

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D. A. No. 224/92
T. A. No.

199

DATE OF DECISION 10-3-93

M.Achuthan Applicant (s)

Mr. M.K.Damodaran Advocate for the Applicant (s)

Versus

Supdt. of Post Offices, Respondent (s)
Manjeri Division, Manjeri & 2 others.

Mr. C.Kochunni Nair (R1&2)
Mr. Pirappancode V.S.Sudheer Advocate for the Respondent (s)
(for R3)

CORAM :

The Hon'ble Mr. N.Dharmadan, Judicial Member

The Hon'ble Mr. R.Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *ys*
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

R.Rangarajan, AM

The applicant, Shri M.Achuthan of Vellur, Malappuram District, while working as a temporary hand as EDBPM, Vellur Post Office from 28.11.91 was terminated on account of the selection of a regular candidate for the above said post after conducting the regular selection. Aggrieved by the apprehension of termination for posting the third respondent, he has approached this Tribunal under ~~the~~ section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- (i) To call for the records leading to the interview and selection for the post of EDBPM, Vellur which was held on 27.1.1992 and to declare that the selection of the 3rd respondent to the post of EDBPM is illegal;
- (ii) to declare that the applicant is selected for the post of EDBPM in the interview held on 27.1.1992;
- (iii) to direct the respondent 1 not to terminate the service of the applicant as EDBPM, Vellur."

2. The applicant states that he has been working as EDBPM, Vellur Post Office from 28.11.1991 and he has also worked as EDBPM/EDSPM for about 15 years earlier on temporary basis in different post offices in Malapuram Sub Division. On creation of a new post office at Vellur, the applicant was recruited on temporary basis with effect from 28.11.91 and is still continuing in that post.

3. A notification was issued on 14.1.92 inviting application from eligible candidates for appointment of ED Branch Postmaster at Vellur Post Office. As per the notification the candidates willing to be considered for that post should present themselves at 3.00 PM on 27.1.92 along with necessary documents for the interview. The applicant, as stated by him, had appeared for the selection along with copies of the Secondary School Leaving Certificate, income certificate, character certificate and experience certificate, which are enclosed as Annexures 2, 3, 4, 5, & 6. It is further stated by the applicant that on 27.1.92 only 4 candidates appeared in the interview before the Supdt. of Post Office at about 3 PM including the applicant. The other 3 candidates present were S/Shri P.R.Mohandas, K.P.Sreenivasan Nair and T.Sreedharan. All other candidates appeared along with him for the interview are not having 3 years' experience as EDBPM. Eventhough the first respondent interviewed 4 candidates on 27.1.92 including the applicant, no select list appears to have been prepared by the 1st respondent. He was of the firm view that he would be selected for the post of EDBPM considering his past experience as EDBPM.

4. While the position explained above stood, the Sub Divisional Inspector, Postal, Malappuram came to the Branch post office, Vellur and enquired about the residence and other particulars of the third respondent Shri Narayanan.

He further submits that Shri Narayanan, the third respondent, did not participate in the interview which was held on 27.1.1992, nor did he file ^{the} application before the 1st respondent as asked for in the notification at Annexure-1. The applicant feels that the 3rd respondent is likely to be appointed as Branch postmaster at Branch Post Office, Vellur, though no appointment order has been issued so far appointing the 3rd respondent as EDBPM Vellur. The applicant further ^{understood} states that he reliably that the third respondent is closely associated with the 1st respondent and the 1st respondent is bent upon to select and appoint the 3rd respondent to the post of EDBPM for some extraneous consideration. He avers that the first respondent is ~~only~~ expected to select the persons who participated in the interview with all sufficient documents and material ^{only} and cannot appoint a person who did not even participate in the interview ~~xxxxx~~ and that the action of the 1st respondent in selecting the 3rd respondent for the post of EDBPM, Vellur is unjustifiable and illegal. He also avers that the third respondent has not procured an independent income certificate nor can he furnish the accommodation certificate. The third respondent also did not possess any experience in the field.

5. The applicant ^{sought for an interim} relief to the extent of staying the termination of service of the applicant as EDBPM Vellur Post Office which was granted by this Tribunal while hearing the case on admission on 7.2.92, which was vacated on 20.1.93.

6. The first respondent in his reply statement has admitted the proposal for opening a new Extra Departmental Branch Post Office at Vellur in Manchery Division on 25.11.91 by the competent authorities. As the Branch Office was to be opened on 30.11.91 the Sub Divisional Head was asked to make provisional appointment of Branch Postmaster

for this office on a purely temporary basis as the interval ^{date.} was too short for regular selection before the target. He was further given direction to inform the person so appointed that he would be discharged from the post when regular selection amongst the candidates sponsored by the Employment Exchange is finalised. Accordingly, the Sub Divisional Inspector, Malappuram opened the Vellur Branch Post Office on 28.11.91 engaging the applicant as ^{temporary} B.P.M., after taking an undertaking from the applicant to the effect that the appointment of the applicant as EDBPM is only on purely temporary basis and that he will be discharged when a candidate selected from the nominees of the Employment Exchange is made available. This was accepted by him and the undertaking given by him is at Annexure-R1-A, which is reproduced below:-

"To Sub Divisional Inspector,
Malapuram.

I undertake to carry on the the works of BPM/EDDA/EDMC in connection with the opening of new post office at Vellur. I am ready to arrange the room for the same. I understand that my job is temporary. I will vacate when the permanent person is selected and appointed.

28.11.1991.

Sd/- "
M.Achuthan.

7. Though the vacancy was simultaneously notified to the Employment Exchange, Malapuram on 29.11.91, no candidates were sponsored by the Employment Exchange within the stipulated period of 30 days. Hence the vacancy was notified by the 1st respondent calling for application direct as per provisions contained in the E.D. Recruitment Rules.

8. In response to the above notification, the respondent avers, six candidates submitted applications including Shri N.Narayanan (SC), Naringala House, Vellur, the 3rd respondent. The third respondent was selected provisionally on 27.1.92 itself subject to the verification of income and residential particulars. The Sub Divisional Inspector,

Malapuram was asked to verify the particulars and to impart the candidate the prescribed training if the result of the verification was found satisfactory. The third respondent was to be appointed on completion of the above formalities on 13.2.91. In view of the interim order given by this Hon'ble Tribunal on 7.2.92 the selected candidate could not be appointed and the applicant is continuing in the post on the strength of the above interim order. The respondent-1 admits regarding the posting of the applicant as B.P.M. temporarily with effect from 28.11.91 but denies the fact that the applicant had worked in various post offices as EDBPM/EDSPM for about 15 years. He states that the applicant has not produced any evidence in support of his claim that he had worked for 15 years earlier. The engagement of the applicant is only a stop-gap arrangement on the clear understanding as per Exbt.R1-A. He has no claim to continue in the post office after the regular selection as prescribed in the E.D. Recruitment Rules.

9. The respondent-1 further ^{states} / that there were six candidates including the applicant who had submitted application for this post with ^{necessary proof} / on the date of interview. He states that the contention of the applicant that only 4 candidates appeared in the interview is incorrect. Annexure-R1-B is produced by the respondent to prove that there were 6 candidates who appeared in the interview and the selection was made on 27.1.92 itself. He further states that the third respondent who belongs to SC community was selected as there was no required percentage of SC candidates among the Postmasters of Mancherry Postal Division. There are ^{in this division} 179 EDBPMs/out of which there are only 13 BPMs who belong to S.C. community. As per the DGP&T's instructions the third

respondent was in the preferential category vide Exbt.R1-C.

The relevant paragraphs of Exbt. R1-C are reproduced below:

"3. It is hereby clarified that candidates belonging to the Scheduled Castes/Scheduled Tribes with the minimum educational qualifications prescribed in this Office Letter No. 5-9/72-E.D. Cell dated the 18th August 1973, ~~xxxxxx~~ Viz. VIII Standard for EDBPMs, VI Standard for EDDAs, and EDSVs and working knowledge of the regional language and simple Arithmetic for other EDAs (and working knowledge of English for ED Messengers) should be given preference over the candidates belonging to other communities, even if the latter are educationally better qualified, provided that the candidates belonging to Scheduled Castes/Scheduled Tribes are otherwise eligible for the post.

xxx xxx x xx

The representation of SC and ST candidates in the employment of ED staff should at least be kept to the prescribed minimum limits as in the Group C and D posts in the Department. These instructions may be brought to the personal notice of all Divisional Heads for their guidance and for assessing the position on divisional basis."

The first respondent further adds that as per the interview held on 27.1.92 which was also finalised on that day itself, the third respondent was given extra weightage being a SC candidate as per the standing instructions of DGP&T, who also possessed all the other requisite qualifications such as pass in SSLC, permanent residence, income criteria, etc.

10. The first respondent denies attribution ^{of any} oblique motive behind the ~~xxx~~ selection of the 3rd respondent. He ^{had} was selected only because of the fact that he ^{had} possessed all the requisite qualifications and being a member of the SC community who enjoys preference in selection to ED posts over other candidates. A copy of the application submitted by the third respondent along with the other credentials are enclosed by the respondent as Exbt. R1-D(3), (4), (5), (6) & (7).

11. The third respondent had also filed a reply affidavit wherein he has stated that he has appeared for the selection and he has been selected because of the superior qualification

and being a permanent resident within the delivery area of the Branch Post Office at Vellur. He states that his selection cannot be challenged.

12. In the rejoinder filed by the applicant, he has more or less reiterated the statement made by him in his O.A. He further submitted that the third respondent and one more candidate i.e. Mrs. Vijayalakshmi who are shown to have appeared for the selection as per Exbt. R1-8 did not present themselves in the interview and hence both these candidates cannot claim any right for this post. He adds further that the post was not reserved as per the notification for SC/ST. It is only with ulterior motives that the respondents have added in their counter affidavit that the third respondent was selected because he hails from the reserved community. Alongwith his rejoinder he has also produced Annexure-7 wherein one of the candidates who appeared for selection, i.e. T.Sreedharan has given a letter ~~to the District~~ stating that the person selected has not appeared in the interview on that day. Annexure-8 is from Smt. Vijayalakshmi, the other candidate whose name appears as the last candidate in Exbt.R1-8. stating that she was not directed to participate in the interview conducted on 27.1.92 at 3.00 PM. To that effect she has given an affidavit also which is at Annexure-9.

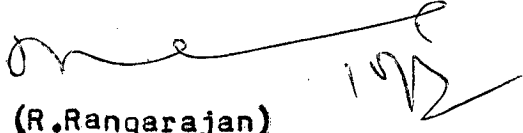
13. We have heard the learned counsel on both sides and perused the records produced by both sides. The main question to be examined in this case is whether the third respondent did really attend the interview and if so, whether he has been selected on the basis of the evaluation of his merits and credentials considering the other applicants also as per prescribed rules and whether the alleged preference given to the SC candidate is in order. The next point to be examined is whether the certificates enclosed as Annexures 7 & 8 and the affidavit at Annexure-9 conclusively prove that ~~the~~ ^{did not appear for interview} the third respondent at the time of the selection.

14. To examine the above points, we called for the original selection file from the first respondent who has conducted the selection. A perusal of the original records of the Exbt. R1-8 shows that the third respondent was included in the interview held on 27.1.92. He was also shown as an SC candidate. The other five candidates including Mrs. Vijayalakshmi were also included in the list of candidates called for interview. This list has been initialled by the official at the bottom. The reasons for selecting the candidate is also indicated by the competent authority i.e. Supdt. of Post Offices in the proceedings in green ink. A perusal of the proceedings dated 27.1.92 indicates that all the 7 candidates were considered and their marks were evaluated on the basis of the details produced by them. There were no over writing or any other irregularities which could lead to suspicion ^{to hold that} ~~the proceedings are not~~ regular. ^{It is} ~~written~~ clearly without any deletion or omission which may lead to some suspicion later. This proceedings, in our opinion, have been prepared immediately after the interview and there is no indication in the proceedings to come to the conclusion that it is forged to select the 3rd respondent and hence not bonafide one. Annexures 7, 8 and 9 produced by the applicant cannot be taken on the face value because Shri T.Sreedharan is also one of the candidates for the selection and who was not selected. Similar is the position in regard to Smt. Vijayalakshmi. Her affidavit is very short and does not indicate anything regarding the absence of the 3rd respondent. She only states in her affidavit that she did not participate in the interview held at 3.00 PM on 27.1.92. Hence in our view, this affidavit ~~also~~ cannot be accepted straightaway to prove that the 3rd respondent did not attend the interview.
15. While the case was heard on 17.2.93 the learned counsel for the applicant submitted an MP 339/93 requesting

that the candidates stated to have participated in the interview be examined on oath. He also stated in the MP that he has filed a complaint with the PMG, Trivandrum in this regard. In our opinion, there is no need to call for the candidates to be examined on oath as the other records are clear and give correct details about the preparation of the panel. Copy of the complaint reported to have been filed to the PMG was not produced along with the MP. Hence we take no cognizance of this MP while deciding this case.

16. The last point to be examined is whether the preference given to the selected candidate being a ~~mm~~ member of SC is in order. In this connection we have gone through the DGP&T's letter dated 8th March 1978 at Exbt. R1-C, the relevant extract of which was reproduced above. The percentage of reserved candidates in the ED staff is necessary to be maintained as per the above said letter. As the percentage was much less than the requirement, we are of the view that the selection and appointment of the third respondent ~~are~~ in order and legal. Accordingly, we reject the allegation against the selection of the 3rd respondent.

17. In the conspectus of facts and circumstances of the case, we hold that the third respondent did appear in the interview and the first respondent has selected him after following the procedure under the Rules. Hence we dismiss this DA in terms of Rule 19(3) of the Administrative Tribunals Act, 1985. There will be no order as to costs.


(R. Rangarajan)
Administrative Member


(N. Dharmadān)
Judicial Member