & 3 and the first respondent have filed separate counter affidavits in this case.

3. Having heard the arguments of the counsel on both sides and after perusing the records, we/notice that the respondents 2 and 3 have taken action against the 1st respondent in OA 220/89 pending the case without/ getting either by prior sanction or even stating the matter for the consideration by this Tribunal. The appointment of the 1st respondent was cancelled threatening action under Article 311 of the constitution. No prior notice was issued to the 1st respondent. Hence he filed the second case OA 136/90 challenging the order.

4. The main controversy in both these cases is whether the person who has been selected for appointment is a regular

EDBPM satisfied the requirement of residential qualification and if it is satisfied whether the cancellation is in accordance with law. The applicants in OA 220/89 have produced the voters list and other documents to establish that the first respondent is not the permanent resident within the delivery jurisdiction of Ayyampuzha Panchayat. On the other hand, the first respondent has submitted that in the light of the decisions of this Tribunal holding that a person satisfying the residential qualification substantially is also eligible and hence she is fully qualified and she has also produced some documents to establish her case that even though she has been married and temporarily shifted from the delivery jurisdiction of Ayyampuzha, for all purposes connected with the selection, she is a permanent resident within the delivery jurisdiction of this Post Office.

5. However, during the pendency of the first case (OA 220/89) the second respondent ~~passed~~ by order, impugned in OA 136/90, cancelled the appointment and intimated her that action under Article 311(2) would be initiated. This action also cannot be supported for the reasons already indicated. At the same time the complaint of the applicants

in OA 220/89 has not been enquired into by the competent authority. In view of these infirmities the proper course which would satisfy the interest of justice and parties concerned is to conduct a fresh selection to the post of regular EDBPM, Ayyampuzha considering all the infirmities pointed out by the parties in this case.

6. Under these circumstances the 2nd respondent in OA 220/89 is bound to conduct a fresh selection in which question as to the residential qualification of the 1st respondent in OA 220/89 should ~~particularly~~ be examined in the light of the complaints and the available evidence and the decision rendered by this Tribunal on this aspect.

7. Accordingly, we allow OA 220/89 especially when the impugned order was cancelled by respondents 1 and 2 without considering the question whether the 1st respondent is ineligible for appointment in the light of the allegation that she is lacking the residential qualifications prescribed under the rules. It needs no mention that the impugned order is ineffective.

8. Now we will deal with OA 136/90. The applicant therein (i.e. 1st respondent in OA 220/89) has been informed by ^u Annexure-1 order dated 23.1.1990 that her selection and appointment has been set aside by the Director of Postal Services and that it is proposed to terminate her services after giving an opportunity to show cause against the action

proposed as required under Art. 311(2) of the Constitution. This order is violative of principles of natural justice and liable to be quashed. Therefore, the Annexure-1 deserves to be set aside and is accordingly ordered.

9. As stated above, we are of the view that under these circumstances it is necessary to conduct a fresh selection in accordance with law in the interest of justice. As the other candidates sponsored by the Employment Exchange and appeared for the interview conducted by the Superintendent of Post Offices have not challenged the appointment of the 1st respondent in OA 220/89, we are of the view that for the purpose of a fresh selection only 3 candidates need be considered, namely, the applicants in OA 220/89 and the 1st respondent therein.

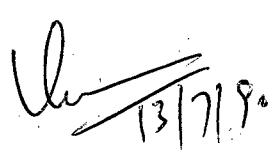
10. Accordingly we direct the 2nd respondent in OA 220/89 to consider the qualifications and eligibility, including the residential qualifications of the above candidates with reference to 6.1.1989, the date on which the original memo was issued by the 2nd respondent to the candidates, and make a selection in accordance with law. We further direct that the process of selection should be completed within a period of 3 months from the date of receipt of this order. Pending such selection, the 1st respondent in OA 220/89 is allowed to continue in the post purely on a temporary basis. If he is not selected he shall vacate the office without raising any claim against ~~appointment~~ the selected candidate in accordance with the

above direction. Both the applications are disposed as indicated above. There will be no order as to costs.


(N.DHARMADAN)

JUDICIAL MEMBER

13.7.90.


(N.V.KRISHNAN)

ADMINISTRATIVE MEMBER