

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.259 of 1997

Tuesday, this the 8th day of July, 1997.

CORAM

HON'BLE MR P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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

P. Prasanna Kumari, W/o Shri Vasudevan Pillai,
Extra Departmental Branch Post Master,
Muthuvila P.O.,
Residing at Diya Bhavan,
Muthuvila P.O., Pin- 695 610.

...Applicant

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. The Chief Post Master General,
Kerala Circle,
Trivandrum.

2. The Senior Superintendent of Post Offices,
Trivandrum North Division,
Trivandrum.

3. S. Thulaseedharan,
Extra Departmental Mail Carrier,
Neermankadavu, Mithirmala,
Thiruvananthapuram.

...Respondents

By Advocate Mr T.P.M. Ibrahim Khan, SGSC for R 1 & 2

By Advocate Mr G. Sasidharan Chempazhanthiyil for R-3

The application having been heard on 10.6.1997,
the Tribunal delivered the following on 8.7.97.

O R D E R

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

Applicant aggrieved by A-1 order dated 29.1.97
issued by the 1st respondent quashing her appointment
as Extra Departmental Branch Post Master, Muthuvila,
seeks to quash A-1 and also for a declaration that
she is entitled to continue as Extra Departmental
Branch Postmaster, Muthuvila Branch Post Office.

2. Applicant commenced her service as Extra Departmental Delivery Agent in Muthuvila Branch Post Office on 21.11.1984. She has passed the SSLC examination. She says that she has passed Pre degree examination also. On coming to know about the retirement vacancy of Extra Departmental Branch Post Master, Muthuvila, she submitted A-2 representation dated 10.4.1995 to the Senior Superintendent of Post Offices for appointing her as Extra Departmental Branch Post Master. As per A-4 order dated 28.7.1995 she was appointed as Branch Postmaster provisionally at Muthuvila.

3. Respondents 1 & 2 say that the applicant, one K.N. Rajan, both Extra Departmental Delivery Agents and the 3rd respondent, Extra Departmental Mail Carrier requested for transfer as Branch Postmaster, Muthuvila. Applicant was posted on transfer as Branch Postmaster, Muthivila with effect from 22.7.1995. K.N. Rajan, Extra Departmental Delivery Agent, Neeramankadavu filed O.A. 991/95 before this Bench of the Tribunal challenging the appointment of the applicant. The said O.A. was disposed of directing the 2nd respondent therein i.e., the Chief Postmaster General, Kerala, to examine the selection and appointment by transfer of the 3rd respondent therein in the light of various rules and clarifications issued by the department within two months. It was also made clear in the said order that selection to the post of Extra Departmental Branch Postmaster, Muthivila will be governed by the decision of the 2nd respondent in the matter. The



Chief Postmaster General, Kerala, after examining the case in the light of the orders and clarifications issued by the Director General of Posts, New Delhi, quashed the appointment of the applicant therein as Branch Postmaster, Muthuvila and directed the Senior Superintendent of Post Offices, Trivandrum, North Division, the 2nd respondent herein, to conduct a fresh selection to the post of Branch Postmaster, Muthuvila, keeping in view of the clarification issued by the Directorate in letter No.17-60/95-ED & TRG dated 28.8.1996. Accordingly, fresh selection was made and the 3rd respondent who secured highest marks in the SSLC examination was selected.

4. Respondent-3 has stated in the reply statement that he was selected being more meritorious.

5. Though grounds A to F have been raised in this O.A., learned counsel appearing for the applicant submitted that he is pressing only grounds A and B.

6. Ground-A is that the 1st respondent, Chief Postmaster General, Kerala, has no power by way of appeal or review against an order of appointment issued by the competent authority, that A-1 order is without jurisdiction and that the direction of the Tribunal to the 1st respondent to examine the selection and appointment in question and to pass appropriate orders will not confer jurisdiction with the 1st respondent to quash the appointment of the applicant.

7. Ground-B is that A-1 order quashing the appointment of the applicant was passed without notice

and hence, is in gross violation of the principles of natural justice.

8. A-5 is the copy of the order passed by this Bench of the Tribunal in O.A. 991/95. The same was filed by K.N. Rajan. The 2nd respondent in A-5 is the 1st respondent herein. The 3rd respondent in A-5 is the applicant herein. The 4th respondent in A-5 is the 3rd respondent herein.

9. This Bench of the Tribunal disposed of O.A.991/95 thus:

"We consider that these are issues which require to be examined by the respondents at the appropriate level. We accordingly direct the second respondent to examine the selection and appointment by transfer of the third respondent as EDBPM, Muthuvila Branch Office in the light of the various rules and clarifications issued by the department and pass appropriate orders within two months. The selection to the post of EDBPM, Muthuvila Branch Office will be governed by the decision of the second respondent in the matter."

10. Learned counsel appearing for the applicant argued that though there is a direction from the Tribunal to examine the selection and appointment in question and to pass appropriate orders, that will not confer jurisdiction on the 1st respondent. In support of this argument he relies on the orders of this Bench of the Tribunal in O.A.Nos.582/92, 652/94, 882/94, 274/96 and 188/96. The facts in O.As 582/92, 274/96 and 188/96 are not identical to the facts of



the case at hand. Therefore, those orders have no relevance here. O.As. 652/94 and 882/94 were disposed of by a common order. In O.As. 652/94 and 882/94 there is some similarity of facts with reference to the facts of the case at hand. What is stated in the common order in O.As 652/94 and 882/94 is that:

"The authority acted under dictation and without application of mind. The decision in the instant case was not based on any rule or reason."

11. It is also observed there that:

"Any opinion different from that of the appointing authority, entertained by the Postmaster General(who has no statutory authority in the matter), is no ground in law to overturn an appointment."

12. Here it is not the case where the 1st respondent has acted under 'dictation and without application of mind. It is not based on no rule or reason.

13. Though in the said order it is stated that an opinion different from that of the appointing authority entertained by the Postmaster General(who has no statutory authority in the matter) is no ground in law to overturn an appointment, the question regarding the binding nature of the order in an inter party judgment is not considered. A-1 order is passed by the 1st respondent on the basis of A-5 order of this Bench of the Tribunal. It is an inter party judgment. In Gorie Gouri Naidu(Minor) and another

Vs. Thandrothu Bodemma and others (AIR 1987 SC 808)
it has been held:

"The law is well settled that even if erroneous, an inter party judgment binds the party if the Court of competent jurisdiction has decided the lis."

14. There is no case for the applicant that A-5 order is passed by the Tribunal without jurisdiction. As the applicant and the respondents herein are parties to A-5 order, A-5 order is binding on the applicant. If the applicant was aggrieved by A-5 order, she should have taken up the matter in appeal. She has not done the same. So, the position is that A-5 order has become final and therefore, she cannot turn round at this juncture and say that the order passed by the Tribunal cannot confer jurisdiction on the 1st respondent and A-1 order is to be quashed.

15. Learned counsel appearing for the applicant argued that A-1 order was issued without notice and therefore, it is gross violation of the principles of the natural justice.

16. According to applicant, the marks scored in the SSLC examination is not a relevant factor for the purpose of transfer from one Extra Departmental Post to another Extra Departmental Post in the light of letter No.43-27/85/PEN dated 12.9.1988 issued by the Director General of Posts. Respondents 1 & 2 say that it is not the said order alone of the Director General is relevant and the Directorate has issued further

clarification R-2 (A) dated 28.8.96 and as per the same marks obtained in the Matriculation examination is the criteria for transfer to the post of Branch Postmaster and the same was followed. From A-1 it is seen that it is passed by the 1st respondent after considering R-2(A). As per R-2(A), preference is to be given to ED Agents having higher marks in Matriculation examination when selection is made for the post of Extra Departmental Branch Postmaster/SPM, if they otherwise satisfy the eligibility criteria. From A-1 it is seen that the 3rd respondent has scored more marks in the SSLC examination than the applicant and the other candidate, K.N. Rajan.

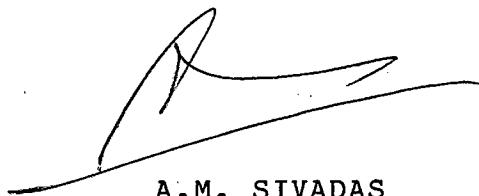
17. In S.L.Kapoor Vs. Jagmohan and others (AIR 1981 SC 136) it has been held:

"Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary."

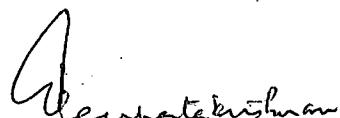
18. Here, it is a case where as per R-2(A), the 1st respondent could come to only one conclusion i.e., preference is to be given to the person having higher marks in the SSLC examination irrespective of the seniority, if otherwise satisfies the eligibility criteria. The applicant has scored the lowest marks in the SSLC examination when compared to 3rd respondent and K.N. Rajan. The 3rd respondent has scored 283 marks, K.N. Rajan scored 249 marks and the applicant scored only 213 marks in the SSLC examination. Since, the 1st respondent could come only to the conclusion as arrived at in A-1 in the light of the ruling referred to above, the question of observance of natural justice does not assume importance. So, there is no scope in this case to import doctrine of natural justice and insist on the requirement of a show cause notice to the applicant before issuing A-1 order.

19. We find no merit in this Original application. Accordingly, the O.A. is dismissed. No costs.

Dated the 8th of July, 1997.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES.

1. Annexure A1: True copy of the order dated 29.1.97 No.VIG/16-101/95 issued by the 1st respondent.
2. Annexure A2: True copy of the application dated 10.4.1995 along with English Translation submitted by applicant to the 2nd respondent.
3. Annexure A4: True copy of the Order No.80/18 dated 28.7.1995 issued by the Assistant Superintendent of Post Offices, Trivandrum Central Sub Division, Trivandrum-33.
4. Annexure A5: True copy of the Order dated 3.12.96 in C.A. No.991 of 95 issued by this Hon'ble Tribunal.
5. Annexure R2(A): True copy of the letter No.17-60/95-ED & TRG, dated 28.8.1996 issued by the Director General of Posts and Telegraphs, New Delhi.

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