

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 30.3.1990

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 381/89

V. P. Thressia

Applicant

Vs.

1. Sr. Superintendent of Post Offices, Trichur
2. Post Master General, Kerala, Trivandrum and
3. T. C. Johnson, Extra Departmental Branch Post Master, Chovur P.O. Trichur Postal Division, Trichur District

Respondents

M/s. M. Ramachandran & P. Ramakrishnan

Counsel for applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for R 1 & 2

Mr. K. Ramkumar

Counsel for R-3

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant, who was regularly selected and appointed as Extra Departmental Branch Post Master Chovur, as per Annexure-I w.e.f. 18.9.87, approached this Tribunal for quashing Annexure-II, a proposal to terminate her service under Rule 6 of the E. D. Agents (Conduct & Service) Rules 1964 solely on the

basis of a complaint sent by Smt. Tessy Siman, who competed with her in the regular selection.

2. The alleged irregularities against the selection are of a minor nature, but the respondents have entertained the complaint and conducted enquiry through Vigilance and issued Annexure-II proposing to cancel the appointment.

We are not quite happy about the way in which action for termination of services of the applicant was taken in this case. Consistently we are taking the view that a regular selection should not be interfered with on the basis of complaint raising irregularities, from rival candidates, who competed with the selected candidate in the selection process, unless there is grave charge of misrepresentation, fraud or suppression of materials particularly against the selected candidates for getting the job at the time of selection on the selection itself was vitiated by serious irregularities, not attributable to the selected candidate.

No such allegation have been raised in this case.

3. The allegations in the complaint against the selection are as follows:

(i) the selected candidate is a SSIC failed candidate even though both the requisition placed before the employment exchange and the copy of notification issued by the employment exchange contained the specific stipulation that SSIC passed candidates would be given preference and the selection of SSIC failed candidate without considering SSIC passed candidates is therefore irregular;

(ii) that the income certificate produced by the selected candidate was obtained from the Village Officer instead of from Tahsildar and the rejection of income certificates produced by other candidates obtained from Tahsildar, on the plea that

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they lacked the information regarding source of income is irregular and

(iii) that the age of the selected candidate exceeds the maximum age limit of 30 years prescribed in MPG Kerala letter No. Rectt/ 11-1/85-II dated 6.3.87 and that no test or even an interview was conducted at least to assess the physical and other suitability of the selected candidate.

4. We have heard the arguments and perused the records. On the facts we are ~~xxx~~ satisfied that there are no satisfactory materials to sustain the order of cancellation dated 20.6.89 which ^{was} passed by the 1st respondent and claimed to have been served on the applicant through her substitute.

5. The post of Branch Post Master, Chevoor fell vacant due to retirement of Smt. K. K. Rosa on 20.7.1987. The first respondent after following procedural formalities for a regular selection found the applicant suitable for the post and appointed her as per Annexure-I order. Out of six candidates nominated for the post only two candidates, namely the applicant and Smt. Tessy Siman were found residents of Chevoor and hence their applications were alone considered for the selection. The applicant was selected.

6. Later on receipt of complaint when the services of the applicant were sought to be summarily terminated she filed OAK 249/87 and obtained a stay. But the said application was closed on 8.3.1989 with the observation that the termination of the service of the applicant should be effected strictly in accordance with law after giving her due notice. Thereafter, Annexure-II notice proposing the

cancellation of Annexure-I appointment order was issued on 26.6.89 by the first respondent. The applicant challenged Annexure.II in this application. But the first respondent, before that date, as per proceedings dated 20/21.6.89 (produced as Annexure-X along with unnumbered M.P. filed on 22.3.90) terminated the service of the applicant. It ~~was~~ not be served directly on the applicant.

7. No substantial ground was brought to our notice for cancellation of the appointment of the applicant which was duly made after a regular selection. It is true that the notification issued to the Employment Exchange contained a specific stipulation that SSIC passed candidates should be given preference (i.e. if other things are equal), but the basic qualification for selection to the post of EDBPM as per the rules contained in the E.D.Aagents (Conduct & Service) Rules 1964 is that the candidate should only pass the eighth standard as the minimum qualification and such a candidate has also to be considered.

8. The applicant studied upto SSIC. It was after advertizing to this aspect in the light of the notification that she was selected in the regular selection. The first respondent compared the qualifications of the applicant with that of Smt. Tessi Siman and yet decided to select her having regard to the relevant rules in the EDA Conduct (C&S) Rules, 1964. The fact that the applicant was not an SSIC holder and she was not eligible for preferential right as per the rules was also known to the authority at the time of selection. According to us, this cannot be considered

as a serious irregularity. Having considered the qualifications of both the candidates and finding that the applicant was also eligible for the post in the selection it cannot be held that the "selection was made without considering SSLC passed candidates." Preferential right, of course, is a right to be considered for selection along with others when other things are equal and giving due weight for the special qualification prescribed in the notification. The respondents have no case that there was no such consideration of the special rights of Smt. Tessy Siman during the selection. In fact it was stated by the learned counsel for the respondents that she could not produce proper income certificate at the relevant time of selection and she had to seek permission for production of the same later, while the applicant produced a valid certificate. Smt. Tessy Siman could not be given preference for her SSLC passed qualification as she was no more the equal to the applicant. In fact her eligibility itself for selection was in doubt. The eligibility qualification is different from suitability of selection. If a person does not possess the minimum qualifications to be eligible for the post then such candidate could not even be called for selection. "Suitability is judged at the time of selection." Applying this principle Smt. Tessy Simon has no cause for any grievance. In this view of the matter there is no bonafides in her complaint. Under these circumstances, we see no merit in the first ground.

9. The second ground for cancellation is that the applicant has produced the certificate of income only from the Village Officer and not from the Tahsildar, who according to the respondents 1 & 2, is the competent authority to issue such certificates. It was neither notified before the selection that the income certificate should be obtained from the Tahsildar nor was it insisted at the time of selection. The respondents 1 & 2 also did not produce any circular or order which shows that the income certificate issued by the Village Officer is invalid. As indicated above, Smt. Tessy Simon did not produce an income certificate with relevant details at the time of selection but only at a later stage. Since the applicant in this case has satisfied the requirement of income, her selection cannot be treated as invalid and this ^{is} ^{not} a valid reason for cancellation of the appointment of the applicant. Hence, we see no merit in this contention.

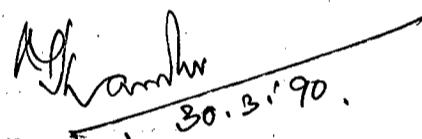
10. So far as the third ground pertaining to the fixation of upper age limit of 30 years for selection the counsel on both sides agree that this is covered by the decision of the Tribunal in an earlier case. We had taken the view that the fixation of upper age limit of 30 is bad and cannot be sustained. ^{so far as RATHGULI case is concerned.} So there is no substance in this ground also.

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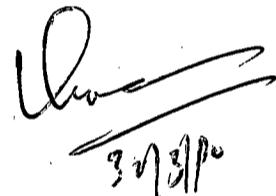
11. Having considered the facts and circumstances of the case we have found that there is no substance in the allegations in the complaint. Hence the cancellation order issued by the respondent is unsustainable and it is liable to be quashed.

12. Accordingly the cancellation proceeding memo dated 20/11.6.1989 of the first respondent (Ann. X) is hereby quashed. We also declare that the applicant has been validly appointed as Extra Departmental Branch Post Master, Chevvar as per Annexure-I order.

13. The application is allowed as above but without any order as to costs.


30.3.90.

(N. Dharmadan)
Judicial Member


3/3/90

(N. V. Krishnan)
Administrative Member

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