

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 24/ 1990
~~XXXX~~No.

DATE OF DECISION 10.8.1990

P.K Unnikrishnan Applicant (s)

M/s. D.V Radhakrishnan Advocate for the Applicant (s)
K.Radhamani Amma
Versus

Sub Divisional Inspector of Respondent (s)
Post Offices and 3 others

Mr T.P.M Ibrahim Khan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

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

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant who has been regularly selected and appointed as Extra Department Branch Post Master, Ayyanthode North approached this Tribunal under Section 19 of the Administrative Tribunals Act challenging Annexure A8 order dated 28.12.1989 terminating his services in exercise of the powers under rule 6 of the P&T ED Agents (Conduct & Service) Rules, 1964 on the basis of the complaint of a candidate who contested along with the applicant in the selection.

2. The termination order is sought to be supported by the respondents in their counter affidavit by stating that six candidates with the highest percentage of marks were considered for selection. They were not having any independent income. So the applicant was selected and appointed since he

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was the next candidate with highest percentage of marks in S.S.L.C. But on receipt of a complaint regarding the irregularity, the CPMG ordered cancellation by giving notice to the applicant.

3. According to the respondents there are three irregularities noticed in the enquiry. They are as follows:-

- i) Alongwith the nominees of the Employment Exchange, application was obtained from an outsider also.
- ii) Out of the three candidates applied for the post one was eligible to be appointed still the vacancy was notified.
- iii) An outsider who was neither a nominee of the Employment Exchange nor an applicant in response to the open notification was included in the panel and was selected.

4. This Tribunal was taking the view that the cancellation of the appointment of a selected candidate for making regular appointment after following the procedural formalities at the instance of a defeated candidate should not be encouraged unless there is grave irregularity in the selection causing injustice to the contesting candidates or loss to the Government or there is some misrepresentation or fraud committed by the selected candidate for getting the appointment.

5. In this case having perused the records and after hearing the matter, we are satisfied that there is no serious irregularity in the selection warranting interference by this Tribunal. There is also no case of fraud or any misrepresentation having been committed by the applicant for succeeding in getting the appointment. There is no allegation of any injustice to anybody on

account of the selection of the applicant. Except one complaint from the defeated candidate no other material is placed before the respondent for taking this drastic action of cancellation of a regular selection. The contentions advanced by the respondents for cancelling a regular selection conducted strictly in accordance with law are too technical to be upheld for sustaining the impugned order.

5. The first ground of irregularity is that the applicant was an outsider whose name was not sponsored by the employment exchange. This Tribunal in a number of cases has held that persons who are not sponsored by the employment exchange, but working in the Post Office on provisional basis, are also eligible to be considered for regular selection notwithstanding the fact that their names have not been sponsored by the employment exchange. Directions can also be issued by the PMG under special or exceptional circumstances indicating that persons from outside can also be considered. Hence, according to us, this cannot be considered as an irregularity.

7. The next irregularity pointed out in the order is also not an irregularity of grave nature, for taking the decision of cancellation of the appointment. In the instant case the learned counsel pointed out that there is provision for issue of notification when candidates sponsored by the employment exchange are not found to be eligible without any keen contest. The appointing authority can issue notification inviting applications from outside candidates for making a regular selection when only one candidate is found suitable for the post

from the total number of candidates sponsored by the employment exchange. In this case the issue of notification by the second respondent was necessitated only because of the absence of eligible candidates except one. In order to make the field of choice wider the second respondent can issue notification inviting applications from the candidates under Annexure-A1. Hence, according to us, this is not an irregularity warranting cancellation of the appointment of the applicant.

7. There is no substance in the third irregularity which appears to be a repetition of the irregularities earlier mentioned in the impugned order. The gist of this irregularity is that the applicant submitted his application not in pursuance of the notification, nor was he nominated by the employment exchange and hence his selection cannot be sustained because he was not included among the persons sponsored by the employment exchange. The grounds relating to this irregularity are baseless. The respondents have themselves admitted in their counter affidavit that the applicant was selected on the basis of the "application made in response to the public notification". Needless to say such application cannot, obviously, be received through the employment exchange.

8. In fine all these irregularities pointed out in the impugned order are without any substance and the impugned order cannot be sustained as valid on the

facts and circumstances of this case.

9. Accordingly we set aside the order at Annexure-A8 dated 28.12.1989 and direct the respondents to treat the applicant as continuing in service without any break. He shall also be granted all consequential benefits legally due to him. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

10.8.90.


(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

RA 104/90 in

O. A. No. 124/90
~~T. A. No.~~

199

DATE OF DECISION 18-10-90

Smt. Sarojini V.C. Applicant (s)

Mr. Ramachandran Advocate for the Applicant (s)

Versus

SDI, of Post Offices, Trichur Respondent (s)
and 4 others

TPM Ibrahim Khan ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

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

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

Shri N. Dharmadan, Judicial Member

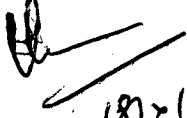
in the RA by
The 5th respondent has filed the Original Application No.24/90. It was heard and disposed of by us on 10-8-90. The present R.A. has been filed to re-open the judgment on the ground that there are some errors in the judgment.

2. The Review Applicant was not a party in the Original Application. The contention, now raised by her in this Review Application has been considered by us and we have found that there is no substance in the complaint submitted by her and the points raised therein against the appointment of original applicant.

3. We see no reason to interfere in the matter as the R.A. is devoid of merit.

4. The Review Application is dismissed. The stay petition is also dismissed.


(N. Dharmadan) 18.10.90
Judicial Member


(N.V. Krishnan)
Administrative Member

18-10-90

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