

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.280/2001.

Monday this the 8th day of July 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Venugopalan K.P., EDSPM,
Thirumattacode (P.O.)
Ottapalam.
Kottaparambil, Chungad (P.O.),
Ottapalam -679 511.

Applicant

(By Advocate Shri S.M.Prasanth)

Vs.

1. Union of India, represented by the Secretary, Ministry of Communications, New Delhi.
2. Chief Postmaster General, Kerala Circle, Department of Posts, Thiruvananthapuram.
3. Director of Postal Services, Northern Region, Kozhikode.
4. Superintendent of Post Offices, Ottapalam Division, Department of Posts, Ottapalam.
5. V.K.Jyothilakshmi, Elath Karuvithudathu Valappil, Kumaranellor (P.O.), Palakkad District.
6. Mini P., Padincharoottu Veedu, Thirumittacode (PO), Raimangalam, Koottanad (Via) 679 533. Respondents

(By Advocate Shri M.R.Suresh, ACGSC(R.1-4)
(By Advocate Shri Shafik M.A. (R-5)

The application having been heard on 8th July, 2002
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Pursuant to a notification dated 28.4.2000 issued by the 4th respondent inviting applications for appointment as Extra Departmental Sub Post Master (EDSPM for short), Thirumattacode, the applicant applied. Among the candidates on merits on the

basis of marks scored in the SSLC examination, respondent No.5 was the first, the sixth respondent was second and the applicant was third. However, on the ground that the 5th respondent did not produce Conduct Certificate and the 6th respondent did not produce evidence of independent means of livelihood, their candidature was rejected and the applicant was selected and provisionally appointed by offer of appointment dated 26.6.2000(A1). While the applicant was continuing on the post, he was served with A-2 notice dated 28.12.2000 issued by the 4th respondent informing that the 3rd respondent, the next higher authority had in accordance with the Director General's letter dated 13.11.97, reviewed the selection of the applicant pursuant to the submission made before the Hon'ble Central Administrative Tribunal in O.A.732/00 and has tentatively held that the selection and appointment of the applicant, third in the merit list is liable to be cancelled and giving the applicant an opportunity to show cause. The applicant in his explanation justified his selection and appointment on the ground that the 5th respondent's candidature was rightly rejected as she did not comply with the requirement of producing Conduct Certificate, and the rejection of candidature of the 6th respondent was perfectly in order as she did not produce evidence of independent means of livelihood which is a condition precedent for selection. The 3rd respondent has passed the impugned order cancelling the selection and appointment of the applicant on the ground that the rejection of the candidature of the 5th respondent who was the first in the merit list, just for the reason that she has not produced the conduct certificate along with the application or at the time of interview, was irregular because conduct certificate could have been produced at the time of appointment. Aggrieved by that, the

applicant has filed this application seeking to set aside the impugned order A-4 declaring that the selection and appointment of the applicant as EDSPM, Thirumattacode is legal and in accordance with rules and to review the selection of the applicant is illegal and not in accordance with law.

3. The respondents 1 to 4 in their reply statement seek to justify the impugned order on the ground that the applicant who was the 3rd in the merit list was irregularly selected and appointed rejecting the candidature of the 5th respondent on the ground that she failed to produce the conduct certificate, because, production of conduct certificate is a condition prior to the appointment and not to be insisted upon at the time of interview. It is also stated in the reply statement that, when the 5th respondent challenged the selection of the applicant in O.A.732/00 it was undertaken by the official respondents that, a review of selection would be made. The 5th respondent in her reply statement has contended that the review was undertaken by the official respondents in terms of the order in O.A.732/00. She has also contended that the selection of the applicant ignoring her superior merit being illegal and made erroneously, the impugned order rectifying the error committed is perfectly justified.

4. We have heard Shri S.M.Prasanth, learned counsel appearing for the applicant, Mr.MR Suresh, ACGSC appearing for Respondents 1-4 as also Mr.Shafik, appearing for the 5th respondent. The short question that is to be answered in this application is, whether the impugned order A-4 cancelling the appointment of the applicant is sustainable in law. It is well settled that, a

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mistake in the matter of administrative or executive decision can be rectified by higher authority. In this case, the Director General of Posts in his letter dated 13.11.1997 produced as Annexure R-2 in the first reply statement has clarified that, the next higher authority can rectify the error committed by the lower authority in order to avoid perpetuation of mistakes. The question therefore, is, whether the appointment of the applicant not considering the superior merit of the 5th respondent was really a mistake which can be rectified by the higher authority.

5. Shri Prasanth learned counsel of the applicant invited our attention to the notification Annexure A-5 which stipulates that, the application submitted without any of the six listed documents which includes conduct certificate, is liable to be rejected outright and argued that, since the 5th respondent did not produce the conduct certificate along with the application, the rejection of the candidature of the 5th respondent is in accordance with the terms of the notification and therefore, it cannot be faulted. In support of this contention learned counsel of the applicant invited our attention to the rulings of the Apex Court in District Collector and Chairman, Vizyanagaram Social Welfare Residential School Society Vizianagaram and others Vs. M.Tripura Sundaridevi (1990 3 SCC 655) and in Ashok Kumar Sharma and others Vs. Chander Sekhar and another (1997 4 SCC 18). We have gone through these decisions cited by the learned counsel. In the first cited decision it was held that, if prescribed qualification is to be relaxed, it should have been mentioned in the notification itself. In the second decision it was held that, the qualification prescribed should be possessed on the last date fixed for receipt of application. The dictum of these

two rulings do not apply to the facts of this case. The 5th respondent in this case is admittedly number one in merit while the applicant is number 3. The candidature of the 5th respondent was rejected just for the reason that she did not produce conduct certificate before the process of selection. In fact, in terms of the instructions regarding appointments to ED Posts, conduct certificate is to be produced at the time of appointment. Appointment is to be made after selection. Therefore, the 5th respondent should have been selected as the most meritorious person and offered appointment giving her direction to produce conduct certificate. Only if she failed to produce the conduct certificate before appointment, chance of appointment could be validly denied to her. A stipulation to the contrary in the notification has no legal validity. Therefore, the impugned order passed by the third respondent, the authority higher than the 4th respondent who made the erroneous selection is perfectly in order and under powers derived from Director General of Posts letter dated 13.11.1997.

5. In the light of what is stated above, finding no merit, the application is dismissed. No costs.

Dated the 8th July, 2002.


T.N.T.NAYAR
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the intimation reg. the selection of EDSPM sent by the 4th respondent to the applicant, dated 26.6.2000.
2. A-2: True copy of the notice of the 4th respondent dt.28.12.2000 intimating the applicant reg. cancellation of his selection as EDSPM.
3. A-3: True copy of the representation of the applicant sent to the 3rd respondent.
4. A-4: True copy of the order of the 3rd respondent reviewing the appointment of the applicant dt.15.3.2001.
5. A-5: True copy of the Notification No.B3/T/6 dated 28.4.2000 issued by Superintendent, Ottappalam.

Respondents' Annexures:

1. R-1: True copy of the notification dt.28.4.2000 Memo No.B3/T/6 Office of the Supdt. of P.O., Ottapalam.
2. R-2: True copy of DGS Instruction No.19-23/97-ED&TRG dated 13.11.97 Department of Post , New Delhi.
3. R-3: Letter No.19-23/97 ED & TRG dated 13.11.97.
4. R-5a: True copy of the judgment dated 13.11.2000 of this Hon'ble Tribunal in Original Application No.732/2000.

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