

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Date of decision: 29-9-1993

Original Application No.346 of 1993

MR Nanappan - Applicant  
M/s TA Rajan & Babu Mathew - Counsel for the applicant

V.

1. Union of India represented by Secretary, Ministry of Communications, New Delhi.
2. Post Master General, Northern Region, Kozhikode.
3. Director Postal Services, Kozhikode.
4. Superintendent of Post Offices, Tellicherry Division, Tellicherry. - Respondents

Mr Kodoth Sreedharan, ACGSC - Counsel for the respondents

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HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN  
&  
HON'BLE MR R RANGARAJAN, ADMINISTRATIVE MEMBER

JUDGEMENT

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant, who is now working as an Extra Departmental Packer, prays for a direction to appoint him in a Group'D' post, on the strength of Annexure-A4 select list. Applicant is ranked at Sl.No.2 in Annexure-A4. One Achappan ranked at Sl.No.3 in Annexure-A4 has been appointed. Applicant would submit that this is illegal.

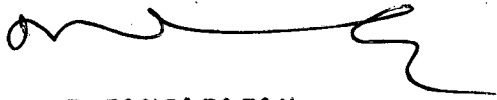
2. In answer, counsel for respondents would submit that Achappan belongs to a Scheduled Tribe and that he is entitled to be preferred. Be that as it may, since Achappan is not a respondent, no relief can be granted against him. For that reason, we do not propose to go into the contention raised. Even so, it is stated that there is an existing vacancy and that, applicant should be appointed in that, by reason of Annexure-A4. Counsel for respondents would submit that this is not possible as, one Subramanian has to be appointed on compassionate grounds in that vacancy. Appointment on compassionate grounds, can be made only to a direct recruitment vacancy, in the light of the orders of Government of India No.14014/6/86-Estt(D) dated 30.6.1987. Besides, it is not stated in the reply statement that Subramanian is being appointed on compassionate basis. There are also restrictions regarding the extent to which compassionate appointments can be made. If a compassionate appointment has to be made, it can be made in appropriate cases, by creating a supernumerary post, as observed by the Supreme Court in Smt Sushma Gosain and others V. Union of India and others, AIR 1989 SC, 1976. We are not issuing any directions, regarding this. We are only concerned with the claims of the applicant. On the basis of the selection, he should be appointed to the available vacant post. We are not unaware that inclusion in a select list, will not confer a right for appointment. But when there is a post available,

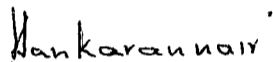
a select list cannot be overturned, arbitrarily.

3. Respondents are directed to appoint applicant to the existing vacancy. As far as the claim of Subramanian for compassionate appointment is concerned, it is not for us to express any opinion though we may point out, that the Department is not without means to reach redress to such a person.

4. Application is allowed as above. Parties will suffer their costs.

Dated, the 29th of September, 1993.

  
R RANGARAJAN  
ADMINISTRATIVE MEMBER

  
CHETTUR SANKARAN NAIR(J)  
VICE CHAIRMAN

trs/30/9

List of Annexures

Annexure-A4 : True copy of the Memo No.82/4-10/89  
dated 13.2.1990 of the 4th respondent.