

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. Nos. 254/91 and 808/91

DATE OF DECISION : 30-7-92.

O.A. 254/91

V.V.Pushpavalli .. Applicant
Mr. M.Sasidharan .. Advocate for the applicant

Versus

Superintendent of Post Offices,
Kannur Division, Kannur & 3 ors .. Respondents

Mr. Mathew J.Nedumpara .. Advocate for respondents
1 to 3
Mr. M.R.Rajendran Nair .. Advocate for respondent 4

O.A. 808/91

E.V. Gopalan .. Applicant
Mr. G.Mohan .. Advocate for the applicant

Versus

Superintendent of Post Offices,
Kannur Division, Kannur & 2 ors .. Respondents

Mr. N.N.Sugunapalan, SCGSC .. Advocate for resp. 1 & 2
Mr. M.R.Rajendran Nair .. Advocate for resp. 3.

CORAM : The Hon'ble Mr. P.S.Habeeb Mohamed, 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

These two cases are heard together and disposed of by this common judgment on the basis of consent of parties

because the applicants in these cases are attacking the appointment of one Smt. P.V.Ratnavally, who was selected as EDBPM, Keezhara Post Office overlooking the better and superior claims of the applicants.

2. O.A.254/91 was filed on 18.2.91 with the allegation that the applicant secured 293 marks out of 600 in the S.S.L.C. examination and she fulfils all the eligible qualifications for the selection to the post of EDBPM. The 4th respondent, the selected candidate, has only 222 marks in SSLC, and second place in the list, while the applicant was No.1. But the first respondent, who is closely related to 4th respondent, took hasty steps to appoint the 4th respondent. Hence she has filed the application mainly for a direction to the first respondent to appoint her in the vacant post.

3. The petitioner in O.A.808/91, which was filed on 27.5.91, also contended that he secured 275 marks out of 600 and better qualified for being selected as EDBPM in every respect and that the selection and appointment of 3rd respondent, who is not a resident of village where Keezhara Post Office is situated, is illegal and liable to be quashed.

4. Both the applicants are challenging the selection and appointment of Smt. Ratnavally (4th respondent and 3rd respondent in OA 254/91 and OA 808/91 respectively) on the following grounds:-

- i) The selected candidate is closely related to the wife of the Superintendent of Post Offices, Kannur Division, 1st respondent, and hence selection is malafide and illegal.

- ii) The selected candidate has only lesser marks in SSLC than the marks secured by the applicants, and
- iii) The selected candidate is not a resident of the village where the Post Office is situated.

5. The respondents have filed reply in these cases and denied all the averments and allegations and submitted that Smt. Ratnavally is found to be the most suitable candidate among the candidates considered in the selection including the applicants in these cases. Accordingly, she was selected and appointed as EDBPM.

6. The main allegation uniformly raised and asserted by both the applicants against the selected candidate and the 1st respondent is one of favouritism. They say that the first respondent selected Smt. Ratnavally only because she is closely related to his wife. Though the respondents have not specifically denied this allegation, in OA 254/91, in the reply statement filed by the same respondents in the connected case OA 808/91 they have denied this allegation. There is only an assertion by one side and a denial by the other side. Neither side had endeavoured to go beyond the assertion and denial. So much so a lingering doubt is entertained in our mind about the truth. Considering the fact that the two applicants have placed strong reliance on favouritism on the part of the first respondent in regard to the selection, he should have given some more explanation or other relevant details about the whereabouts or further facts pertaining the selection proceedings, so as to dispel our doubt particularly when the selection files disclose that one Shri P.N.Nambiar, Superintendent of Post Office, Cannanore has selected the

daughter of one Shri C.Govindan Nambiar. Hence, on the facts of this case, mere denial is not sufficient. Since neither the selected candidate nor the first respondent did not care to give sufficient details as indicated above to dispel our doubts, we are compelled to probe the matter further keeping in mind the lingering doubt about the bonafides of the selection created in our mind on the basis of the assertions of the applicants.

7. Both the applicants have more marks in SSLC than the selected candidate. Applicants in OA 254/91 and OA 808/91 scored 293 and 275 marks respectively while the selected candidate got only 222 marks. But the applicants were denied selection on the ground that one (applicant in OA 254/91) is having a permanent job in Cannanore Homeopathic Hospital, 40 KMs away from Keezhara and if she is selected she would not be able to continue the job and thereby disqualified in regard to independent income and the other (applicant in OA 808/91) having completed and passed SSLC in the second chance cannot be selected when person passed SSLC in first chance is available.

8. On a carefull examination of the contentions in the light of the pleadings and documents available in this case, we are not impressed by the statements of the first respondent about the selection of Smt. Ratnavally as EDBPM. It appears that the 1st respondent had made the selection without reference to all the relevant criteria for the selection under the Rules.

9. The criteria for selection of an ED Agent under the Rules supplemented by relevant instructions are:-

- i) Minimum age limit of 18 years and maximum of 65 years should be satisfied for employment as ED Agent.
- ii) For the post of EDDA, EDBPM and EDSPM the candidate should have completed VIIIth standard as educational qualification; but when other things becomes equal in every respect Matriculation or equivalent may be preferred. PMG's letter dated 12.8.87 states that preference shall be given to those who are possessing highest educational qualification but no weightage need be given to qualifications above the level of SSLC. Among matriculates candidate, candidate having highest mark has a chance of selection provided the candidate is found physically fit. In the case of all other categories of ED staff no minimum educational standard has been prescribed, but the candidate should have sufficient "working knowledge of the regional language and simple arithmetic". In the case of ED Messenger the candidate should possess in addition to the above "enough knowledge of English".
- iii) For the post of EDSPM/EDBPM the candidate should have adequate means of livelihood which is supplementary to the allowances of the work as ED Agents and the selected person should be able to offer space for postal operations.
- iv) The EDSPM/EDBPM must be permanent resident of the village where the post office is located so as to enable him/her to attend official work. In regard to EDMC, ED Carrier, Mail Peon etc. he should

reside in the station of the Main Post Office or delivery jurisdiction.

- v) An ED Agent of all categories should furnish a security of Rs.1000 subject to variations.
- vi) Ability to ride bicycle is a precondition and a candidate should possess ability to ride bicycle in the case of selection of EDAs to be engaged on out door duties as per letter dated 18.8.73.
- vii) The candidate should satisfy physical fitness and sound health for discharging duties. 'The selection should easily be the best one suitable for the post notified' in every respect. Preference will be given to SC/ST to ensure the fixed percentage.

10. The authority who makes selection to an ED post may conduct an interview to satisfy the physical and general fitness of the candidate, but he is bound under the Rules supplimented by instructions to conduct the selection proceedings bearing in mind the above principles and criteria, for choosing the "best one suitable for the post notified" and not a candidate of his choice using his own discretion in an arbitrary manner. The selection should be fair and impartial. He should apply the criteria scrupulously for pickeing out the best among the lot. If the Tribunal or the Court on verification of the records and the selection proceedings is satisfied that the above principles and criteria are not followed or applied in the selection proceedings strictly it is liable to be quashed.

11. Now let us examine the selection proceedings in the instant case. In both the cases the Superintendent of Post

Offices, who conducted the selection, filed reply and stated that the selection was conducted strictly according to the Rules and instructions but this was not supported by documents. The learned counsel for the respondents was kind enough to produce the selection files. We have perused the same. The minutes shows that eight candidates appeared. Three were disqualified as they do not possess 'required income'. How and in which manner they do not satisfy this requirement is not clear from the minutes. Two others were rejected merely on the ground that they have only 210 marks in SSLC. The remaining candidates are the two applicants and the selected candidate. The reasons stated in the minutes for rejection of the applicant in OA 254/91 is xxxxxxxxxx xxxxxxx that "Pushpavally has got more marks, but the income shown by her is by employment as a Clerk in Homeo Hospital. The distance from Keezhara to Chengalayi is about 40 KM. If selected she will not be able to continue in the post and she has offered to resign if selected. In that case she will not have any independent income at all and therefore not eligible."

12. The decision of the 1st respondent that applicant in OA 808/91 cannot be considered since he has only completed SSLC in the second chance. /^{This is} no consideration and it cannot be supported particularly when the minimum educational qualification for the post of EDBPM is VIIIth Standard, Matriculation or equivalent qualification is preferential in nature under the instructions. It has been made clear that preference shall be given in the selection to those who have highest educational qualifi-

cation but no weightage need be given to qualifications above SSLC. Among matriculates candidate having highest percentage of marks has only a chance to be selected provided he is found fit physically. So disqualifying a candidate even before consideration on the ground he passed SSLC in the second chance is illegal. The Rules or instructions do not make mention of such a position. On the other hand the instruction of PMG dated 12.8.87 only says "Those candidates who do not satisfy any of the prescribed conditions should be eliminated. From among the those who satisfy all the prescribed conditions preference should be given to those who are possessing the highest educational qualification. But no weightage will be given for qualifications above the level of matriculation (SSLC). For matriculates and candidates possessing qualification above matriculation, the criteria for selection will be the percentage of marks obtained in matriculation/SSLC. The candidates who has secured the highest marks will have the best chance of selection, provided that candidate was found physically fit." A candidate who secured highest mark in SSLC has only a best chance of selection provided such candidate is easily the best out of the lot in all other respect. Generally selections are being made by the authorities misunderstanding the scope of the above instructions placing reliance solely on SSLC marks, as if marks in SSLC is the sole criterion for selection. The relevance of SSLC marks assumes importance when all other conditions are found to be equal in every respect. An overall assessment and evaluation of the qualification of all the candidates is necessary before examining their marks in SSLC and finalising the selection.

13. The Superintendent of Post Offices did not say what are the other qualifications and disqualifications of Shri Gopalan, the applicant in OA 808/91 for comparing his case in other respect with the selected candidate. It is only when both the selected candidate and Shri Gopalan are standing in equal footing that Shri Gopalan can be denied selection on the basis of the percentage of marks. Considering the percentage of marks Shri Gopalan is above the selected candidate, but he was not even considered because he passed SSLC in the second chance. It is not a sound principle to give preference to an SSLC holder with lesser marks when compared to a candidate who has more marks in SSLC but passed SSLC in the second chance, particularly when the rule or instruction is silent about the chances and pass in SSLC while prescribing preference on percentage of marks in SSLC. This Tribunal has deprecated such practice of downgrading SSLC passed candidates depending on their success in SSLC in the second or third chances. It is the percentage of marks of the candidate in SSLC that matters and not the number of attempts of the candidate in SSLC examination. This Tribunal in OA 561/91 considered identical issue and held as follows:-

"A pass in the SSLC examination is not even prescribed as a desirable qualification. But while assessing the merits of the candidates of the same educational standards to hold that the person who has obtained higher marks is more meritorious is a safe course. Though SSLC examination is not prescribed as an essential or preferable qualification since the applicant as well as the 1st respondent have the same standard of educational qualification, their inter se

merit has to be adjudged on the basis of the marks obtained by them in the SSLC examination. In that process to say that a person who has obtained less marks in the examination is more meritorious than the another who obtained more marks for the reason that the former passed the examination in the first chance while the latter passed examination in the second chance does not appear to be reasonable.

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.... The selection file discloses that while making the selection, the SDI was influenced by a guideline issued by the Superintendent of Post Offices, Malappuram that while assessing the merits of the candidates, a candidate who has passed the SSLC examination in the first chance should be placed above a candidate who has passed the examination in the second chance even though the latter had obtained more marks in the examination. It is solely on that basis and solely because the applicant passed the SSLC examination in the second chance that the 1st respondent was preferred and was selected and appointed. This is evident from a letter written by the SDI on 27.3.1991 to the Superintendent of Post Offices, Kannur in reply to d.o. letter No.83/PNR dated 19.3.1991 which is available at page 12 of the file relating to the selection. As observed by us earlier, the conclusion that a person who has obtained less marks in the SSLC examination is more meritorious than a person who has secured higher marks for the reason that the former passed the examination in the first chance while the latter passed it only in the second chance is unscientific and unjustified. Therefore, we are of the view that the selection and appointment of the 1st respondent as ED MC, Vellore overlooking the superior merit of the applicant cannot be sustained."

(emphasis is ours)

14. Smt. Pushpavally, the applicant in OA 254/91 was denied selection on the ground of disqualification on independent income. The Superintendent of Post Offices, 1st respondent, has committed a more or less same mistake here also. The applicant alleged that in the selection made by the 1st respondent, she was placed as Rank No.1 and only second place was given to the selected candidate. But a change was effected after an enquiry on 25.1.91 because of the close relation of the 1st respondent with Ratnavally and she was selected. This selection is illegal and malafide. The applicant has a part-time job in a Homeo Hospital at Chengalayi, but the authorities have promised to transfer her to Payyanur so as to enable her to continue that job even after appointment as EDSPM. But the 1st respondent treated it as a full time job and has taken the view that she would not be able to continue that job after selection and appointment. Therefore she was disqualified. The view of the 1st respondent does not appear to be correct.

15. One more aspect remains to be considered in the light of the pleadings in this case. It is about the residential qualification of ED Agents. The applicant in both the cases assail the selection and appointment of Smt. Ratnavalli on the ground that she is not a resident within the delivery jurisdiction of the post office at the time of selection and hence she is disqualified for appointment.

16. As indicated above, one of the criteria for selection is that EDSPM/EDBPM must be permanent resident of the village where the post office is located. EDMC, ED Carrier, Runner Mail Peons etc. should reside in the station of the Main Post Office or delivery jurisdiction. This clause in the

rules is to be interpreted in a liberal manner and this Tribunal held in R.K.Chandri vs. The Superintendent of Post Offices, Tellicherry Division & Others/^(OA 60/89) as follows:-

"7. We have to interpret the instruction in a reasonable manner adhering to the ordinary meaning of the words used in it. The so called "Golden Rule" of interpretation of the statute can be applied to the instructions as well. We have to "adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature." And in so doing the Courts and the Tribunals have the freedom to "adopt that which is just, reasonable and sensible rather than that which is none of those things." See Nasiruddin vs. State Transport Appellate Tribunal (AIR 1976 SC 331). The Supreme Court held in Paradise Printers vs. Union Territory of Chandigarh (AIR 1988 SC 354), that an interpretation which least offends our sense of justice should be adopted or in other words a meaning of the statute which produces an unreasonable result is to be rejected in favour of that which does not and the Courts or Tribunals as far as possible interpret the rule which is agreeable to justice and reason."

In that case the applicant was appointed as EDBPM of a post office, but due to marriage though she was compelled to change her residence from the delivery jurisdiction of the post office in which she was appointed and reside with her husband in the neighbouring area, she was easily available for the work of the post office in which she was appointed. Having considered such a situation the Tribunal held as follows:-

"Hence, we are of the view that her appointment given in 1983 cannot be cancelled on this ground alone. As indicated above the condition of residential qualification is a condition intended only to facilitate that the appointee be easily available for work and would also be in touch with the people of the locality for catering to their needs."

The Tribunal in another case, K.Krishnan vs. Superintendent of Post Offices, Cannanore and others/^(OA 30/90) followed the above decision and held as follows:-

"15. It is clear from the facts that the locality in which the applicant in the instant case is residing and the area in which the new branch post office was established by carving out some portion of the village are situated in the same village. So even going by the wording contained in the 'condition of residence' in the above instruction for the recruitment of EDBPMs, the applicant cannot be disqualified and hence we are of the view that the cancellation of his appointment is illegal."

17. It would be advantageous to read in this connection the residential condition contained in Swamy's Compilation (Pages 57 & 28). It is as follows:-

"4. Residence:

(i) The ED BPM/ED SPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which need not be adapted to suit his convenience or his main avocation.

(ii) ED Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherfrom mails originate/terminate, i.e. they should be permanent residents of the delivery jurisdiction of the post office.

(iii) ED Agents of other categories may, as far as possible, reside in or near the place of their work. (Letter No.5-9/72-EL Cell, dated 18.8.1973 and 43-312/78-Pen, dated 20.1.1979, stand modified to this extent.)"

(emphasis is ours)

18. Unlike other conditions for selection, residential condition stipulates 'The EDBPM/EDSPM must be a permanent resident of the village where the post office is located.' The purpose is also indicated therein. The wording in regard to ED Mail Carrier, Runner, Mail Peon, etc. is also same. Bearing in mind the Golden Rule of literal interpretation explained by the Supreme Court if we examine the wordings of this clause it is crystal clear that a candidate or an applicant for the post of EDBPM/EDSPM, ED Mail Carrier, Runner, Mail Peon etc. need not, while applying for the post, satisfy that he is a resident of the village or delivery jurisdiction where the post office is situated. A candidate becomes EDBPM, EDSPM, ED Mail Carrier etc. as such only after a proper selection by the competent authority. Such a selected person should be a permanent resident of the village or delivery jurisdiction where the post office is located. Thus, according to us, the residence clause insists that a fulpledged EDBPM/EDSPM, ED Mail Carrier, Runner, etc. need only satisfy this residential condition. This view

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is further strengthened from the fact that this clause does not use the phrase such as 'for employment', 'for the post' or 'candidate for the post'. From this it can be presumed that the residential qualification of a candidate is intended to be understood to mean that it is to be insisted or fulfilled only after selection and not before selection and appointment. In other words residential qualification can be better treated as a condition to be fulfilled subsequent to the selection rather than as a condition precedent to be satisfied even at the time of filing the application by a candidate for the post. If the later interpretation is accepted there is the possibility of raising an argument that it is hit by Article 16(2) of the Constitution of India. This view gains further strength from the DGP&T letter No.43/36 Pen dated 17th October 1966 which only directs that the selecting authorities are to make prior verification about the property and income of the candidate treating the income of candidates as a "pre-condition for appointment to the post of EDBPM/EDSPM". No such directives were so far issued by any of the superior competent authorities in regard to the residential qualification to treat it as a "pre-condition for appointment".

19. A circular of DGP&T No.43-312/78 Pen dated 20.1.79 issued in this behalf clearly support the view expressed by us. It states that "EDAs' who are posted as EDSPMs/EDBPMs/EDSVs and to other posts should be permanent residents of the villages where they are appointed." This circular is consistent with the residential condition contained in the Rules referred to above. But Annexure-P5, a letter issued by the PMG, Kerala Circle, Trivandrum gave a wrong interpretation and issued the following circular dated 22.2.80 without understanding the scope and

application of the provisions of Article 16(2) of the Constitution. It reads as follows:-

" So far as this circle is concerned, this should be understood to mean that they should be permanent residents within the delivery area of the POs concerned. Since local residence is a primary condition for selection to ED posts, this should be correctly verified by reference to the primary school certificate as enjoined in DG P&T letter No.43-312/78-Pen dated 21.12.79 and ration card as described in this office letter No.STA/1/28/Rlgs dated 29.10.76. Sub Divisional Inspectors are personally responsible for correct verification of this condition for appointment.

2. The condition of being a permanent resident within delivery area need not be applied for selection of retrenched EDAS, but once appointed they should be required to reside within the delivery area of the P.O."

20. In fact the PMG has no power to issue any letter interpreting the circular of DG P&T contrary to the very object and purpose for which it was issued. This Tribunal also held in some cases that the PMG has no authority to issue letters of this nature. If he has any doubt in the matter of implementing the principles or conditions for selection it is his duty to refer the matter to DG P&T for clarification. Hence, according to us this letter has no effect and it should be ignored.

21. A view consistent with the above interpretation of Article 16 of the Constitution of India and the power to issue notifications pertaining to residential qualification has been taken by one of us, Hon'ble Shri N. Dharmadan, in his dissenting judgment in P.V.Kochuthresia vs. The Superintendent of Post Offices, Aluva and others (OA 1018/90) and held as follows:-

". . . . This object can be achieved by enforcing the residential condition strictly after selection. Preventing a person who seeks employment with all the basic qualification from being considered in the selection is illegal and the courts have repeatedly warned against it. The Supreme Court in *Nagarajan and others vs. State of Mysore*, AIR 1966 SC 1942 held "If the Government advertises the appointments and the conditions of service of the appointments and makes a selection after advertisement there would be no breach of Art. 15 or Art. 16 of the Constitution because everybody who is eligible in view of the conditions of service would be considered by the State."

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20. Considering the impugned clause in Ann.1A in the light of the decision of the Courts, it would only be proper to sustain it accepting the suggestion given by the learned counsel for the applicant that the residential condition in the matter of appointment to the ED posts, should be strictly insisted and enforced only after the appointment of candidates making it clear that the appointee should be a permanent resident of the village where the post office is located. The object and reasons of the clause clearly spell out that such an interpretation will satisfy the requirements and it can be sustained without violating the provisions of Art. 16(2) of the Constitution."

22. We have considered the issue regarding residential qualification only because of the lengthy arguments advanced by the learned counsel on both sides referring the ration card and other documentary evidence produced in this case to establish that the selected candidate was really residing in the quarters attached to the jail with her husband far away from the place where the post office is situated and that the selected candidate asserted that at the relevant time of selection she was residing with her parents within the delivery jurisdiction of the Keezhara post office. But this controversy need not be decided at this stage in the view that we are taking in this case particularly when we have already held that the first respondent's action and selection to the post of EDBPM, Keezhara P.O. is illegal on the other grounds urged by the applicant in both these cases.

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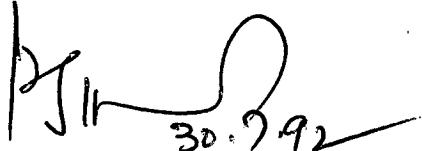
23. In the light of the foregoing discussion and our findings we are fully satisfied that the selection of Smt. P.V.Ratnavally as EDBPM, Keezhara P.O. is illegal and liable to be quashed. We do so.

24. In the result we allow both the applications and direct the Superintendent of Post Offices, Kannur Division, to conduct a fresh selection in accordance with law taking into account the above observations and findings. In the fresh selection the applicants in both the cases as also the selected candidate Smt. Ratnavally should xxxx be allowed to take part. The selection shall be conducted and completed as directed above as early as possible at any rate within a period of two months from the date of receipt of a copy of this judgment. Till such a selection and appointment the present arrangement shall continue. It is only to be treated as a provisional arrangement.

25. There will be no order as to costs. A copy of this judgment may be forwarded to the DGPT for information and compliance in future.


(N.DHARMADAN)
JUDICIAL MEMBER

30.7.92


(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

30.7.92

v/-