

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 655/92 & 288/1992
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DATE OF DECISION 31.8.92

Ghee Varghese Thomas Applicant(s) in DA 655/92
R Nandakumar Applicant in DA 288/92

M/s DV Radhakrishnan Advocate for the Applicant (s) in DA 655/92
Mr MR Rajendran Nair Advocate for Applicant in 92
Versus
Postmaster, Adur, Kerala DA 288/92
and others.

Respondent(s) in DA 655/92
Postmaster Head Post Office, Respondents in DA 288/92
Adoor and others.

CORAM: Mr TPM Ibrahim Khan, ACGSC Advocate for the Respondent (s) DA 655/92
Mr V Ajit Narayanan, ACGSC for Respondent 1-2 in DA 288/92
Mr DV Radhakrishnan for Respondent -3 -do-

The Hon'ble Mr. PS Habeeb Mohamed, Administrative Member
and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? 4/9
2. To be referred to the Reporter or not? no
3. Whether their Lordships wish to see the fair copy of the Judgement? no
4. To be circulated to all Benches of the Tribunal? no

JUDGEMENT

Shri N Dharmadan, J.M

These two cases have been heard together on consent of the parties, since the decision in one of the cases will have impact on the other. Accordingly, these cases are disposed of by this common judgment.

2 For disposing of these applications, we need only refer the facts in DA 655/92. The applicant, in this case was originally engaged as a ED Packer at Janasakthinagar Post Office on a provisional basis with effect from 27.12.76. Consequent on the closure of this Post Office on 25.2.77(AN), the applicant was ousted from service. Subsequently, the applicant was again appointed as ED Mail Carrier at Anandappally B.O. on a regular basis with effect from 1.12.77. However,

he was not able to continue from 22.10.84 on account of his illness . Later, he submitted Exbt.A2 representation dated 24.11.87 for posting as ED Agent in the Postal Department. This was replied by Exbt.A3 letter dated 4.12.87 directing him to submit his application when vacancy arises. Accordingly, when vacancy arose at Janasakthinagar and Adur Post Office, he submitted Exbt.A5 and A6 representations. He was appointed by the Postmaster as ED Messenger with effect from 11.2.92 as per Exbt.A8 order dated 10.2.92, at Adoor Kla Head Post Office pursuant to a direction from higher authorities. While continuing in that Post Office, he was issued a show cause notice at Exbt.A9 proposing to cancell his appointment. Thereupon, he submitted a representation objecting to the proposal for cancellation, but the proposal was finalised as per Ext.A11 dated 5.5.92. The applicant is challenging the said order in this application filed under Section 19 of the Administrative Tribunals Act of 1985.

3 According to the applicant, he was regularly selected and appointed by a competent authority and the termination order at Exbt.A11 was passed without giving any reason for cancelling the valid and legal appointment. The two reasons mentioned in the order are not sustainable.

4 Respondents have filed reply and stated that even before the appointment of the applicant as ED Messenger on 11.2.92, the Respondent-2 initiated steps for conducting a regular selection and appointment in the vacant post at

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Adoor Kla HPO. Since this was not brought to the notice of the superior authority a decision was taken to appoint the applicant provisionally and consequently the Postmaster was forced to pass Exbt.8 appointment order. He, however, submitted that the applicant has tendered his resignation as EDMC on 22.10.84 which was accepted by the Department as per R4-C dated 1.5.85. Hence, the cancellation order at Exbt.11 is legal and valid and accordingly it has to be rejected.

5 We have heard the arguments of the learned counsel appearing on both sides. The learned counsel for the applicant submitted that one of the reasons in Exbt.A11 is that the appointment order Exbt.A8 was issued overlooking the eligibility of the applicant. This is wrong because while considering the question of appointment, the Postmaster requested the applicant to produce his certificates and other credentials for satisfying him that the applicant is suitable for appointment and the appointing authority as per a proper verification of all relevant details, decided to appoint him as ED Messenger. The further reason mentioned in the impugned order that the applicant's resignation has already been accepted and his appointment after the resignation is irregular is also not a valid one. According to the learned counsel, the applicant had not submitted any resignation as contended by the respondents at any time. He was unwell and could not attend duty

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when
for some period, but he became fit for job submitted
representations.

6 It is an admitted fact that even before 10.2.92 when the applicant was appointed in Adur Kla Head Post Office, a notification was issued by the appointing authority, namely, Respondent-1, but pursuant to the notification further proceedings could not be continued by the Respondents 1 & 2 because of the interim order passed by this Tribunal. When a decision was taken by the appointing authority for conducting a regular selection in accordance with law, that authority is expected to follow it up and complete the procedure in accordance with law. The applications submitted in pursuance of the notification had not been processed. Applicant in the connected case is a person aggrieved on the basis of the interim order passed in this case. It was brought to our notice that the Respondent-4 who has taken a decision to appoint the applicant as ED Messenger, Adur Kla HPD was not aware of the fact that the Respondent-1 has already initiated steps for conducting regular selection. Had he been informed of the correct position that Respondent-1 has already initiated steps for regular selection, he would not have taken a decision to appoint the applicant without subjecting himself to the selection proceedings.

7 In this view of the matter, we are of the view that Respondent-1 is bound to conduct and complete the regular selection proceedings in accordance with law

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in which the applicant should also be considered alongwith other candidates sponsored by the Employment Exchange, taking into consideration his prior service. The learned counsel for the respondents on the other hand submitted that since the applicant has already submitted his resignation on 22.10.84 which had been accepted with effect from the next date, no weightage can be given to the applicant on that score. This is a matter to be considered by the appointing authority while making the selection. However, the fact remains that the applicant had worked in the Post Office as ED Agent from 1976 to 1977 and for 2 years from 1977 to 1984, whatever may be work or value of that service in the regular selection to be conducted by the Respondent-1. It is a fact that he acquired experience as ED Agent and that matter requires consideration. Hence, we are satisfied that we can dispose of this application in the interest of justice by directing Respondent-1 to complete the selection proceedings which has been initiated as per notification dated 2.8.91, in which the applicant may also be considered alongwith others sponsored by the Employment Exchange. ^{We do so.} This shall be done within a period of six weeks from the date of receipt of a copy of this judgment.

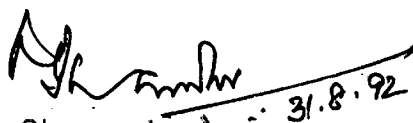
7 It is submitted that the applicant is continuing on contract basis in the light of the interim order passed in this case on 12.5.92. That assignment will continue

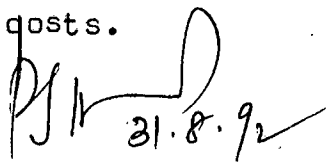
till a regular selection as a provisional assignment but subject to the outcome of the regular selection.

8 The connected DA 288/92 which was heard alongwith this application is only to be rejected. The prayer of the applicant is to conduct selection proceedings of ED Messenger, Adur ~~Kla~~ HPO and complete it in accordance with law.

9 In the light of the directions issued in DA 655/92, no further orders are required to be passed except to observe that the applicant in this case also should be considered alongwith others.

10 There will be no order as to costs.


(N Dharmadan)
Judicial Member


(PS Habeeb Mohamed)
Administrative Member

31.8.1992