

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. DA 272/91  
~~XXXXX~~ 199

DATE OF DECISION 24-1-1992 u

Jose KJ Applicant (s)

Mr CM Suresh Babu Advocate for the Applicant (s)

Versus  
The Sub Divisional Inspector  
Posts & Telegraph Department Respondent (s)  
Mattannur and others

Mr NN Sugunapalan, SCGSC for Respondent 1 to 4  
Mr PV Narayanan Nambiar for R-5 Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV Krishnan, Administrative Member  
and

The Hon'ble Mr. N Dharmadan, Judicial Member

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

Sh NV Krishnan, A.M

The applicant is aggrieved by the fact that in respect of the post of Extra Departmental Delivery Agent (EDDA, for short), at Koomanthode P.O., the Respondent-5 has illegally been selected ignoring his legitimate superior claims. He has, therefore, filed this application to set aside the selection and appointment of Respondent5 to the post and to direct the respondents to appoint him in that Post Office as EDDA.

2 The brief facts giving rise to this application can be set out as follows:

2.1 A regular vacancy of EDDA at Koomanthode Post Office arose due to the promotion of the permanent incumbent as a Postman. For

the purpose of regular selection, the Employment Exchange was requested to sponsor names. Out of the 8 names so sponsored, 7 persons, including the applicant appeared for interview. The applicant has secured the highest marks in the SSLC and is also conversant with cycling. Therefore, he was provisionally selected. Yet, he was not appointed, but Respondent-5 was appointed.

3 Before the appointment order could be given to the applicant, it was brought to the notice of the Sub Divisional Inspector, Mattannur, Respondent-1 by a letter dated 1.10.90 (Annexure R1), by one Mohanan Nellipara, that the provisionally selected candidate i.e., the applicant, was involved in some financial irregularities while working as a Bill Collector under Iritti Cooperative Rural Bank and he was discharged from service on that account. When an inquiry was made by Respondent-1, the Secretary of the Iritti Rural Cooperative Bank sent him a reply (Annexure R2) which is reproduced below.

" Shri Korakkalayil Joy, Koomanthodu, was appointed in this bank as commission agent on 6.10.1987. While on service we had noticed some irregularities in the work and he had removed from service on 5.12.1987. The security deposit remitted by him was refunded to him later."

As the EDDAs' job requires a high degree of reliability, the applicant was not appointed.

4 The respondents also contend that the Exbt.R2 discloses that the applicant is not fully trust worthy and therefore, he was not adjudged to be a fit person for appointment. Therefore, in the interest of service, the

provisional selection, which has not been communicated to the applicant, was cancelled and the next meritorious candidate, Respondent-5 was selected and appointed to the post.

5 The respondents, therefore, submit that the decision not to appoint the applicant is not arbitrary.

6 Respondent-5 also filed a reply claiming that no illegality has been committed in his appointment.

7 We have perused the records and heard the parties on both sides. The learned counsel for the applicant submits that if the main reason for cancelling the selection was Annexure R2 letter received by Respondent-1 from the Iritty Cooperative Rural Bank, the applicant should at least have been given an opportunity to rebut these allegations. In the R2 letter, it is admitted that the security deposit of the applicant was returned and therefore, there is no proof of the allegation that he was involved in misappropriation as stated in the Annex.R1 complaint received by the Respondent-1.

8 It is also alleged by the applicant that one of the candidates for the selection was NP Philip. He and his brother Joseph who is a Director of the Iritty Cooperative Rural Bank conspired to send the Annexure R1 letter to the first respondent in a false name. It is submitted that the  
the Annexure R1 are false. The Annexure R2 reply of the Cooperative Bank is vague and refers to certain irregularities which is not a sufficient ground to deny

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appointment to a candidate. At any rate, as the deposit was returned, obviously, there could not have been any misappropriation. It is admitted by the applicant that he was a Daily Deposit Collection Agent of the Bank from 6.10.87 on 3 per cent commission of the collected amount as remuneration. He resigned this office on 29.10.87. He, however, admits that on two occasions, there was a days' delay in remitting the amount collected into the Bank which is the only irregularity. This happened because of his illness.

9 The learned counsel for the respondents submitted that a perusal of the selection file also shows that the applicant had not mentioned that he had also been employed by the Cooperative Bank as a Daily Collection Agent. This fact is admitted by the applicant, but it is contended that the engagement in the Cooperative Bank was not an employment for the purpose of being mentioned in the application because this is not in the nature of a regular employment.

10 We have considered the plea taken by the learned counsel for the applicant carefully. The question in the application form is as follows:

" Are you holding or have you at any time held an appointment under the Central or State Government, or Quasi Government or Autonomous Body or Private Firm or Institution? If so, give the full particulars, the date of employment and reasons for termination of employment."

The applicant had given particulars about his employment in a Paralel College (Devmatha College, Karakottkari) till 1984. He has not made any mention about his employment with the Cooperative Bank.

11 We are unable to accept the plea of the applicant

that employment in the Cooperative Bank was not regular.

/collection agent".

worked as a "daily deposit/  
On his own admission, he has ~~/XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Unless he collects the deposit, if not on every day,  
at least on most of the days in a month, he would not have

been continued in the Bank in the normal course. In

other words, it has all the attributes of a regular

employment. The failure to mention this employment in the

application form was probably due to the apprehension that

if an inquiry was made an adverse <sup>reply</sup> might be received from

the Bank.

12 The Exbt R2 is from the Bank in which it is stated

that the applicant was appointed as a Commission Agent

on 6.10.87. It is further stated that the Bank noticed

some irregularities in his work and he was removed from

service on 5.12.87, but that his security deposit was <sup>u</sup> refunded to him later on. At the stage of <sup>appointment</sup> ~~/XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ making application\*

\* to a post,

it is sufficient if the employer has any bonafide suspicision

about the integrity of a selected person or a potential

appointee. It is not necessary that such a suspicision

should be converted into a full proof after giving the

applicant an oppportunity to be heard.. In such a case, an

inquiry should be briefly made on the selected candidate's

record without casting any stigma . In the circumstance,

we are satisfied that the Department had adequate reason)

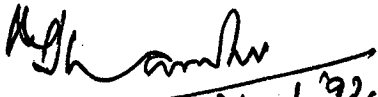
in not selecting the applicant and in preferring Respondent-5

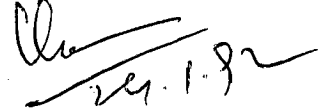
to the applicant. We are of the view that in the <sup>light of</sup> ~~/XXXXXXXXXXXXXXXXXXXX~~

<sup>a</sup>  
the facts the applicant has no case.

13 For these reasons, this application is  
<sup>a</sup>  
dismissed.

14 There is no order as to costs.

  
(N Dharmadan) 24.1.92.  
Judicial Member

  
(NV Krishnan)  
Administrative Member