

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 303 of 2005

Tuesday, this the 18th day of October, 2005.

C O R A M:

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Gopinathan M.
S/o. Shri Balan Nair,
Kollarukandy House,
Edakkulam P.O.,
Koyilandi (via) : 673 306

.... Applicant.

(By Shri O.V. Radhakrishnan, Senior Counsel)

v e r s u s

1. Inspector of Posts,
Koyilandi Sub Division,
Koyilandi : 673 305
2. Superintendent of Post Offices,
Badagara Division,
Badagara.
3. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.
4. Vijeesh,
S/o. Shri Balan Nair,
Bhavana House,
Peruvattuka P.O.,
Kozhikode District,
Working as GDSMD, Peruvattur
Branch Post Office, P.O. Peruvattur,
Via. Quilandy, Kozhikode.

.... Respondents.

(By Shri TPM Ibrahim Khan, SCGSC)

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O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The respondents vide A/1 notification dated 8.2.2005 invited applications for selection and appointment to the post of Gramin Dak Sevak Mail Deliverer (GDSMD, for short), Peruvattur Post Office under Koilandi Postal Division in the Time Rated Continuity Allowance (TRCA) of Rs. 1375-2125 + DA per month and the applicant was one of the aspirants for the post. According to the applicant, he fulfills all eligibility conditions for appointment to the said post. He has passed SSLC examination in second chance securing 292 marks (A/2) and also registered his name with the Town Employment Exchange, Quilandy for employment. The applicant had the working experience as Gramin Dak Sevak Mail Deliverer by working as a Substitute to the regular incumbent to the post of GDSMD. The applicant was served with a memo dated 30.3.05 (A/3) asking him to appear for interview at the office of the first respondent on 11.4.05. The applicant appeared before the first respondent on the said date as directed vide A/3 memo and submitted all documents/certificates which were perused by the first respondent. The grievance of the applicant is that even though he got higher marks in the SSLC examination compared to the marks obtained by the 4th respondent, the respondents selected the 4th respondent and appointed him for the post in question. Aggrieved by this action of the respondents, the applicant has filed the present O.A. seeking the following main reliefs:

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"To call for the records leading to the selection and appointment of the 4th respondent to the post of GDSMD, Peruvattur Post Office under Quilandy Sub Division and to set aside the same;

To issue appropriate direction or order directing the first respondent to make selection and appointment to the post of GDSMD, Peruvattur Post Office on the basis of the marks secured in the SSLC Examination among the candidates who attended the interview held on 11.4.2005;

To issue appropriate direction or order directing the respondents 1 and 2 not to post the 4th respondent as GDSMD, Peruvattur Post Office on the basis of the appointment order issued to him, which is illegal and inoperative."


2. The respondents have filed a detailed reply statement contending that since the applicant satisfied all eligibility conditions prescribed for appointment to the post, he was called for verification of records alongwith other 11 candidates on 11.4.2005. No preference was given to those who had working experience in GDS post. As per Annexure A/4 O.M No. 17-366/91-ED & TRG dated 12.3.1993, the minimum qualification prescribed for GDSMD is 8th standard and preference is to be given to the candidates with Matriculation and no weightage should be given to any qualification higher than Matriculation and the selection should be made on the basis of marks secured in the Matriculation examination. But as per DG Posts, New Delhi, letter No. 19-48/94-ED & TRG dated 9.9.1994 (R/1), it is clarified that a candidate who has passed the prescribed examination in the first attempt should be given preference

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over the candidates who secured higher marks in the second or subsequent attempts. The 4th respondent got 265 marks in SSLC Examination in the first chance whereas the applicant secured 292 marks in SSLC Examination in the second chance. A person who passed the examination in the first attempt should be placed above in the merit list than the persons who had secured higher marks in the subsequent attempts. The 4th respondent took over the charge as GDSMD on 2.5.2005. It was further stated that obtaining higher marks in the examination in the second or subsequent attempts does not give him any weightage when compared to the marks secured by a candidate in his first attempt as clarified in R/1 letter referred to above.

3. Shri O.V. Radhakrishnan (Senior) and Shri Antony Mukkath, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan and Ms. Jisha, learned counsel appeared for the respondents.


4. Learned counsel appearing for the parties invited our attention to the pleadings, material and evidence placed on record. Learned counsel for the applicant would argue that the mere fact that the applicant secured 292 marks in the the examination in the second attempt that by itself cannot legitimise the selection of a candidate who secured lesser marks than the applicant. The selection of the 4th respondent is vitiated by extraneous and irrelevant consideration and does not represent a



bonafide exercise of power. Therefore, the said selection is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution. Learned counsel for the respondents on the other hand persuasively argued that as per Annexure R/1 letter dated 9.9.1994, a candidate who passed the prescribed examination in the first attempt should be given preference over the candidates who secured higher marks in the second or subsequent attempts. The selection of the 4th respondent was, therefore, in order and not in violation of any constitutional provisions.

5. We have given due consideration to the pleadings and arguments advanced by the learned counsel for the parties.

6. It is the case of the applicant that though he satisfied all eligibility conditions required for the post, he was not selected. It is also his case that he secured higher marks than the respondent No.4 in the SSLC Examination, of course, in the second chance. The respondents have admitted that the applicant got higher marks in the SSLC Examination than the 4th respondent. But the applicant was not selected due to the fact that the candidate who had passed the prescribed examination in the first attempt should be given preference over the candidates who secured higher marks in the second or subsequent chance. The short point to be considered in this case is whether the person who passed the examination in the first attempt should be placed above in the merit



list than the persons who had obtained higher marks in the second or subsequent attempts. Learned counsel for the respondents relying on R/1 letter dated 9.9.1994 contended that preference should be given to the candidate who had passed the examination in the first attempt. The relevant portion of the said letter is reproduced below:

"2. The issue raised has been examined in this office carefully. It is clarified that a person who has passed the examination which has made him eligible for appointment EDA in the first attempt should be placed above in the merit list than the persons who has secured higher marks in the second or third attempt by appearing compartmentally in individual subjects. In other words, a candidate who has passed the prescribed examination in the first attempt should be given preference notwithstanding the fact that other candidate(s) have secured higher marks by appearing in the compartmental examination in the second or the subsequent attempt, subject to the condition that the candidate satisfies all the other prescribed eligibility conditions."

7. Learned counsel for the applicant on the other hand, submitted that as per Annexure A/4 letter dated 12.3.1993 the criteria prescribed for the post is that "the minimum educational qualification for E.D. Delivery Agents, E.D. Stamp Vendors and other categories of E.D. Agents should be eighth standard. Preference may be given to the candidates with Matriculation of qualifications. No weightage should be given for any qualification higher than Matriculation." Learned counsel for the applicant further submitted that this Tribunal and Hon'ble High Court of Kerala had already examined and considered the issue in question in OA No.

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367/1997 and also in O.P. No. 5020 of 2000 (Annexures A/5 and A/6) respectively. In the order dated 2.7.98 in OA No. 367/1997, this Tribunal has held that the SSLC qualification is the criteria for considering the selection since the said examination is a fairly dependable criterion to judge the merit of a candidate vis-a-vis other candidates all of whom may have been found suitable at the threshold. The relevant portion of the said order is reproduced below:-

"10. It is well settled that the Courts and Tribunals cannot interfere in a matter where the relevant weightage of an interview has been raised as an issue. On this point, we would like to quote from the celebrated ruling of the Hon'ble Supreme Court in Lila Dhar vs. The State of Rajasthan and Others, 1981 (3) SLR 56. The operative part of the judgement is quoted below:

"As already observed by us the weight to be given to the interview test should depend on the requirement of the service to which recruitment is made, the source material available for recruitment, the composition of the interview Board and several like factors. Ordinarily, recruitment to public service is regulated by Rules made under the proviso to Art. 309 of the Constitution and would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight be attached to the various tests. If we do that we would be rewriting the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motives.

There is none in the present case:

(Emphasis supplied)"

11. The other allegation is that it was irregular on the part

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of the first respondent to select the second respondent primarily on the basis of the relatively higher marks obtained by her at the SSLC Examination. Here, we have to observe that when certain candidates were found suitable in terms of the educational qualifications, appearance, knowledge of cycling etc. the administration took into account the relatively higher marks obtained by a candidate, as reflective of the higher merit possessed by that candidate.

12. The question is it open to the administration to do so without violating the fundamental rights of equal treatment before law and equal opportunities for public service under Articles 14 and 16 of our Constitution. According to us, the answer to this question has to be in the affirmative. Though the merit is admittedly difficult to define, one of the objective criteria for judging the merit of a candidate vis-a-vis other contending candidates, who have all passed the SSLC Examination, can certainly be their relative performance at that examination. It is admitted that SSLC Examination has been prescribed as a preferential examination. Therefore, the relative performance of the candidate at the SSLC Examination, in this view of the matter, can be adopted as an objective and unbiased criterion for judging the relative merits of the candidates.

13. We do not thus find anything particularly discriminatory or untenable in adopting as a criterion for judging her merit the relatively higher marks obtained by the second respondent at the SSLC Examination vis-a-vis the other candidates, including the applicant who had appeared for the selection for regular appointment to the post of EDDA, Vettampara Post Office. We, on the other hand, strongly feel that higher marks at the SSLC examination is a fairly dependable criterion to judge the merit of a candidate vis-a-vis other candidates all of whom may have been found suitable at the threshold."

8. In judgement dated 23.10.2003 in O.P. No. 5020/2000, an identical matter was considered by Hon'ble High Court of Kerala, the operative portion of which is reproduced as follows:

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"8. It is true, as pointed out by the counsel for the 4th respondent, that the petitioner had passed the S.S.L.C. Examination in the third attempt. It is also correct that the 4th respondent claims to have qualified in the first attempt. However, the criterion as laid down by the authority was to assess the merit on the basis of the marks in the SSLC Examination. That is how the authority had proceeded. In doing so, it had violated no rule or transgressed any law. The action was just and reasonable. In view of the above, we find that the action of the Tribunal in holding that the selection was not proper cannot be sustained."

9. It is quite clear that Hon'ble High Court also considered the letter dated 9.9.94 (R1 in this case) issued by the DG Posts, New Delhi, and declared that passing in the prescribed examination in first or second attempt by a candidate cannot be taken as a reason to deny the appointment.. In another judgement in O.P. No. 13597/1998 dated 1.10.199 (filed against order in OA No. 367/1997), Hon'ble High Court by upholding the order of this Tribunal and relying on various decisions of Hon'ble Supreme Court, observed that a pass in SSLC was clearly stated to be a preferential qualification in the advertisement made for the purpose of selection. Therefore, the Selection Committee was perfectly within its limit to take the marks secured at the SSLC as the guiding factor.

10. We are in respectful agreement with the decisions referred to above and following that the SSLC Examination is a fairly dependable criterion to judge the merit of a candidate irrespective of the fact whether one has

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passed the prescribed examination in the first attempt or second attempt, we are of the view that the non-selection of the applicant is not in conformity with the rules and the dictum laid down by judicial pronouncements.

11. In the conspectus of the facts and circumstances of the case, we are of the view that the applicant is entitled for selection to the post of GDSMD, Peruvattur Post Office under Quilandy Sub Division. Accordingly, we set aside and quash the selection and appointment of the 4th respondent with a direction to the the respondents to pass appropriate order within a period of six weeks from the date of receipt of a copy of this order.

12. The O.A is allowed to the extent indicated above. In the circumstances, no order as to costs.

(Dated, the 18th October, 2005)



K.V. SACHIDANANDAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

CVT.