

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 26/91

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DATE OF DECISION 28-8-91

1. N.C. Ramachandran  
2. Kunjukrishnan Keettukandy  
3. Prakasan

Applicant (s)

Mr. M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

The Sub Divisional Inspector  
Mattannur and 3 others

Respondent (s)

Mr. v.v. Sidharthan, ACGSC for R-1 to 4

Mr. M.C Nambiar for R-5. Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. A.V. Haridasan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

S.P. Mukerji, Vice Chairman

In this application dated 1-1-1991, the three applicants have challenged the selection of the 5th respondent <sup>for</sup> in the post of Extra Departmental Mail Carrier (EDMC for short) at Karaperavoor Post Office and <sup>have</sup> ~~had~~ prayed that the respondents be directed to make the appointment <sup>to</sup> ~~of~~ aforesaid post in accordance with law. Brief facts of the case are as follows:

For the new Post Office at Karaperavoor, a notification announcing the vacancy of EDMC appeared in one of the local dailies, directing the eligible

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candidates to appear before the Employment Officer on or before 24-9-90. According to the third applicant when he reported before the Employment Officer, he was told that he will be informed of the selection later. According to the applicants the Sub Divisional Inspector, Mattannur of the Postal Department notified the vacancy on 26-9-90 on the notice board of the Mattannur Sub Post Office indicating that the selection for the aforesaid post of EDMC will be held on 26-9-90 at 4 P.M. Altogether 5 persons including the applicant participated in the interview. According to the applicants all the candidates except the 5th respondent <sup>were</sup> ~~was~~ subjected to cycling test. Their grievance is that even though the 5th respondent has secured <sup>only</sup> less marks in the S.S.L.C. than the applicants, he was selected without <sup>even</sup> ~~even~~ being put to cycling test. Unseemly haste with which the Sub Divisional Inspector conducted the selection without waiting for the Employment Exchange to send names is indicative of undue favouritism shown to the 5th respondent.

3. According to the counter affidavit filed by the Postal authorities, the first respondent notified the vacancy arising out of <sup>the</sup> opening of the new <sup>Branch</sup> Post Office to the Employment Exchange on 23-8-90. The ~~panel~~ <sup>of</sup> candidates in respect of <sup>the post of</sup> ~~Extra~~ Departmental Mail Carrier was not received till 22-9-90. Since the Branch Post Office had to be opened latest by 30-9-90, the vacancy of EDMC was notified locally on 22-9-90 directing the candidates to appear with all the required documents before the first respondent on 26-9-90. Five candidates appeared and all of them were put to cycling test. As per the prescribed qualifications for the post

of EDMC all the candidates should have sufficient working knowledge of regional language, simple arithmetics and should be a permanent resident of the delivery jurisdiction of the Post Office. According to the respondents the second applicant had been arrested and prosecuted by Mattannur Police for gambling but in his application form he had wilfully concealed these facts. Enquiry revealed that he is still in the habit of indulging in gambling. The respondents further submit that the first applicant had failed in the cycling test and was not selected. The third applicant had also failed in the cycling test. On the otherhand the fifth respondent who was proficient in cycling and resident of Karaperavoor was found suitable in all respects and was selected. Soon after the selection, a list of candidates was received from the Employment Exchange but the same could not be considered as the selection had to be made before the deadline set for the opening of the new post Office latest by 30-9-90. The respondents have categorically stated that after waiting for one month for the panel to be sent by the Employment Exchange, the vacancy was notified locally on 22-9-90 and hence there was no undue haste in making selection.

4. In his counter-affidavit, the 5th respondent has argued that the minimum educational qualification is VIII standard and marks obtained in the S.S.L.C are not relevant. He averred that he was put to cycling test while the first and third applicants did not participate in the cycling test. After the selection he assumed charge on 12-10-1990.

5. In the rejoinder the applicants have stated

having sent the requisition on 23-8-90, the first respondent notified the vacancy on 22-9-90 even before one month had elapsed. He fixed <sup>the</sup> ~~last~~ date for receipt of application as 26-9-90 and 22-9-90 being a Saturday, the whole process is suspicious. The notice indicated that the applications from only those who are permanent residents of Karaperavoor are invited. One of the candidates Shri K Kunhikannan ~~dis~~ who was <sup>dis</sup> qualified on the ground of residence is living in Kizhallur village in which Karaperavoor village is situated. The applicants further assert that the first and third applicants did not fail in the cycling test as falsely alleged by the respondents. They have pointed out the inconsistency between the averments of R.1 to 4 that the first respondent failed in the cycling test and the affidavit of the 5th respondent that the first and third applicants did not participate in the cycling test. They have stated that the second applicant was neither fined nor convicted and there was no wilful suppression of any fact

6. We have heard the counsel on either side and gone through the documents carefully. We are satisfied that there was no undue haste in making the selection. When the panel of names was not received from the Employment Exchange till 22-9-90 on which date one month had passed <sup>the</sup> ~~of~~ <sup>vacancy</sup> notification <sup>was</sup> published locally on 22-9-90 fixing <sup>the</sup> ~~date~~ for interview as 26-9-90, and the applicants could appear in that interview which shows that they were not handicapped by the shortness of notice. The respondents have clearly stated that the first and third applicants had failed in the cycling test. The respondent-5 has stated that they did not

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participate in the cycling test. But we do not see any inconsistancy <sup>between</sup> in these two statements because it is possible that these applicants did not take the cycling test because they do not know cycling and the respondents correctly failed them. So far as the second applicant is concerned against the column ~~xx~~. in the application that "Have you ever been arrested/prosecuted/filed or convicted for any offence, if so, give full particulars of the case", the applicant gave categorical answer in negative.

In the rejoinder dated 2nd July 1991, the second applicant stated as follows:

"...It is submitted that this applicant filled up the column by writing 'NO' on the understanding that a positive statement of details are required in the case of fining or conviction or any offence. He was never convicted or fined. Therefore the arrest and prosecution was thought to be irrelevant. It is submitted that it is due to this understanding of the column the answers was given in the negative. It is pertinent to note that he was acquitted and by giving the answer in the positive with the details no disqualification could have come to him. Therefore it cannot be said that he wilfully suppressed it. This applicant was given to understand that the details of any arrest or prosecution need be given only if there was conviction. Therefore it is submitted that the applicant did not wilfully conceal any fact. It cannot be said that he concealed a fact, the revealing of which would have done no harm to him...."

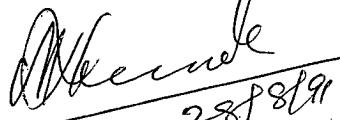
The explanation given by the second applicant is not at all convincing because <sup>the</sup> column in the application form required him to state whether he was inter alia prosecuted or not but the fact that he was not fined or convicted does not mean he was not prosecuted.

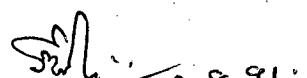
The applicant's averment that another candidate Shri Kunhikannan who was wrongly excluded on the ground that he was not a resident of the village in which the Post Office was situated cannot be considered

as Shri Kunhikannan is not a party to this application.

7. In the facts and circumstances of the case, we see nothing wrong in the selection made by the Sub Divisional Inspector, Mattannur. Accordingly we dismiss the application.

There will be no order as to costs.

  
28/8/91  
(A.V. Haridasan)  
Member (Judicial)

  
28/8/91  
(S.P. Mukerji)  
Vice Chairman

28-8-1991

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