

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 388/2003

THURSDAY, THIS THE 17TH DAY OF FEBRUARY, 2005.

C O R A M

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

Geon V.V. S/o Sri Vadasseri Paily Kunji Varghese
GDS Mail Deliverer, Chattikulam BO,
Pariyaram SO, Irrinjalakkuda Division
residing at Vadasseri House
P.O. Elanjipra, Pariyaram

Applicant

By Advocate Mr.O.V. Radhakrishnan

Vs.

1. Superintendent of Post Offices
Irrinjalakkuda Division
Irinjalakkuda-680 121
2. Post Master General
Central Region
Ernakulam, Cochin.
3. Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.
4. Director General of Posts
Dak Bhavan, New Delhi.
5. Union of India represented by its Secretary
Ministry of Communications
New Delhi.
6. A.R. Gopinathan
GDS Mail Deliverer
Khannanagar, Koratty.

Respondents

By Advocate MR.TPM Ibrahim Khan, SCGSC for R 1-5
By Advocate Mr. M.R. Rajendran Nair for R6

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The Applicant, V. V. Geon, GDS Mail Deliverer, Chattikulam B.O. in Irrinjalakkuda Division later recruited under GDS merit quota as Postman in 2004 has filed this Application challenging his non-selection as Postman in 2002-03 in preference to the sixth respondent on the ground

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that between the two of them he had scored much higher marks in the selection examination and hence between the two of them covered under the physically handicapped category he should have been appointed to the post on the basis of the examination held on 24.11.2002, in preference to the sixth respondent. That he was selected to the post next year in the merit quota, has not overtaken his claim to selection in the previous year itself. His non-appointment in 2002-03 has visited him with pensionary consequences in as much as his recruitment a year later in 2004 has taken him out of the purview of the CCS(Pension) Rules entailing a recovery of 10% of his emoluments for financing the alternative Pension Scheme effective from 1.1.2004. He has sought, inter alia, to be appointed as Postman on the basis of the examination conducted on 24.11.2002 in the place of the sixth respondent. Challenging the appointment of the sixth respondent he has claimed that as per vacancy notification dated 4.9.2002 (A7) one post was reserved for physically handicapped category, and the official party respondents, despite his securing 78% marks in the examination, declared first that no one in the PH category was found suitable and then went on to select the sixth respondent despite very low marks secured by him.

2. The official party respondents have contended that the vacancy notified by A7 in the PH category was reserved for the orthopaedically handicapped, identified way back in 1999 (Annexure R-5). Since no recruitments were made in 2000 and 2001, this vacancy was taken up for recruitment in 2002. The vacancy notification did not indicate the sub category of orthopaedically handicapped, but by R1 circular to all

participating offices in the Irinjalakkuda Division the candidates belonging only to the orthopaedically handicapped category were directed to produce medical certificates in the prescribed form from Medical Board. By R2 order the result was announced, in which it was indicated that none qualified in physically handicapped category from outsider quota. This was because of the fact that the sixth respondent who was the only orthopedically handicapped person, had not secured 45% marks in Paper-II. A clarification was received from the Regional Office to the effect that relaxed standards can be adopted while selecting PH candidates as for SC/ST candidates. Since relaxed standards could go down upto 30% and the sixth respondents had secured 80%, 40% and 58% in papers I, II and III respectively the sixth respondent was selected. The applicant had also sought selection as a PH candidate and had secured admittedly 78% marks, but he did not belong to the OH sub category for which the post was reserved. Non-indication of the sub-category in the vacancy notification would not be a reasonable basis for ignoring the classification determined already in 1999 and further when two slots for visually handicapped had already been earmarked for Trichur and Changanacherry, while only one slot for orthopaedically handicapped in the circle was allotted to Irinjalakkuda Division. This vacancy therefore had to be filled up by an orthopedically handicapped candidate, and not by any other sub-category.

3. Heard the counsel for the parties. We also examined the extracts of the roster produced. On a doubt being expressed in regard to the status of real handicap (assessed

as 50%) in the case of the sixth respondent, we ordered and got produced a fresh assessment of degree of handicap from a duly constituted Medical Boards. The short point to be decided is whether the applicant has an overriding claim with reference to the sixth respondent for selection as a Postman on the basis of the 2002 Examination. While the omission to indicate the sub-category in the vacancy notification (A7) brought in the visually handicapped applicant into realm of consideration, we do not think he should be allowed to stretch it too far to exclude a genuinely orthopedically handicapped candidate for whom the post was reserved and which came rolling from 1999 in the absence of recruitment action during the intervening years. The applicant would have no superior claim as he could have been in the normal course out of reckoning, but for an omission to show the sub-category. Higher marks alone would not determine selection. Since two posts were earmarked in the visually handicapped category for the circle and only one post was left open to the orthopedically handicapped, the action of the respondents in not considering the applicant only on the basis of higher marks, cannot be faulted. No malafide has been alleged. Further, we are quite impressed by the ability of the applicant to stand on merit, as his selection in the merit quota next year would show. The sixth respondent who was selected, deserved the protection of quota much more than the applicant. As to the apprehension of the learned counsel for the applicant that, missing the crucial year 2003, has visited the applicant with adverse consequences in terms of the new Pension Scheme, we would like to state that the scheme is applicable to all appointees from 1.1.2004, and the

apprehension is only hypothetical without any comparative statement as to losses and gains between the existing and the new scheme. Further more, we do not think that the concession granted to the handicapped in employment should be weighed in terms of individual conveniences and private gains. The concession is given to a class of people who are in genuine need of the concession. The applicant with his ability was capable of making the grade without concession. Now, his wish to displace a more disadvantaged person for securing for himself the hypothetical benefits of a non-contributory pension scheme against a contributory pension scheme, can only be termed as opportunism. Ends of justice would be ill served if we allow the applicant his wish.

4. In the result therefore, we dismiss the Application leaving the parties to bear their own costs.

Dated the 17.2.2005.

H.P.Das
H.P.DAS
ADMINISTRATIVE MEMBER

K.V. SACHIDANANDAN
K.V. SACHIDANANDAN
JUDICIAL MEMBER

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