

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXXNo.

361/ 198 89

DATE OF DECISION 29.6.1990

P.K Kumaran Applicant (s)

Shri V.Rajendran Advocate for the Applicant (s)

Versus

Union of India, represented Respondent (s)

by the Director General,
Postal Department, New Delhi and 3 others

Mr.V.V.Sidharthan, ACGSC Advocate for the Respondent (s) (1-3) - 1

Mr. George Varghese " " " - 4

CORAM:

The Hon'ble Mr. M.Y PRIOLKAR, ADMINISTRATIVE MEMBER

&

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

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant who worked as EDDA at Vemom Post Office from 1.6.86 approached this Tribunal with the grievance that in the regular selection he was prevented from participating on account of the upper age limit fixed by the 3rd respondent and invited names for consideration from the Employment Exchange.

2. The facts are as follows. The applicant started working as an EDDA from 1.6.86 without any break in service. He passed SSLC and his age is 36 years. He is also a permanent resident ^{within the} Vemom postal jurisdiction. According to him he is fully qualified for being selected and posted as a

regular EDDA. Since the 3rd respondent requested the Employment Exchange to forward the names of candidates, who have passed SSLC but not completed 30 years of age, the applicant's name could not be forwarded by the Employment Exchange for the consideration in the regular selection. Thus on account of the arbitrary fixation of upper age limit for selection the applicant has been deprived of the chance for appearing in the selection. The third respondent has no power to fix the age limit as thirty years for the candidates in the aforesaid manner. The applicant submitted that if his name was also forwarded for consideration by the third respondent he should have been selected for the post as he is fully qualified. Now he lost a fair chance of being selected for the post.

3. However he knew about the selection proceedings and the appointment of the fourth respondent subsequently when his service was terminated w.e.f 30.3.89. He filed this application to quash the appointment of the 4th respondent. He also prays for further consequential reliefs.

4. The respondents 1 to 3 and the 4th respondent have filed separate counter affidavits. In the counter affidavit filed by the respondents 1 to 3, they have stated that the applicant has no continuous service

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from 1986 onwards as alleged in the application. But they have admitted that the applicant has some past service in the post office and his claim for selection was not considered. They have further admitted that the third respondent has invited names from the Employment Exchange after fixing the upper age limit as 30 years. This was done on the basis of an order issued by the PMG, Kerala Circle, Trivandrum laying down the norms for the selection. They have also stated in the counter affidavit that there is no provision for giving preference for the candidates who are working in the post on a temporary basis in short term vacancies.

5. We have considered same issues which came up for consideration in earlier cases. These two issues namely (i) the power of the respondents to fix the upper age limit as 30 years for the regular selection of EDDA and (ii) the preferential right of provisional hand working in short term vacancies, ^{have been dealt with in our judgment.} We ~~have~~ ^{are} consistently taking the view that the provisional hands working in the posts have a preferential claim to be considered by the authorities while making regular selection to the said post. We have also held in O.A.K-32/88 that the fixation of the upper age limit of 30 years for the selection of EDDA is arbitrary and struck ~~down~~ the same.

6. In the light of the aforesaid decision, the applicant has a strong case. Since the applicant was having past service in the very same post office,

his case requires consideration by the respondents at the time when regular selection was being made.

This was not done. The applicant lost this opportunity only because of the fixation of the upper age limit of 30 years and invitation of names from the Employment Exchange on that basis by the 3rd respondent. This action of the respondents is illegal. Hence the entire selection procedure followed by the respondents including the appointment of the fourth respondent cannot be sustained.

7. Accordingly we allow the application and quash the appointment of the fourth respondent and direct the third respondent to make a fresh selection to the post of EDDA, Vemom Post Office, in accordance with law. He shall conduct a fresh selection, within a period of three months from today, in which the claims for appointment of the applicant as also the fourth respondent should be considered along with other eligible candidates who will be staking their claim for the selection. Till finalisation of the selection and consequent appointment, in accordance with law, the fourth respondent shall be allowed to continue in the present post. The application is allowed to the extent indicated above. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

29.6.90


(M. Y. PRIOLKAR)
ADMINISTRATIVE MEMBER