

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D. A. No. OA 352/90 190
T. A. No.

DATE OF DECISION 28-6-91

Josephine Miranda Applicant (s)

Mrs. Chandrakshmi P.V. Advocate for the Applicant (s)

Versus

Government of India, Respondent (s)
represented by The Secretary
and 3 others.

Mr. P. Sankarankutty Nair, Advocate for the Respondent (s)
ACGSC, for R.1 & 4.

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
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.

The applicant is aggrieved by the appointment of the third respondent as Extra Departmental Branch Post Mistress (EDBPM for short) at Puthanthope Post Office, Trivandrum, ignoring her claims to that post and her service from 1983.

2. According to the applicant she was first appointed ^{as} EDBPM _h at Puthanthope Post Office on 22-6-89. She continued to work on a provisional basis till her termination on 22.8.89 with short intervals in between. She submitted that she worked for a period of 240 days in 1984, 1985, 1986, 1987 and 1988. During 1989 she worked without interruption from 11.3.89 to 22.8.89. While she was continuing in service provisionally as EDBPM, the second respondent initiated steps to replace the applicant by selecting and appointing

the third respondent in whom he was interested. When Annexure-I notification was issued inviting applications for selection and appointment to the post of EDBPM, Puthanthope, the applicant also applied and she alone satisfied the requirements regarding independent income. This is clear from Annexure 2 certificate. But she was not selected. The selection and appointment of the third respondent as EDBPM is against the guidelines. It is malafide, arbitrary and illegal. Hence she filed this application for quashing the appointment of the third respondent and re-appointment of the applicant to the post of EDBPM with retrospective effect from 22.8.89.

3. The averments and allegations in the Original Application have been denied by the respondents in their reply statements. According to them the applicant only worked as regular substitute in the Branch Post Office Puthanthope on leave arrangements. She worked as substitute on the sole responsibility of the absentees for short spells as detailed below:

1983

23.6.83 to 26.6.83	:	3 days
4.8.83 to 6.8.83	:	3 days
		<u>6 days</u>

1984

26.12.84 to 31.12.84	:	6 days
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1985

1.1.85 to 25.1.85	:	25 days
26.1.85 to 13.2.85	:	19 days
15.2.85 to 22.2.85	:	8 days

52 days

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1986

10.6.86 to 14.6.86	:	5 days
30.8.86	:	1 day
24.11.86 to 26.11.86	:	3 days
26.12.86 to 27.12.86	:	2 days

		11 days

1987

8.1.87 to	:	1 day
11.5.87 to 14.5.87	:	4 days
1.9.87 to 3.9.87	:	3 days
14.12.87 to 16.12.87	:	3 days

		11 days

1988

27.1.88 to 6.2.88	:	11 days
30.3.88 to	:	1 day
4.4.88 to 9.4.88	:	6 days

		18 days

1989

11.3.89 to 30.4.89	:	51 days
1.5.89 to 31.7.89	:	92 days
1.8.89 to 22.8.89	:	22 days

		165 days

The allegations of malafide ^{has} also been denied. The respondents submitted that out of 8 applications received two were incomplete and without the sufficient requirements. Hence, remaining six candidates were called for interview but only 3 candidates including the applicant appeared for the interview and the third respondent alone could produce the document in support of the independent income. She got more marks in SSLC Examination than the applicant. Accordingly the third respondent was found to be more suitable to the post of EDBPM in the selection. Hence, she was selected and appointed. No rules have been violated

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as alleged by the applicant. The selection of the third respondent is legal and valid.

4. When the application was heard on 16.6.91, the learned counsel for the applicant sought further time to produce some mere documents in support of the case of the applicant that she had worked for 240 days in a year. Time was granted. Accordingly, she filed an additional rejoinder dated 21st June 1991 with Annexure A-7 charge report dated 17.1.84. Relying on the same, the learned counsel for the applicant submitted that since the charge report shows that she was given charge on 17.1.84 it is to be presumed that she is continuing from that date and she had completed 240 days and that the details given by the respondents in their statement are ~~false~~.

5. Having considered the matter in detail we are of view that such presumption cannot be drawn on the facts and circumstances of the case, merely placing reliance on Annexure-A.7. Without further proof it would be difficult to come to this conclusion that the applicant had worked for 240 days in the year 1984. Apart from this, the applicant has also not produced any materials to satisfy us whether she was working as provisional EDBPM for any period. Admittedly, she had worked only as a substitute for the regular incumbent, on the sole responsibility of such regular hand for different periods

mostly on short term leave vacancies. This will not confer any right either for regularisation or for a preferential consideration for selection.

6. In the light of the above facts and circumstances of the case, we are inclined to take the view that the applicant has not established her superior claim for selection and appointment as EDBPM over the third respondent, the present incumbent of the post of EDBPM, Puthanthope, Trivandrum. There is no merit in this application.

7. Accordingly, this application is dismissed. There will be no order as to costs.

N. Dharmadan
(N Dharmadan) 28.6.91
Judicial Member

S. P. Mukerji
28.6.91
(S P Mukerji)
Vice Chairman