

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.391/93

Friday this the 10th day of December, 1993.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.P.Chandran,
Kuriappillil House,
Pallikkurup P.O. .. Applicant

By advocate Mr.O.V.Radhakrishnan

vs.

1. Sub Divisional Inspector,
Mannarghat Sub Postal Division, Ottapalam Division.
2. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi.
3. M.Unnikrishnan, Sankar Nivas,
Thambara, Palghat District. .. Respondents

By Advocate Mr.K.Karthikeya Panicker

ORDER

CHETTUR SANKARAN NAIR(J),VICE CHAIRMAN:

Applicant who has been working as an Extra Departmental Mail Carrier, Pallikkurup Branch Post Office since 6.5.1991 claims preference over third respondent in the matter of regular appointment, both by reason of superior merit and by reasoning of his being a member of a Scheduled Caste. This claim is contested by respondents on the ground that he does not satisfy the residential qualification, and also on the ground that he is not eligible to weightage.

2. Learned counsel for applicant relied on the decision in S.S.Sharma and others vs. Union of India(1983 SLR 511) and Comptroller & Auditor General of India and others vs. K.S.Jagannathan(1986(2) SCC 679) to contend that qualifications can be relaxed in the case of members belonging to Scheduled Castes. Next he would argue that members of the Scheduled Caste are entitled to preference over candidates belonging to other communities. Finally he would submit that when preferment is extended to a community, members of other communities can be considered, only after members of the preferred community, are exhausted.

He relies on the decision in Government of Andhra Pradesh vs. P.Dilip Kumar (1993 (2) SCC 310) to find support for this submission. We do not read the decision as laying down that persons of a group to whom a preference is extended, have to be exhausted, before others are considered. To our mind, preference envisages the existence of two eligible categories. Preference does not imply exclusion of one of the two eligible categories. If that were so, it would not be preference but reservation. It is a relative and not an absolute concept. If the right is singularised in one, there is no question of preference. All that the expression conveys is that, priority can be extended to one if in other respects both are equal. (emphasis supplied)

3. A member belonging to Scheduled Caste is entitled to preference or reservation, in given cases. This will have to be understood in the context of facts, and not in an absolute sense. It is common knowledge that when there is only one post, there is no reservation. There may be cases, where there are 10 posts and 100 applicants, with 10 belonging to a reserved category. If all the posts are to go to them, it will lead to 100 percent reservation. It is well settled that reservation cannot exceed 50% of the vacancies. We are referring to these instances, only to illustrate that reservation or preference is not absolute. We do not think that applicant is entitled to be appointed merely by reason of his community status to the single vacancy which is in existence.

4. Notwithstanding that, rejection of applicant's candidature on the other ground is not justified. Absence of residential qualification is the important ground on which applicant was considered ineligible. It is well settled that a person cannot be discriminated against based on place of birth, residence or sex. May be, after appointment, rules may require an official to remain at a station, or in an area. Rejection of the candidature of applicant, is therefore, improper. It is admitted by both sides that the third respondent who was chosen for appointment has not accepted the appointment.

5. In these circumstances, we quash the appointment granted in favour of 3rd respondent, and direct 1st respondent to consider

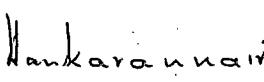
whether the applicant should not be appointed. It should also be considered whether applicant should not be granted weightage in the light of the principles enunciated in G.S.Parvati v. Sub Divisional Inspector(Postal), Guruvayoor(1992)21 ATC 13.

6. By reason of an interim order, substitution of applicant by another provisional employee had been stayed. It is needless to point out that a provisional employee cannot be replaced with another provisional employee (See State of Haryana vs.Piara Singh (1992)4 SCC 118).

7. Application is allowed as aforesaid. Parties will bear their costs.

Dated the 10th December, 1993.


P.V.Venkatakrishnan
P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


Chettur Sankaran Nair
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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