

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 372/89
~~KAXXKX~~

188

DATE OF DECISION 6-7-1990

CR Subramaniyan Applicant (s)

M/s GP Mohanachandran, Advocate for the Applicant (s)
KR Haridas, SK Vijayakumar & Lal C Aruviekal

Assistant Supdt. of Post Respondent (s)
Offices, Trivandrum North Sub Divn.,
Tvm. & 2 others

Mr K Narayanakurup, ACGSC Advocate for the Respondent (s)-1&2

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

&

The Hon'ble Mr. AV Haridasan, 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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Shri AV Haridasan, Judicial Member)

The applicant was working as a Substitute E.D. Stamp Vendor from 8.4.1985 to 31.12.1986 and as a provisional E.D. Stamp Vendor from 1.1.1987 onwards in Trivandrum Fort Post Office. He had studied upto SSLC and was ~~xxxx~~ born on 25.5.1960. He is fully qualified to hold the post of E.D. Stamp Vendor. He had also executed a security bond for Rs.1000/- in 1987 and had paid premia for the years 1987 and 1988 as required by the the first respondent. While he was thus working as E.D. Stamp Vendor on a provisional basis, an advertisement in Desabhimani daily dated 17.2.1989, calling for applications for filling up the regular vacancy of the

..2...

E.D.Stamp Vendor in the Trivandrum Fort Post Office was noticed by him. In the above advertisement, it was stated that the applicants should have passed ^{the} SSLC Examination, should be below 30 years and above 18 years of age, should be a permanent resident within the jurisdiction of the Trivandrum Fort Post Office and should be registered with the Employment Exchange. ^{Some of} the above terms mentioned in the advertisement are against the provisions of the Recruitment Rules of E.D.Agents including E.D.Stamp Vendor. Anyway, coming to know of this advertisement, the applicant submitted a representation to the second respondent on 22.2.1989 requesting him to regularise him as E.D.Stamp Vendor, Trivandrum Fort Post Office. As no reply was received, he submitted another representation to the Senior Superintendent of Post Offices, Trivandrum North Division requesting him to regularise the service as E.D.Stamp Vendor. The second respondent rejected these representations and by Annexure-A5 letter dated 5.6.1989 he was informed that his representation has been rejected. The first respondent had also issued an (Annexure-A6) order dated 20.3.1989/appointing the third respondent as E.D.Stamp Vendor in the Trivandrum Fort Post Office. Challenging these Annexure-A5 and A6 orders, the applicant has filed this application under Section 19 of the Administrative Tribunals Act praying that the impugned orders may be declared as illegal and invalid and that the respondents

may be directed to regularise the ~~service of~~ ^{the} applicant as E.D.Stamp Vendor, Trivandrum Fort Post Office.

2. The third respondent though served with the notice did not appear and ^{set} was ~~was~~ ex-parte. The respondents 1&2 have filed a counter affidavit stating that the applicant who was provisionally employed as an E.D.Stamp Vendor is not entitled to be regularised in service, that the advertisement in the Desabhimani was not made at the instance of the respondents, that the third respondent has been appointed to the post in sports quota and that therefore the applicant is not entitled to the relief claimed. The applicant had prayed for an interim relief against termination of his services during the pendency of the application. This interim relief was granted by us and thus the applicant still continues in service.

3. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. The Annexure-A6 order appointing the third respondent as E.D.Stamp Vendor in the Trivandrum Fort Post Office on a regular basis has been challenged by the applicant on the ground that the order is against the Recruitment Rules. The respondents had initiated recruitment proceedings to fill the post regularly by calling for nominations from Employment Exchange. It is coming to know of that the applicant had made his representations Annexure-A3

and A4 requesting that he may be considered for appointment to that post. It is while this matter was pending that the first respondent has appointed the third respondent. This appointment was made without resorting to any selection process. The case of the respondent 1&2 in the reply statement is that this appointment was made from the Sports Quota. Annexure-RI(b) is a circular issued from the Govt. of India, Ministry of Communications, Department of Posts, New Delhi to all the Heads of Postal Circles. In paragraph 4 of this circular, it is made clear that there is no quota for recruitment of E.D.Agents or Labourers as sports persons. No rule or regulation is [^]produced on the side of the respondents to show that there is a quota for sportsmen for appointment as E.D.Agents. Further, Annexure-A6 order dated 20.3.1989 appointing the third respondent as E.D. Stamp Vendor, Trivandrum Fort Post Office with effect from 6.2.1989 afternoon is absolutely irregular. A fresh appointee can under no stretch of imagination be appointed to a post on a later date with retrospective effect from an earlier date. Therefore, ~~the selection and~~ appointment of the third respondent being irregular and against the rules, this has to be quashed. The applicant has prayed that the Annexure-A5 order rejecting his representation for regularisation should be quashed. The procedure for appointment of E.D.Agents is by making a selection from

candidates sponsored from Employment Exchange or if no nominations were so made from candidates who have made applications direct to the Department. In making that selection, the serving E.O. Agents could also be considered. We have been in appropriate cases giving directions to the Department to consider the applications of the serving E.O. Agents also for absorption in regular service along with other eligible candidate. But without ^{to a} resorting/selection process, the working Agents cannot be after a specified period directly absorbed in the regular service. The representation referred to in Annexure-A5 by the applicant was requesting that he may be considered for regular appointment to the post considering his past service and the fact that he has the requisite qualifications. By Annexure-A5 the Senior Superintendent of Post Offices, Trivandrum has informed the applicant ^{that} the Chief Post Master General, Kerala Circle, Trivandrum has intimated that the request of the applicant for regular appointment has been considered and rejected. The reason as to why the request was rejected has not been made clear. But anyway, it seems that the recruitment process for regular appointment to the post has been dropped in the middle. We are of the view that the interest of justice will be met if the respondents are directed to consider the case of the applicant also for regular appointment along with other candidates when they

resort to a selection process to fill the post of E.D. Stamp Vendor, Trivandrum Fort Post Office giving due consideration for his experience as E.D. Stamp Vendor at the same station.

4. In the result, the Annexure A-6 order appointing the third respondent as E.D. Stamp Vendor, Trivandrum Fort Post Office is quashed. The respondents are directed to consider the applicant also, for regular appointment to the post of EDSV, Trivandrum Fort Post Office along-with other candidates when they make selection to that post, giving due weightage to the fact that he has been serving in the same post, and that the provisional service of the applicant should not be terminated, without observing the due process of law, rules, regulations and instructions on the subject.

There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

6-7-1990