

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 235/91
XXX

199

DATE OF DECISION 29.6.1992

N.L.Satheesan _____ Applicant (s)

Mr.P.Santhalingam _____ Advocate for the Applicant (s)

Versus

Superintendent of Post Offices, _____ Respondent (s)
Irinjalakkuda Division, Irinjakkuda and four others.

Mr.P.Sankarankutty Nair, ACGSC _____ Advocate for the Respondent (s)
Mr.O.V.Radhakrishnan

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 7.2.1991 the applicant who was a candidate for selection to the post of EDBPM, Konnakuzhi has prayed that it may be declared that he is entitled to continue in that post in preference to the 5th respondent and that the impugned order dated 28.8.90 at Annexure-AX terminating his services be set aside. The brief facts of the case are as follows.

2. The names of the applicant along with of six other candidates were sponsored by the Employment Exchange for the aforesaid post of EDBPM. The applicant was a resident of the village where the Post Office is situated and has passed the S.S.L.C examination. He appeared in an interview on 6.7.1989 and was appointed to the post of EDBPM, Konnakuzhi on 11.8.1989. The Post Office was housed in a building provided by the applicant. The 5th respondent challenged his appointment in O.A 400/89 (in which the applicant before us was respondent 4) claiming that the 5th respondent being a resident within the delivery area of Konnakuzhi Post Office, should

have been appointed. The Tribunal by our judgment dated 16.7.1990 allowed the application with the following directions:-

" 7. In the facts and circumstance, we allow the application, set aside the impugned order dated 11th June 1986 at Ext. A7 and declare that the applicant is fully eligible for regular appointment to the post of EDBPM, Konnakuzhi Branch Post Office situated in Periyaram Village and direct the 1st respondent to consider him for appointment as EDBPM, Konnakuzhi Branch Post Office deeming him to be fully satisfying the residential qualification and keeping in view the guidelines for such appointment. Decision about the applicant's regular appointment should be taken within a period of one month from the date of communication of this order. The appointment of respondent-4 will be subject to the decision taken on the applicant's appointment on the above lines."

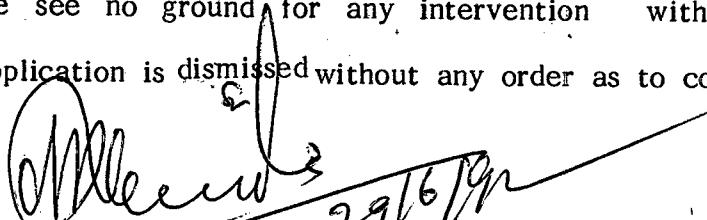
The case of the applicant before us is that the Postal authorities misinterpreted the directions in the judgment and on the basis of some observations made in the judgment that on the basis of the higher marks obtained by the applicant in that case who is also respondent No.5 in this case, he would be the most suitable candidate, mechanically appointed respondent No.5 in this case by terminating the services of the applicant before us. The review application filed by the applicant before us in O.A.400/89 was also dismissed. According to the applicant, the Postal authorities did not assess the comparative merits of the various candidates and on the basis of the single factor of marks obtained in the S.S.L.C. examination, selected respondent 5 ignoring the fact that the applicant had superior income and had residential qualification also. He has also alleged that the 5th respondent manipulated the records and misrepresented facts before the authorities and did not approach the Tribunal in O.A. 400/89 with clean hands.

3. Respondents 1 to 4 have in the counter affidavit explained the circumstances in which respondent No.5 Shri Rajan was originally rejected as being disqualified on residential qualification but was finally selected in accordance with the directions given in the judgment in O.A. 400/89. They have clearly stated that once respondent No.5 was found

to be eligible as found in the aforesaid judgment, he had to be given preference over the applicant before us as the former had secured 259 marks out of 600 in the S.S.L.C. examination whereas the applicant before us got only 255 marks out of 600 in the S.S.L.C. The difference in income between the applicant and the 5th respondent is also negligible. They have further stated that the "5th respondent was appointed after giving due consideration to all the factors while making the selection. The applicant in this original application is in no way superior to the 5th respondent".

4. In the counter affidavit the 5th respondent has stated that the question of residential qualification of the 5th respondent was finally decided in his favour in O.A.400/89 and the same cannot be reagitated by the applicant before us. He denies having committed any fraud or any misrepresentations and that he was finally selected by the Postal authorities on merits.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The question of respondent No.5 being eligible for the aforesaid post was decided by this very Bench in O.A. 400/89 in which the applicant before us was the 4th respondent. Accordingly the latter cannot reopen that issue in this application. It is also admitted that the applicant before us got less marks than respondent 5 in the S.S.L.C examination and accordingly, we see no ground for any intervention with the selection made. The application is dismissed without any order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN