

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.301/93

Wednesday, this the 3rd day of February, 1994.

**SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)**

Biju Krishnan,
S/o TV Krishna Pillai,
Aged 21 years, Thekkedathu Veedu,
Padinjarekkara PO, Vaikom. - Applicant

By Advocate Shri MR Rajendran Nair

VS.

1. The Senior Superintendent of Post Offices,
Kottayam.
2. The Town Employment Officer,
Vaikom.
3. PK Chandrasekharan,
R/o Elakadu, Ezhumanthuruthu,
Muttuchira. - Respondents

By Advocate Shri S Krishna Moorthy, ACGSC(for R-1)

O R D E R

S KASIPANDIAN, MEMBER(A)

The applicant, who is a Mathematics Graduate is staking his claim for selection and appointment as Extra Departmental Branch Post Master in Ezhumanthuruth village. The advertisement for the post was published in the papers on 7.2.1993 as in Annexure-I which is as follows:

"There is a temporary vacancy which can continue as a regular vacancy of EDBPM at Ezhumanthuruth P.O., in Vaikom Taluk. The selected candidate will be paid on allowance of Rs.450/- per month. Those who are permanently residing within the delivery area of Ezhumanthuruth PO, with SSLC passed, registered their name with Vaikom Town Employment Exchange prior to 11.10.1979 and renewing the same time to time and within the age group of 18 to 65 will be considered.

Those who are interested shall appear before Vaikom Town Employment Exchange with all original certificates and details on 2.2.1993 at 11 AM"

As the applicant had registered his name in the Employment Exchange only on 16.4.1990, he approached this Hon'ble Tribunal for a direction that his case should also be considered along with the others sponsored by the Employment Exchange. His request was granted by the Tribunal.

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Thereafter, the applicant filed M.P-557/93 that in addition to the income certificate filed before the respondents at the time of interview held on 22.2.1993, he should be allowed to furnish another certificate from the Tehsildar showing his independent income which he derived from taking tuition classes in a tutorial 'Flora Study Centre' as he is teaching there. His second certificate was dated 9.3.1993. This was also allowed by the Tribunal. In the interview held on 22.2.1993 along with the applicant, the respondents considered nine candidates sponsored by the Employment Exchange and ultimately they selected the third respondent as he satisfied all the requirements of the rules.

2. Aggrieved by this, the applicant is challenging the selection in the present OA. The learned counsel for the applicant has stated that the applicant is the highest qualified amongst all the ten candidates considered by the respondents. On that ground, he should be selected in preference to the third respondent.

3. The learned counsel for the respondents stated that the applicant was also considered for selection held on 22.2.1993 along with nine others and since he has not fulfilled the prescribed conditions of independent income and the residential qualification, he could not be selected.

4. After having heard the learned counsel on both sides, we have also called for the selection proceedings and perused the same. As per the method of recruitment prescribed for the post, the educational qualifications is VIIIth Standard (Matriculation or equivalent may be preferred). Regarding income and ownership of property, Rule 3 says:

"The person who takes over the agency (ED SPM/ED BPM) must be one who has an adequate means of livelihood. The person selected for the post of EDSPM/EDBPM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business premises, such as shops, etc, may be preferred)."

Regarding residential qualification, Rule 4(i) says as follows:

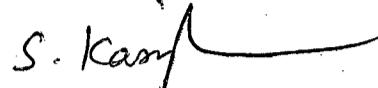
"(i) The EDBPM/EDSPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which need not be adapted to suit his convenience or his main avocation".

As may be seen from the rules, the person who is selected for the post must be one who has an adequate means of livelihood. He must also be in a position to offer a space to serve for office premises for postal operations. This implies that the ownership of property in the village is considered as much important as the income of the aspirant since both are essential ingredients of Rule 3. The rationale behind these instructions is that the ownership of property in the village would ensure some status to the incumbent of the post and would enhance the effectiveness of the incumbent's discharging of duties. Similarly, the rationale behind insisting on the residential qualification is that local knowledge, contact with local people and a stake in the locality would be advantageous to the incumbent in the smooth discharging of his functions which is of a part time nature. When there are so many requirements contemplated in the rules, relaxation of one requirement ordered by the Tribunal under special circumstances of a case cannot be quoted as a precedent in a routine way to be made applicable in all cases. If exemptions become the rule, the rule will become a nullity. If relaxations become precedents, the rule will take a back seat. The sancrosanct character of the rule should not be undermined by the sacredness of the precedents of deviations. It is possible the Hon'ble Tribunal might have granted relaxation of one of the requirements of rules when the other requirements are found satisfied and if there is a special justification for giving relaxation. For instance, in the case of an existing incumbent of a post, the Tribunal might have ordered him to be considered for selection along with others even when his name has not been sponsored by the Employment Exchange on the basis of seniority. But if such a relaxation is claimed in every case on the ground that the decision of the Hon'ble Tribunal has the force of law and it should override the rules, then it will make the Employment Exchange rule of seniority, of no consequence. When there are four or five requirements of rule as in the present case, namely, sponsorship by the Employment Exchange, educational qualification, certificate of income, ownership of property, residential qualification etc. for each one of these requirements,

it is possible to quote the precedent decision of a Tribunal where relaxation had been given taking into account the special facts and circumstances of a case. But if the cumulative effects of such relaxations on various requirements are invoked saying that the case law should take precedents over rule, then there will be no sanctity attached to the rule and the rule will in course of time become infructuous and irrelevant. Case law could be invoked only when the situation in two cases is on all fours, similar.

5. In the OA before us an assessment of the comparative merit of third respondent who has been selected by the department for the post of EDBPM and that of the applicant is necessary. The third respondent was sponsored by the Employment Exchange. He has got SSLC qualification with the highest marks amongst the candidates sponsored by the Employment Exchange even though his qualification is definitely inferior to that of the applicant. He is having landed property in the village and he has produced his ration card to prove the residential qualification. He has also agreed to provide accommodation to house the Branch Post Office in his own building. On the other hand, the applicant though he did not have a seniority in the Employment Exchange was considered for selection as per the relaxation of the Employment Exchange rule granted by this Hon'ble Tribunal. The Tribunal again permitted him to produce a supplementary income certificate which shows his income as earned from his self employment as a tutor in a tutorial institute. He is admittedly not having any landed property in the village. He is also not having any residential qualification but he is claiming relaxation of residential qualification on the basis of a precedent decision of this Hon'ble Tribunal. The applicant undoubtedly has the highest ^{educational} qualification amongst those candidates considered for selection, being a maths graduate. If the department considers him as over qualified for the job they cannot be faulted on this ground. Out of the five requirements of rules even if one or two are not satisfied by the applicant, when the third respondent satisfies all the requirements, the latter would necessarily be given preference. We therefore do not find any justification for

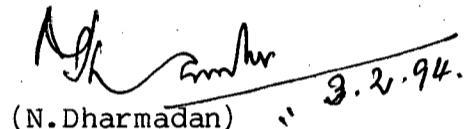
interfering with the selection of the third respondent already made by the department. The application therefore deserves to be dismissed and I accordingly do so. There will be no order as to costs.



(S. Kasipandian)

Member (A)

I have gone through the judgment of my learned Brother. I agree with the conclusions. Having regard to the facts and circumstances of the case, after a careful perusal of the minutes of the selection, I am satisfied that the applicant has not made out a case for interference. The selection of the 3rd respondent has to be upheld for the reasons recorded by the authority who has conducted the selection on 22.2.93. Hence the O.A. is to be dismissed. I do so.


3.2.94.

(N. Dharmadan)

Member (J)

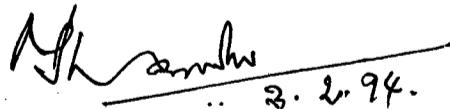
ORDER OF THE BENCH

Having regard to the facts and circumstances of the case, after a careful perusal of the minutes of the selection, we are satisfied that there is no merit in this application. It is only to be dismissed. Accordingly, we dismiss the same. No costs.



(S. Kasipandian)

Member (A)


3.2.94.

(N. Dharmadan)

Member (J)

TRS