

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

...

DATE OF DECISION ... 26.2.90

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN  
AND

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION No.252/89

K.K.Kumaran ... Applicant

Vs.

1. Superintendent of  
Post Offices,  
Alwaye Division,  
Alwaye.

2. Postmaster General,  
Kerala Circle,  
Trivandrum.

3. Union of India,  
represented by Secretary,  
Ministry of Communications,  
New Delhi.

..... Respondents

M/s D.V.Radhakrishnan  
K.Radhamani Amma  
Raju K.Mathew

... Counsel for the  
Applicant.

Mr. K.Karthikeya Panicker,  
ACGSC

.. Counsel for the  
Respondents.

O R D E R

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

In this application dated 23rd April, 1989  
filed under Section 19 of the Administrative Tribunals Act  
the applicant who has been working as a Postman in the  
Alwaye Division under the Postmaster General, Kerala Circle  
has prayed that the impugned order dated 20.7.88 at  
Exhibit A.11 enclosing a list of departmental candidates

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and departmental surplus qualified candidates and calling upon them to exercise option for being promoted to the posts of Postal Assistants/Sorting Assistants in Divisions other than the one for which they had appeared in the examination, should be set aside along with the order dated 27.7.88 calling upon the applicant to give a declaration for being appointed as Postal Assistant in another Division. He has also prayed that the Respondents 1 and 2 should be directed to promote the applicant to the cadre of Postal Assistant in Always Division with effect from 1.9.1984 against the vacancy which was notified in the order dated 1.2.1984 (Exbt. A.1). The brief facts of the case are as follows:

2. The applicant appeared <sup>for the</sup> examination for promotion as Postal Assistant/Sorting Assistant which was held on 30.10.83 and was successful in the same. By the order dated 1.2.84 (Exbt. A.1) he was shown to have been selected for the post of Postal Assistant/Sorting Assistant as a result of the examination held on 30.10.83 against a single unreserved vacancy. He was sent for training as a departmental candidate vide order dated 18.5.84 (Exbt. A.2) and completed the same successfully. He completed practical training also but after that, instead of being appointed as a Postal Assistant, he was continued in his original post of Postman. While he

was waiting for an offer of appointment he found to his surprise that the respondents vide circular dated 8.2.84 at Exhibit A.3 issued a list of surplus qualified candidates who had qualified in the aforesaid examination held on 30.10.83. In that circular, the candidates were asked to give their option whether they would like to be promoted to a post of PA/SA in a Division other than the Division for which they had appeared on the condition that they will stand junior to the candidates in the regular list of that Division. The applicant found that whereas two Examination of names of candidates who had appeared with him in the Always Division, i.e. M/s Thankamma and Venugopalan, were shown in the list of candidates selected for unreserved vacancies, his name was missing from the list. On the basis of the option exercised by these two candidates, they were sent for undergoing training whereafter Smt. Thankamma was promoted as Postal Assistant in the Ernakulam Division. The respondents conducted another examination on 28.10.84 for which one more vacancy was notified in the Always Division. However, a surplus candidate from Always Division was promoted. When the applicant before us found that the surplus candidate was promoted as Postal Assistant, he represented on the ground that he had already been selected in 1983 for promotion in Always Division for that vacancy and he should have been promoted to that vacancy. The

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respondents however replied that since he was selected in the regular list he cannot be re-allotted to other Division. Again on 14.3.89 the respondents notified the names of 3 candidates selected through the examination held on 18.12.88 for three vacancies in the Always Division of which two were unreserved. The applicant's grievance is that in accordance with the Recruitment Rules 50% of the posts in the cadre of Postal Assistant/Sorting Assistant are to be filled up by direct recruitment and 50% by promotion through departmental examination. The respondents, instead of filling up the promotion quota posts by appointment of candidates successful in the departmental examination for that Division, are getting them filled up by surplus candidates from other Division while regular candidates of that Division are waiting. The applicant having qualified and trained for promotion to the unreserved vacancy in Always Division was kept waiting whereas those who appeared with him in the same examination of Always Division were notified to give their option for being promoted as Postal Assistant/Sorting Assistant in that Division. Finally he was given an option in 1988 but he did not exercise the option to be promoted <sup>so late</sup> <sub>by</sub> loss of seniority in that Division, The respondents

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have conceded that the applicant did qualify in the examination held in October, 1983 against an unreserved vacancy but because of certain establishment changes that vacancy in Alwaye Division was not available to him. Though they have stated that no junior departmental candidate has been promoted in Alwaye Division, they have explained that the surplus candidates Shri Venugopalan and Smt. Thankamma who appeared in the 1983 examination were promoted as Postal Assistants in the Ernakulam Division as they had exercised the option. They have argued that since the applicant did not exercise the option to be allotted to other Division, he cannot be promoted. They have also stated that in July 1988 the applicant was specifically asked whether he was willing to be re-allotted to any other Division to which he has not responded. They have stated that if the applicant had exercised his option by virtue of Exbt.A.3 he would have been absorbed in some other Division and would have been senior to those candidates who had been absorbed by Exbt. A.11 order.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. The facts are self-evident. The applicant qualified in the departmental examination against a notified unreserved vacancy vide Exbt. A.1 while no other candidate was shown against that vacancy. He should have been appointed against that vacancy

straightaway after training. If candidates ranking lower than the applicant in the Always Division were given the option to be absorbed as Postal Assistants in other Division vide Exbt. A.3, there is no reason why a similar option should not have been given to the applicant who had a prior claim over the surplus candidates.

The respondents quite unreasonably have argued that the applicant should have availed himself of the option given by the order dated 8.2.84 at Exbt. A.3 like Smt. Thankamma and Shri Venugopalan, ~~forgetting~~ that whereas the names of Smt. Thankamma and Shri Venugopalan were included along with others in the list, the applicant's name was not included. Therefore, the question of his exercising option to be allotted to other Division did not arise. The applicant quite justifiably refused to exercise the option offered to him as late as in 1988 by which time the surplus candidates of 1983, 1984 etc. examinations had already been absorbed.

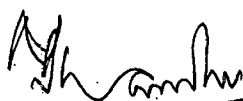
4. In the circumstances and in justice and equity, we find that the applicant has to be absorbed as Postal Assistant as a regular selected candidate of 1983 batch. It is understood that the applicant got appointed in 1989

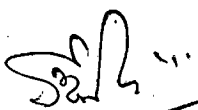
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through the examination of 30.10.83. By no reason  
he can be denied the seniority of 1983.

5. In the facts and circumstances, we allow  
the application to the extent of directing that the  
applicant should be given seniority in the cadre of  
Postal Assistant/Sorting Assistant as if he, as a  
candidate of 30.10.83 examination, had exercised option  
in accordance with order at Exbt. A.3, ~~and given seniority~~  
~~on that basis.~~

6. There will be no order as to costs.

  
(N. DHARMADAN) 26.2.90  
JUDICIAL MEMBER

  
(S.P. MUKERJI) 26/2/90  
VICE CHAIRMAN