

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 237/1999

Wednesday this the 27th day of june, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

E.Sajeev Kumar
Extra Departmental Delivery Agent,
Mamala PO, residing at Sree Nilayam,
Edathamana, Mamala PO,
Thiruvankulam.Applicant

(By advocate Mr. TCG Swamy)

v.

1. The Sub Divisional Inspector of Post Offices,
Tripunithura Sub Division,
Tripunithura.
2. The Postmaster General,
Central region, Kochi.16.
3. The Director General of Posts,
Department of Posts,
New Delhi.
4. K.P.Kunjappan,
Kunthuruthiyil House,
Vadayampadi PO, Ernakulam.
5. Shri K.V.Sasi,
Sub Divisional Inspector of
Post Offices, Tripunithura
Sub Division, Tripunithura.Respondents

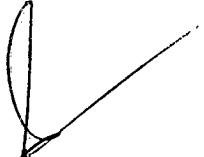
(By Advocate Mr. M.Rajendrakumar (rep)
Mr.M. Paul Varghese (for R.4)

The application having been heard on 27.6.2001, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

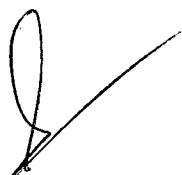
Applicant seeks to quash Annexure.A8, to declare
that the rule of 'preference' referred to in paragraph 2(iv)
of Annexure.A9 can be invoked only when other aspects are
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found to be equal and that such preference has to be given equally to all matriculates without further classification based on the marks obtained in the matriculation examination and to direct the first respondent to conduct a fresh selection for the post in question duly considering the applicant in accordance with law and by granting him due weightage for the past service rendered by him and to grant the consequential benefits.

2. Applicant is working as provisional Extra Departmental Delivery Agent, Mamala. He is a matriculate. Steps were taken by the respondents to fill up the vacancy against which he is working, on a regular basis. He applied. He was initially directed to appear for an interview on 13.10.97. That was postponed. Subsequently the interview was proposed to be held on 6.4.98. Ultimately the applicant was called for an interview on 8.2.99. The 4th respondent was selected. The applicant is entitled to weightage for the experience he has got in his capacity as Extra Departmental Delivery Agent, A8 is arbitrary and bad in law and he was not considered in accordance with law.

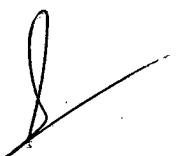
3. The official respondents resist the OA contending that the applicant was called for interview. Selection to the ED Post as approved by the department is on the basis of marks obtained in SSLC Examination, if all other conditions are fulfilled. The applicant was given ten marks as weightage. The 4th respondent has secured 267 marks wherein

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the applicant including the weightage marks has obtained only 264 marks. Preference will be given to candidates who secured higher marks among the candidates who fulfil the conditions. The applicant was considered fairly and reasonably in accordance the rules on the subject. In OA 367/97 it has been held by this Bench of the Tribunal that selection made on higher marks in SSLC Examination is fairly dependable criteria.

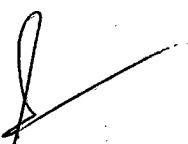
4. The 4th respondent contends that the marks obtained in the SSLC Examination is the criteria in the light of the pronouncement of this Bench of the Tribunal in OA 367/97.

5. There is no dispute as to the fact that both the applicant and the 4th respondent are matriculates. The learned counsel appearing for the applicant vehemently argued that as far as matriculates are concerned, selection should be based on the comparative merit and not based on the marks obtained in the SSLC examination. He further argued that as per the instructions on the subject, it is mandatory that one who to be selected as EDDA, EDSV and all other categories of ED Agents should have sufficient working knowledge of the regional language and simple arithmetic so as to be competent to discharge the duties satisfactorily and the official respondents have not subjected the candidates appeared to any test to assess their working knowledge of the regional language and simple arithmetic.



Thus in short according to the learned counsel for the applicant the whole process was vitiated and is liable to be interfered by this Bench of the Tribunal.

6. Instructions as to the method of recruitment of EDDA, EDSV and all other ED categories of ED as say that "VIIIth standard, preference may be given to candidates with matriculation examination, no weightage should be given for any qualification higher than matriculation, should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge in English". So it is evident that while the interview or selection is conducted for the post of EDDA it is incumbent upon the authorities concerned to test and assess the working knowledge of the candidates of the regional language and simple arithmetic apart from working knowledge of English if the post is that of an ED Messenger. There is absolutely no case for the official respondents or for the private respondent that the candidates appeared were subject to any test to assess their working knowledge of the regional language and simple arithmetic. It is mandatory and should have been complied with by the authority who conducted the selection/interview. Failure to do that is fatal. The selection/interview should have been conducted strictly adhering to what is contained in the instructions and especially with reference to the working knowledge of the regional language and simple arithmetic.



7. Learned counsel for the respondents drew our attention to the order in OA 367/97 by a Division Bench of this Bench of the Tribunal. There it has been held that relative preference in the SSLC Examination can be the criteria for assessing the merit of the candidates. The question whether the working knowledge of the regional language and simple arithmetic was tested was not in issue in OA 367/97. The Apex Court in *Sher Singh Vs. Union of India and others*, (AIR 1984 SC 200) has held that preference amongst others means prior right, advantage, precedents etc. and that it signifies that other things being equal, one will have preference over the others. This particular ruling of the Apex Court has not been referred to in the order in OA 367/97. Another Division Bench of this Tribunal in OA 932/97 had occasion to consider the question whether a person who secured highest marks in the SSLC Examination is to be selected or the highest marks in the SSLC examination is to be the criteria for assessing the merit. While considering that question, this Bench has relied on what the Apex Court has held in *Shersingh Vs. Union of India and others* (AIR 1984 SC 200). The stand of the respondents there in that highest marks in the SSLC Examination is to be the criteria for selection was not accepted in OA 932/97. The decision in OA 932/97 is latter to the decision in OA 367/97. So the stand of the respondents that the 4th respondent was selected on the ground that he has secured highest marks in the SSLC Examination cannot be legally supported. A8 is the order appointing the 4th respondent as.

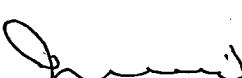


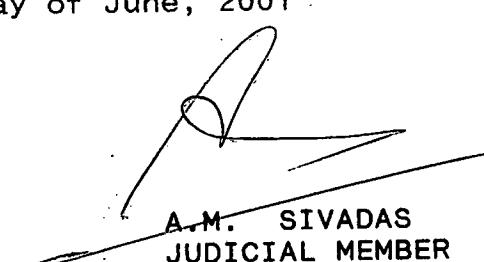
Extra Departmental Delivery Agent, Mamala. As already stated, the appointment of the 4th respondent as per Annexure.A8 is purely based on the sole fact that he has secured more marks in the SSLC Examination when compared to the applicant. For the reasons stated Annexure.A8 is liable to be quashed.

8. Accordingly A8 is quashed. It is declared that "preference" referred to in the instructions regarding selection of Extra Departmental Delivery Agent, Extra Departmental Stamp vendor and all other categories of EDAs means prior right, advantage, precedents etc. and it signifies that other things being equal one will have preference over other. The first respondent is directed to conduct a fresh selection for the post in question considering all the candidates who have already applied including the applicant in accordance with law and bearing in mind the observations contained in this order.

9. O.A. is disposed of as aforesaid. No costs.

Dated the 27th day of June, 2001


T.N. T. NAYAR
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

(s)

List of annexures referred to:

Annexure.A8:True copy of the Order No.DA/Mamala dated 22.2.99 issued by the first respondent.

Anenxure.A9:True copy of the letter No.17-366/91-ED&Trg.d ated 12.3.93 issued by the Postal Directorate.

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