

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 385/90 and
~~xxxxxx~~ 513/90

DATE OF DECISION 15.7.1991

1. K.Chandran - applnt. in OA 385/90
2. PV Mohanan - applnt. in OA Applicant (s) 513/90

1. Mr.G.Mohan- advocate for the applicant in OA 385/90
2. Mr.EV Nayanar- advocate for the applnt. in OA 513/90
Advocate for the Applicant (s)

Versus

1. Supdt. of POs, Cannanore Divn., Cannanore & 3 others
(res. in OA 385/90 Respondent (s)
2. Supdt of POs, Cannanore Divn., Cannanore &
6 others - respondents in OA 513/90

1. Mr.P.Sankarankutty Nair Advocate for the Respondent (s)
(for R.1 to 3 in OA 385/90)
2. Mr.KA Cherian, ACGSC- for R.1 to 3 in OA 513/90
3. Mr.OV Radhakrishnan - for R.4 in OA 385/90 and OA 513/90

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman
and

The Hon'ble Mr. A.V.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? *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

(Mr.A.V.Haridasan, Judicial Member)

These are two applications filed under Section 19 of the Administrative Tribunals Act, challenging the appointment of the 4th respondent in both these cases, as Extra Departmental Branch Post Master, Malappattam Branch Post Office. As the facts and question of law involved in both these cases are identical, these two applications can be disposed of jointly.

2. The details of facts necessary for the disposal of these applications can be briefly stated as follows.

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As the post of Extra Departmental Branch Post Master, Malappattam fell vacant, the Postal authorities requested the local Employment Exchange to nominate eligible candidates for consideration for appointment to that post.


The Employment Exchange sponsored the names of 9 persons including the applicants in both these cases and the 4th respondent. The applicant in OA 513/90 was working as a substitute in this post from 5.1.1990. Out of 9 persons whose names were sponsored by the Employment Exchange,

5 were considered for selection. An interview was held on 24.4.1990. Coming to know that the 4th respondent ^{for appointment} has been selected to the post, the applicant in OA 385/90

filed this application challenging the selection and appointment of the 4th respondent. The case of the applicant in OA 385/90 is that, since he has produced certificate to the effect that he has income from landed properties and as he is residing in Malappattam desam itself, the selection and appointment of the 4th respondent who is a resident of Adicherry Desom in Malappattam Village and who has no landed property and whose income certificate shows income from his employment as Salesman in a ration shop belonging to his brother is irregular and arbitrary. It is averred that, since on appointment as EDBPM, the 4th respondent would not be in a position to work as Salesman in the ration shop, he would cease ^{the} to have independent income, and that, therefore the

appointment of the 4th respondent is illegal and obtained only on account of the influence of officials of the Postal Department. Therefore, the applicant in OA 385/90 prays that the appointment of the 4th respondent may be cancelled and he being the most eligible candidate for appointment to that post may be directed to be appointed.

3. Shri P.V.Mohanan, the applicant in OA 513/90 has averred in the application that, being the person holding the highest qualification, Pre-degree, among the five candidates considered for selection, he is the best candidate entitled to be selected. He has also claimed that, as an ED Agent who had been working in the same post for some time, he should have been given preference in the matter of selection. The selection and appointment of the 4th respondent is challenged by Shri P.V.Mohanan on the ground that the 4th respondent did not satisfy the requirement of having independent income as the source of his income revealed by him is only wages received as salesman from the ration shop run by his brother and also on the ground that he was not interviewed by the same person who interviewed the 4th respondent. The Assistant Labour Officer, Taliparamba, The Executive Officer, Madappattam, Panchayath Office and District Employment Officer, Cannanore were impleaded as additional respondents 5 to 7 in OA 385/90 as per order in MP 612/90 filed by, on behalf of the applicant.



3. On behalf of the respondents 1 to 3 the first respondent has filed reply affidavit in both these cases. It has been contended by the respondents 1 to 3 that the 4th respondent in these two cases was found to be the best among the 5 candidates considered for selection, as he had obtained the highest marks in the SSLC Examination, and ~~as~~ ^{he} had satisfied all the eligibility conditions. The contention of the applicant in these two cases that the 4th respondent did not satisfy the requirement^{of} having independent income has been met by the respondents 1 to 3 by producing a copy of the income certificate issued by the Tahasildar on 28.2.1990 at Annexure-R.1(A), a copy of the letter written by the applicant to the Postal Superintendent and a certificate issued by V.Sahadevan, Manager of the Ration Shop No.ARD 123 to the effect that the 4th respondent was employed as a part-time salesman in the ration shop from 3.30 pm to 7.30pm on a monthly wages of Rs.200. It has been averred in the reply statement that as the hours of work in the ration shop did not conflict with the working hours of the ED Branch Post Office, there was no chance of the 4th respondent losing the income on his being appointed^{ment} as Extra Departmental Branch Post Master, and that, since the 4th respondent has got independent income, the contention that his selection and appointment is bad has no force. It has further been contended that, the authorities

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were satisfied that the 4th respondent is a resident within the delivery area of the Branch Post Office.

Respondents 1 to 3 therefore contended that the contention of the applicants that the selection of the 4th respondent is arbitrary and yielding to influence has no bonafides. The 4th respondent also has filed a reply statement stating that he has got independent income of Rs.200 per month as a part-time employee in the ration shop and apart from that, he has purchased 15 cents of land from which also he is getting some income. Since he is a resident of the village in which the post office is situated, and as he has independent income as averred by him in the reply statement, the 4th respondent contends that there is no merit in the challenge levelled against his appointment.

4. The applicant in OA 385/90 has filed a rejoinder wherein it is stated that the claim of the 4th respondent that he is getting an income of Rs.200 per month as wages from the ration shop run by his brother is false because in the entry in the Labour Office in connection with the ration shop is shown that there is no employee in the ration shop, and that as the 4th respondent had been getting unemployment pension from the Employment Exchange till June, 1989, the claim of the 4th respondent that he has independent income cannot be accepted. The 5th respondent, the Assistant Labour Officer, Thaliparamba

filed ~~the~~, an extract from the register under Section 5A(1) of the Kerala Shops and Commercial Establishment pertaining to ration shop No.ARD 123 with the date of registration as 29.6.1988 showing ~~that~~ the number of workers ~~or~~ to be employed as Nil. The 6th respondent, The Executive Officer, Malappattam Panchayath produced the photo copies of application form for ration shop ARD 123 furnished by Shri Sahadevan which also shows that there was no employee in the ration shop. The 7th respondent, The District Employment Officer has produced the records showing that the 4th respondent was being paid unemployment allowance from April, 1984 to May, 1989 and that from June, 1989 onwards as the 4th respondent declared that his income exceeded the limit, the payment of allowance was stopped thereafter.

5. The 4th respondent has filed an additional reply statement stating that he was getting Rs.45 per month as allowance from the ration shop till May, 1989, that thereafter when he was getting Rs.200 per month, he made a declaration to the Employment Exchange to that effect that, thereafter the unemployment allowance was stopped, that the Taluk Supply Officer, Thalipparamba ^{has} issued to him Exbt.R4(D) certificate certifying that, he was employed in the ration shop on part-time basis from 3.30pm to 7.30pm, and that on his application dated 31.5.1990 the Tahasildar, Thalipparamba has issued to him an income certificate on

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4.6.1990 certifying that he was getting an income of Rs.2400 as salesman in the ration shop in addition to Rs.600 per annum from 15 cents of land owned and possessed by him. This certificate issued by the Tahasildar is marked as Exbt. R4(F).

6. We have heard the arguments of the counsel for the parties in these two applications and have carefully gone through the documents produced. The selection and appointment of the 4th respondent to the post of EDBPM, Malappattam is challenged on the following grounds:

- 1) The 4th respondent is not a resident of the village in which the Post Office is situated.
- 2) The 4th respondent is not having independent income.
- 3) The applicant in OA 513/90 being better qualified should have been appointed.

We will consider these grounds one by one. The contention that the 4th respondent is not a resident of the village in which the Post Office is situated is not true even as per the averments in the application OA 385/90, Because it has been stated ⁱⁿ the application itself that the 4th respondent is a resident of Adicheri Desom in Malappattam Panchayath. The 4th respondent has produced a sketch of the Malappattam village issued by the Tahasildar, Thalipparamba. Malappattam village consists of Adoor Desom, Kolanda Desom, Adicheri Desom, Kondala Desom, Malappattam Desom and Chooliyad Desom. The house of the 4th respondent situated

in Adicheri Desom is shown in the sketch as situated $\frac{1}{2}$ Kms. away from the Malappattam Post Office, whereas the house of the applicant in OA 385/90 though situated in Malappattam Desom is shown as situated $3\frac{1}{2}$ Kms. away from the Malappattam Post Office. The respondents 1 to 3 have in their reply affidavit stated that the 4th respondent is residing within the delivery jurisdiction of Malappattam Post Office. Since the 4th respondent is residing in Malappattam Village where the Malappattam Post Office is situated just $\frac{1}{2}$ Km. away from the Post Office, there is no bonafides in the contention that the 4th respondent did not satisfy the residential qualification prescribed for EDBPM.

7. Annexure-R.1(A) is the income certificate issued by the Tahasildar, Thalipparamba on 28.2.1990 wherein the Tahasildar has certified that the Annual independent income of V.Ajayan, the 4th respondent from his occupation vis. cooli is Rs.2400. Annexure-R.1(B) is a statement submitted by the 4th respondent before the Superintendent of Post Office wherein he has stated that in his application though he had stated that, he had an yearly income of Rs.2400/- he had omitted to mention that this amount was being received by him by way of wages as part-time salesman in ration shop No:ARD 123 of Malappattam from 3.30pm to 7.30pm. Annexure-R1(C) is the English version copy of the Annexure-R1(B). Annexure-R1(D) is a certificate issued by Shri V.Sahadevan, Manager, ARD 123 ration shop, Malappattam dated 1.3.1990 produced before the Superintendent of Post Office along with Annexure-R.1(C)



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by the 4th respondent wherein the Manager of the Ration Shop No.ARD 123 has certified that A.Vijayan, the 4th respondent was a part-time salesman in the ration shop No.ARD 123, Malappattam from 3.30pm to 7.30 pm with the monthly wages of Rs.200. It was basing on these documents and being satisfied on enquiry that the 4th respondent had Rs.2400 as annual income, and that he is a resident of the village in which the Post Office is situated, the 4th respondent was appointed as EDBPM, Malappattam, as he had obtained the highest marks among the eligible candidates considered for selection. The learned counsel for the applicants has ~~blinded this case~~ ^{ed} vehemently argued that there is an inconsistency in the nature of employment of the applicant as is reveal^{ed} from Annexure-R.1(a) and R.1(b) and (d), in that where as in Annexure-R.1(a) the certificate issued by the Tahasildar, the source of income is shown as Cooli in Annexure-R1(b) and (d), the same is shown as wages from employment as part-time salesman in the ration shop. Cooli is the Malayalam equivalent of wages. Though in Annexure-R1(a) the nature of employment from which the wages was being received by the applicant has not been specifically mentioned, it is impossible to find out that there is a conflict between the statement regarding the nature of employment in these documents. Further, the applicant has produced Annexure-R4(c) and R4(f) which are his applications

to the Tahasildar dated 31.5.1990 for an income certificate and the income certificate issued by the Tahasildar, Thaliparamba on 4.6.90. Though the Annexure-R4(f) dated 4.6.90 was issued after filing of this OA (OA 385/90) as filed on 21.5.90) on the application the Village Officer, Malappattam has submitted a report to the Tahasildar stating that the 4th respondent owns 15 cents of land in Survey No.1 of Malappattam Village, yielding Rs.600/- per annum as income and that, as salesman in Ration Shop No.ARD 123, Malappattam Village, he was getting Rs.2400/- per annum as income. On the basis of this report by the Village Officer, the Tahasildar issued the Annexure-R4(f) certificate stating that the annual independent income of the 4th respondent is Rs.2400/- from his occupation as salesman and Rs.600 per annum from the landed properties. It is true that a document which came into existence after the filing of the application cannot be considered of great probative value. But the fact that the income certificate was issued by the competent authority after detailed enquiry cannot be over-looked. Annexure-R4(d) certificate issued from Taluk Supply Office, Thaliparamba dated 13.6.90 shows that the 4th respondent has been working as salesman in ARD 123 of Malappattam. The Taluk Supply Officer being the authority who makes periodical inspection in all the ration shops, the certificate issued by him though dated after filing of this application cannot be completely ignored.

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There is no reason why the Taluk Supply Officer, as responsible Government Officer should issue a certificate that the 4th respondent is employed as salesman in ration shop No.ARD 123 unless that fact is true.

The statement filed by the respondents 5 and 6 that the Manager of the Ration Shop No.ARD 123 did not disclose presence of any employees in the application for licence and the fact that in the licence application, the Manager of the ration shop had mentioned that there was no employee cannot be taken as proof for the fact that the 4th respondent was not employed in the ration shop. For one thing the Manager of the ration shop is not a party to ~~these~~ applications.. Under what circumstances the Manager of the ration shop omitted to mention the name of the applicant as a part-time employee is not known. It is a common case that the 4th respondent is the younger brother of the Manager, ~~xxxxxx~~ of the ration shop ARD 123. If names of employees are shown in the licence applications the Ration Shop manager would be liable to pay minimum wages to the employee. As the 4th respondent was his own younger brother and as he was employed only ~~on~~ a part-time basis, the Manager of the ration shop would ^{not} have mentioned that there was any regular employee in the licence application. This cannot be held out as a conclusive ~~proof~~ of the 4th respondent ~~was~~ not working as a part-time employee in the ration shop. The applicants in these two cases

are residing in the same village where the 4th respondent is residing. If as a matter of fact the 4th respondent was not working as a salesman in the ration shop ARD 123 they should have known that fact and would ^{have} categorically stated in the applications that the 4th respondent was not working as a part-time salesman in the ration shop at all. On the other hand going by the averments in the applications, it would appear that the applicants have admitted that the 4th respondent is in fact working as a salesman in the ration shop and their case in the applications was that as he would have to leave his employment as salesman ~~in~~ the ration shop on appointment as Branch Post Master, he would not be having the independent income. It is worth while to quote the averments in page 4 of the Original Application 385/90 which reads as follows:

"At the time of application and thereafter he has produced income Certification to the effect that he is the Salesman of a Ration Shop. The said Ration shop is run by his own brother." As soon as he selected he will have to discontinue the job of the salesman of the ration shop and hence he will not have any other income."

In paragraph 5 of the application it has been stated as follows:

"The applicant has permanent source of income from the property he owns, the 4th respondent herein does not have such qualification. The income shown by him is from the assignment he holds as a salesman in his brother's ration

shop. Needless to add as soon as he gets the appointment as the Branch Post Master he will cease to have the said job and hence he will not have any source of income. Further the income certificate produced by producing a salesman job cannot be said to be genuine one as admittedly he is the ^{man} sales_{man} of his own brother's ration shop."

In paragraph 4 of the application No.513/90 it is averred as follows:

"The 4th respondent Ajayan in his income certificate, has shown his income from his work as a salesman of a ration shop as his only source of income. The said ration shop is owned by his brother and the said income would cease immediately on his taking up employment. As per the general instructions in the income meant therein is not such income."

So the fact that the 4th respondent has been working as a part-time salesman in the ration shop No.ARD 123 of Malappattam is not disputed but admitted by the applicants in these two applications. From the documents produced by the 4th respondent and the respondents 1 to 3 and from the averments in the affidavit statement of the respondents of 1 to 4 it is seen that the hours of work in the ration shop and that of the Branch Post Office did not over-lap, and that, therefore even after appointment as Extra Departmental Branch Post Master the 4th respondent would be able to continue his part-time job and to earn the independent income. It has been clarified in the letter of the PMG No.Rectt/11-1/85-II dated 13.2.1989 that independent income need not

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be income from landed property and it could be from any other source.. Therefore, the case of the applicants in these two cases that the 4th respondent does not have independent income and therefore his selection is bad cannot be upheld. The fact that the 4th respondent had been getting unemployment allowance till May, 1989 is no reason to hold that the applicant was having employment and income at the time when he applied for selection. The very fact that the unemployment allowance was stopped with effect from June, 1989 as revealed from the documents produced by the respondents would show that the applicant had having income from June, 1989 onwards. Therefore, we reject the contention of the applicants in these two cases that the 4th respondent has no independent income.

8. The applicant in OA 513/90 has passed Pre-degree Examination. He was working as substitute from 5.1.90 onwards in that post. He therefore claims that on account of his superior educational qualification and on account of his work as EDBPM, Malappattam for a short period, he should have been considered as a better candidate than the 4th respondent. As per the instructions on the subject in regard to selection of ED Agents, qualifications above matriculation have no relevance. As among the candidates who are matriculates, according to the instructions of the Post Master General, the

person who has the highest marks has the best chance for selection. It is admitted that the 4th respondent has the highest marks in the SSLC Examination among the eligible candidates considered for selection. Therefore, the claim of the applicant in OA 513/90 that on account of his higher educational qualification he should have been preferred has to fail. Though the applicant has been working as a substitute in the post of EDBPM for a few months, there is no rule or instruction which directs that such a person should be given preference over others who do not have such experience. So, on that score also the applicant in OA 513/90 is not entitled to challenge the selection and appointment of the 4th respondent who has the highest marks in the SSLC Examination among the candidates considered. Though the applicant in OA 513/90 has averred that he was not interviewed by the same person who interviewed the other candidates, the respondents 1 to 3 have in their reply statement made it clear that all the candidates were properly interviewed and the merits assessed. Therefore, we do not find any legitimate grievance of the applicants on that score.

9. In the conspectus of facts and circumstances, we find that, there is no irregularity in the selection and appointment of the 4th respondent to the post of EDBPM, Malappattam. Hence, we find that the applicants in these two cases have no legitimate grievance and therefore, we dismiss these applications without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

18.7.1991