

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

248 of

1991

DATE OF DECISION 3.4.92

P.V. THOMAS

Applicant (s)

Mr. K. Karthikeya Panicker

Advocate for the Applicant (s)

Versus

Union of India rep. by Secretary,
Ministry of Communications, New Delhi and 3 others

Respondent (s)

Mr. V. Krishna Kumar, 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? Y
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

N. Dharmadan, M(J)

A regular vacancy of Extra Departmental Mail Man(EDMM) which was notified in 1987 could not be filled up by the department by appointing a duly selected candidate due to repeated challenge of selection process. The present application is the fourth in series. The applicant in this case was a party in the earlier proceedings. He attacks the appointment of the 4th respondent when he is found fit in a regular selection pursuant to direction of this Tribunal. The contention of the applicant is that he is better qualified and he ought to have been

selected in preference to the 4th respondent.

2. In-order to appreciate the real issue some facts are necessary. The third respondent made a request to the District Employment Exchange, Kottayam on 8-10-83 to sponsor candidates for filling up the three vacant posts of EDMM. The Employment Exchange sponsored 26 candidates, out of 15 attended interview held on 28-12-83. The third respondent prepared a rank list of 5 candidates. As a matter of fact there was only one vacancy of EDMM. Four candidates in the panel were working as Mazdoors i.e. substitute EDMM and they were employed whenever the regular incumbents used to go on leave. At a subsequent stage, out of the 4 candidates, two were absorbed as EDMM. Remaining two candidates in the panel were M/s. Gopinath and P.S. Devadas. Since Shri Gopinath did not turn up after 25-7-87, his name was deleted from the panel. The name of the applicant was included in his place in the panel. He was not a candidate sponsored by the Employment Exchange but he was engaged as substitute from 1980 onwards in the Post Office. In 1987, one more post of EDMM fell vacant. Then the third respondent requested the Employment Exchange to sponsor candidates for selection to the vacant post. Accordingly, a list of 14 candidates were sent to the third respondent who conducted interview on 8-2-88. Then OA 62/88 was filed by Shri P.S. Devadas and obtained a stay of the interview. This case was disposed of by judgment dated 31-8-89 directing the respondents

to permit Shri P.S. Devadas to participate in the interview on 25-10-89. Though Shri Devadas was permitted to participate in a selection as per the directions of the Tribunal, he was not selected. The applicant ⁴EDMM. The R-4 who is in the list of who was selected, was appointed as/candidates sponsored by the Employment Exchange, filed the next case OA 92/90 challenging the selection of the applicant. This case was disposed of after setting aside the selection and directing the respondents to conduct fresh selection after giving an opportunity to the applicant therein as well as the fourth respondent herein, along with other candidates sponsored by the Employment Exchange. As per the directions, of the third respondent again conducted interview on 2-11-90 in which only 4 candidates attended ^{No. 4} and the respondent/was found to be fit and proper person to be selected and he was given first rank. The applicant who was given only 4th position was not appointed. Since there was only one vacancy the 4th respondent was appointed as EDMM with effect from 31-11-90, after cancelling the provisional appointment given to the applicant earlier. Immediately the applicant filed OA 1091/90 but it was subsequently withdrawn by the applicant after filing the case in hand. The order dated 1-5-91 of this Tribunal in OA 1091/90 reads as follows:

"....The learned counsel for the applicant wishes to withdraw this Original Application in view of the fact that he has filed another OA 248/91, and without prejudice to the reliefs claims in the latter application. The learned counsel for the respondent has no objection..."
 "Accordingly, this OA is dismissed as withdrawn.."

This appears to be an abuse of process of the court.

This case was filed on 13-2-91 challenging the appointment of the 4th respondent mainly on the ground that the applicant is better qualified because of his past service from 1980. When the applicant was selected as EDMM in the same Post Office, the 4th respondent filed OA 92/90 which was disposed of by judgment dated 10-8-90 after quashing the appointment of the applicant. Though the applicant was 4th respondent in that case and notice was duly served he did not contest the matter either by filing a reply or appearing and arguing the case at the time of final hearing. But after the disposal of the case he filed R.A. 132/90 with an MP for condonation of delay suppressing service of notice. This Tribunal found that there was no bonafides in the statements in the MPs for he appeared before the authorities for the interview held on 2-11-90 and participated in the selection knowing all details. Both the MPs were dismissed as per Annexure R-4(C) order.

3. The applicant's claim that he was working from 1980 and he is eligible for a weightage cannot be appreciated because he was included in the list as a substitute under the circumstances mentioned by the third respondent in their reply in order to engage when regular incumbents of the posts go on leave. Moreover in the

regular selection his claims were also considered but the 4th respondent was given first rank placing the applicant in the 4th position.


4. The applicant was really negligent and committed default in appearing before this Tribunal to sustain his earlier regular selection. He was not vigilant in sustaining his selection when it was challenged by the 4th respondent in OA 92/90. This is clear from Annexure R-4(B) judgment. After the selection of the 4th respondent applicant [✓] the has also filed OA 1091/90 challenging the selection and appointment of the ^{4th} ~~respondent~~ to the post of EDMM. But later after filing the present case, he has withdrawn OA 1091/90. Why he has filed a fresh case and decided to withdraw the earlier case with ^{almost} ~~the~~ same allegation and challenges is also a mystery. Unless he given a satisfactory explanation it can only be treated as an abuse of process of court. No such explanation is forth-coming. From the facts and circumstances of the case it is clear that the applicant has not come with clean hands.

5. The selection of the 4th respondent has been done as per the direction of the Tribunal. After quashing the earlier selection, the Tribunal directed the third respondent to conduct fresh selection for filling up the post of EDMM RMS(TV) Division Changanacherry in a regular manner. The fresh selection had been conducted in accordance with law and there is no substance in the contention of the applicant. There should be a finality to the process of selection

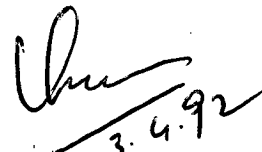
From 1987 onwards the regular appointment has been disturbed repeatedly on account of filing of cases.

6. In the result having regard to the facts and circumstances of the case, we are of the view that there is no merit in the case of the applicant and it is only to be dismissed. Accordingly, we do so.

There shall be no order as to costs.


(N. Dharmadan)
Member(Judicial)

3.4.92


(N.V. Krishnan)
Member(Administrative)

3.4.92

ganga ??

14.5.1991

SPM & AVH

Mr. Karthikeya Panicker-for the petitioner.
Shri Ibrahim Khan-for respondents.

Shri Ibrahim Khan takes notice of the CCP and undertakes to check up the position about the reengagement of the petitioner and ensure the compliance of our interim order at Annexure-A. List for further directions on the CCP on 14.5.1991.

[Signature]

1.5.91.

ND

Mr. Karthikeya Panicker for the petitioner
Mr. Ajit Narayanan ACS for respondents

At the request of the counsel for
the respondents list for further directions
on 27.5.91.

[Signature]
14/5/91.

SPM & ND

Mr. K. Karthikeya Panicker for petitioner
Mr. V. Krishna Kumar, ACS for respondents

On request list for further directions
further directions on the C.C.P. on
4.6.91

[Signature]
27.5.91.

Statement by
repet - PMD.
on 3/6/91. *[Signature]*

4.6.91.

SPM & AVH.

Mr. Karthikeya Panicker.

Mr. Viniraj - rep. Krishnakumar.

The learned counsel for the respondents seeks some time to get further instructions from the respondents. The applicant is directed to report to the Sub Record Office for joining as casual Mazdoor in the same type of work which he was doing before he was selected as E.D. Mail man. He should do so within a period of one week and the respondents are directed to comply with the direction in our order dated 23.4.91 in OA. 248/91 without further delay.

Wait for further directions on

13.6.91.

Copy of this order may be given to the counsel on either side by hand today.

1 D issued on 4/6/91.

At 4/6/91

Mr. MOE

4.6.91.

19-6-91
(17)

SPM & AVH

Mr K Karthikeya Panicker for petitioner

ORDER

Heard the learned counsel for the the petitioner, Shri Karthikeya Panicker, who states that the petitioner has since been engaged by the respondents. Accordingly, the CCP is closed and the notice discharged.

(AV HARIDASAN)
JUDICIAL MEMBER

(SP MUKERJI)
VICE CHAIRMAN

19-6-1991

At 20/6
Mr. MOE