

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. XXXXXX 236 of 1990.

DATE OF DECISION 30th JULY 1991.

M.S. Subramanian _____ Applicant (s)

M/s K.Ramakumar & VR _____ Advocate for the Applicant (s)
Ramachandran.Nair

Versus

Union of India represented Respondent (s)
by the Secretary, Department of Posts
and Telecommunications and others

Mr.V.Krishnakumar-for R.1-4 Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P. MUKERJI** - VICE CHAIRMAN
and

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 Mr. S.P. Mukerji, Vice Chairman)

In this application dated 19th March, 1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Extra Departmental Packer (EDP) at Thiruvathara Post Office under the Sub Divisional Inspector, Guruvayoor has challenged the impugned order dated 1.3.1990 (Annexure-B) appointing Respondent No.5 to the post of E.D.Packer, Thiruvathara and has prayed that Respondents 1 to 4 be directed to consider the applicant also for appointment taking into account his past experience.

2. The brief facts of the case are as follows. The applicant has been working as E.D.Packer, Thiruvathara from

24.4.1989 to 22.7.1989 as a substitute of ~~the~~ regular incumbent. On the latter's resignation the post fell vacant and the applicant was provisionally appointed to continue in the post on a provisional basis from 23.7.1989 to 19.10.1989. In the meantime the Postal Department placed a requisition with the Employment Exchange for nominating eligible candidates. Five candidates were sponsored by the Employment Exchange in September, 1989, all of them having equal educational qualification of matriculation. The applicant's name was however, not sponsored by the Employment Exchange. The 5th respondent having secured highest marks in the S.S.L.C. Examination was selected and appointed with effect from 2.3.1990 till which date the applicant continued to hold the post without any break. The contention of the applicant is that he had also got himself registered with the Employment Exchange but his name was not sponsored presumably because he had not passed the S.S.L.C. Examination. The applicant is a member of the Scheduled Caste and ~~is~~ not being a matriculate, according to him, should not have been the reason the Employment Exchange ^{for} not sponsored ^{ignoring} his name ignoring his previous experience. He has also argued that he was entitled to a proper notice under the Industrial Disputes Act before his services could be terminated.

3. The respondents 1 to 4 have stated that after the 5th respondent was selected on the basis of his obtaining the highest marks in the S.S.L.C. Examination under the directions from the Regional Office, the order of selection was kept in abeyance and the applicant was allowed to continue in the post on a provisional basis. Later under the instructions of the Regional Office, the 5th respondent was appointed to the post with effect from 2.3.90.

Conceding that the applicant satisfies all conditions of appointment, the respondents 1 to 4 have stated that other candidates could not be left out of consideration since all the five candidates had passed the S.S.L.C. Examination, selection was made from amongst them. They have stated that in accordance with the instructions, for matriculates and candidates possessing qualification above matriculation the criteria of selection is the percentage of marks obtained in matriculation. They have further indicated that there is no reservation ^{for the} ~~of~~ Scheduled Castes and Scheduled Tribes for Extra Departmental posts and Scheduled Caste and Scheduled Tribe candidates are given preference only if everything else is equal. They have also stated that E.D. Agents are not workmen and Postal Department does not come within the purview of Industrial Disputes Act.

4. In the rejoinder the applicant has stated that for the post of E.D.Packer, S.S.L.C. is neither essential nor preferable qualification and that it is well settled that Extra Departmental Agents are considered to be workmen and the Industrial Disputes Act is applicable to them in the Postal Department.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. This Tribunal has been taking consistently the view that working E.D. Agents should also be considered for regular selection to the post they are holding even though they are not sponsored by the Employment Exchange. Since in the instant case before us the applicant has been working intermittently as a substitute between 1984 and

1989 and then on a provisional basis for 221 days during 1989-90 and is a member of the Scheduled Caste, he was also entitled to be considered for regular selection to the post which he has been holding. It is also noticed from D.G.P&T's letter dated 8.3.78 (page 62 of Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department-4th Edition) that Scheduled Caste/Scheduled Tribe candidates possessing prescribed qualifications for the post of E.D.As "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 Caste/Scheduled Tribe are otherwise eligible for the post." Further, where S.S.L.C. etc., are not prescribed even as preferential qualification, the higher qualification possessed by a general candidate cannot be the deciding factor in overlooking the claims and other merits of a Scheduled Caste/Scheduled Tribe candidate. It has also been clarified in D.G. P&T's letter of 8.10.80 (page 62 ^{that} ibid), "the representation of Scheduled Caste/Scheduled Tribe candidates in the employment of E.D. staff should at least be kept to the prescribed minimum limits as in the Group 'C' and 'D' posts in the Department."

6. Since the applicant is admittedly eligible for the post of E.D.Packer in all respects and has been holding the post when the selection of Respondent No.5 took place, in accordance with the decisions of the Tribunal in similar cases of working E.D.Aagents and keeping in view the instructions of the D.G.P&T as referred to above, the applicant as a member of the Scheduled Caste and being

a working E.D.Agent is entitled to be considered for regular selection to the post.

7. In the conspectus of facts and circumstances, we set aside the impugned order at Annexure-B and direct respondents 1 to 4 to consider the applicant also for regular selection for the post of E.D.Packer, Thiruvathara Post Office even though he has not passed the S.S.L.C. Examination but is otherwise educationally qualified for the post of E.D.Packer keeping in view the D.G. P&T's instructions of 8th March, 1978 and 8th October, 1980 regarding preferential treatment to Scheduled Caste/ Scheduled Tribe candidates and also keeping in view the experience which the applicant has gathered by virtue of his previous employment as E.D.Packer in the same post. Final selection for the post of E.D.Packer, Thiruvathara should be made on the basis of the comparative merits of Respondent No.5 and of the applicant keeping in view the applicant's entitlement to preferential treatment as a member of the Scheduled Caste and his previous experience and the aforesaid instructions of the D.G. P&T. Action on the above lines should be completed within a period of three months from the date of communication of this order. The respondent No.5 who did not contest this application despite notice and whose learned counsel did not enter appearance ever, may, however, be allowed to continue in the post of E.D.Packer provisionally till the final selection on the above lines or the expiry of three months from the date of communication of this order, whichever is earlier.

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If no decision is taken about the final selection of the post after the expiry of three months from the date of communication of this order, the Respondent No.5 should be replaced by the applicant on a provisional basis after the expiry of three months as above and till the final selection and appointment is made. There will be no order as to costs.

A. V. Haridasan
30/7/91
(A. V. HARIDASAN)
JUDICIAL MEMBER

S. P. Mukerji
30/7/91
(S. P. MUKERJI)
VICE CHAIRMAN

30th JULY 1991

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