

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 392/91
~~XXXXXX~~

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DATE OF DECISION 28-8-1991

C Ajayakumar Applicant (s)

M/s D Peethambaran and Advocate for the Applicant (s)
PB Sahasranaman
Versus

Sub Divisional Inspector of Respondent (s)
Post Offices,

Karunagappally Sub Division,
Karunagappally and another.

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)-1
Mr Pirappancode V Sreedharan Nair for Respondent-2

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

and

The Hon'ble Mr. N Dharmadan, 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 SP Mukerji, Vice Chairman

The applicant who had been working as Extra Departmental Branch Post Master (EDBPM) at Varavilla under the Sub Divisional Inspector of Post Offices, Karunagappally Sub Division has filed this application dated 5.3.1991 under Section 19 of the Administrative Tribunals Act challenging the impugned order dated 6.3.1990 at Annexure A1 by which he was directed to give over the charge to Respondent-2 who was selected for regular appointment on the expiry of the applicant's provisional appointment on 6.3.1990. He has further prayed that the respondents be directed to reappoint him to the same post with all emoluments. According to the applicant, having been sponsored by the Employment Exchange, he was appointed provisionally as EDBPM at the Varavilla Post Office on 9.9.88 for a period of 89 days (Annexure A-2). The respondents extended

the applicant's services after ^{spells of} 89 days from time to time [^] vide Annexures A2, A3, A4, A5, A6 and A7, the last order dated 15.12.89 ^{being} at Annexure A7 sanctioning his provisional [^] appointment for 89 days from 8.12.89 to 6.3.90. The provisional appointment was in the vacancy caused by the dismissal of the regular incumbent and in all the aforesaid orders it was mentioned that the provisional appointment will be terminated without notice if ever it is decided to take back the regular incumbent into service. He got six spells of 89 days[^] of service with short technical breaks of one and two days in between. The petitioner is aggrieved by the fact that suddenly his provisional appointment was terminated by appointing Respondent-2. As a working EDA, he has claimed preference over an outsider ^{relying on} ~~against~~ the directions of the Postmaster General, Kerala Circle's letter dated 7.11.1978 and D.G. P&T's letter dated 18.5.1979. He has also claimed the benefit of Section 25 H of the Industrial Disputes Act.

2 In the statement filed by Respondent-1 it has been stated that the applicant suppressed the material fact that he had also participated in the regular selection in which Respondent-2 was selected and ^{also that} in accordance with [^] the ruling of the Supreme Court (AIR 1986 SC-1043), he cannot now be allowed to question the selection. It has been stated that the regular incumbent of the post Smt. S. Padmavathy Amma was ultimately dismissed from service

and accordingly the need for regular appointment after calling fresh nominations from the Employment Exchange arose. The applicant was also considered, but the Respondent-2 was selected as she was better qualified. The provisional appointment of the applicant even though made through Employment Exchange was for a specified period with the condition of termination without notice. Referring to the dictum of this Tribunal in OA 12/90 it has been stated that experience gained by a person as an EDA is not the ground to claim preferential rights.

3 In the rejoinder, the applicant has stated that he is more qualified than the 2nd respondent who was selected for extraneous reasons. Respondent-2 in his reply has stated that provisional appointment for a specified period cannot confer on the applicant any right of regular appointment. Having taken part in the selection along with him, the applicant cannot challenge the same.

4 We have heard the learned counsel of both the parties and gone through the documents carefully. The applicant has referred to the Postmaster General, Kerala's circular dated 7.11.88 (page 68 of Swamy's Compilation of Service Rules for ED Staff- 1987 Edition) for seeking priority in the matter of selection as working EDA. The

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relevant portion of the circular reads as follows:-

"2. It has been decided by the Postmaster General that working ED Agents should be given priority over all other categories except retrenched ED Agents for selection of various ED posts if they satisfy all the conditions prescribed in the officer letter No.STA/1/28-Rlgs., dated 24.10.76, as amended from time to time and if the appointment in the new post is in public interest. The concession is, however, applicable to the following categories of ED Agents only:-

- (i) ED Agents appointed prior to the introduction of the residence condition.
- (ii) ED Agents who had acquired residences in new locality by purchase or inheritance.
- (iii) All women ED Agents who have to shift the residence after marriage."

The applicant cannot claim the benefits of the aforesaid circular unless he ^{happens} ~~claims~~ to belong to any of the three categories mentioned in the above quotation. The applicant has also cited DG, P&T's letter dated the 18th May, 1979 which is available at page 63 of Swamy's Compilation of Service Rules as mentioned above. The relevant portion of this reads as follows:-

" Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in less than three year's service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in DG, P&T's letter No. 43-4/77-Pen. dated 23.2.1979."

The above circular applies to those who have put in not less than three years of service as EDA. Since the applicant has put in service ^{of} less than 1½ years, _^ he cannot claim benefits of the aforesaid circular.

5 However, since the applicant had completed more than 240 days' service in a period of one year

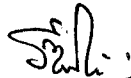
between 14.9.88 and 16.9.89, he can claim the benefit under 25 H of the Industrial Disputes Act, if he had been a retrenched employee. But, since at the time of selection, he was still continuing in service, the benefits of the aforesaid selection cannot be claimed by him.

6 As regards the respondents' contention that the applicant cannot challenge the selection of respondent-2 as he himself participated in the selection cannot be accepted because at the time of his participation in the selection he did not ^{and could not} know ^{if} whether he would be denied his rights and respondent-2 would be selected by overlooking his rights on merit. The ruling of the Supreme Court (Om Prakash Vs. Akhilesh Kumar- AIR 1986 SC 1043) as cited in the statement filed by respondent-1 thus cannot be applied to this case. The fact, however, remains that in the process of regular selection the applicant was found to be less meritorious than respondent-2. The applicant cannot claim regular selection on the basis of his provisional appointment in the circumstances indicated above. We cannot overlook the fact that the applicant had suppressed the material fact that he had participated in the selection, but was not selected. In accordance with the judgment of Patna Bench of this Tribunal in Chandra Sekhar Singh Vs. Controller of Defence Accounts, Patna (1987 (4) ATC 962) " ^{it} is a well accepted canon

of justice that he who seeks protection of Court must come with clean hands. Suppression of material facts disentitles the applicant to any relief, even if such a claim was justified otherwise."

7 In the above context we see no merit in this application which we dismiss without any order as to costs.


(N Dharmadan) 28.8.91
Judicial Member


(SP Mukerji) 28.8.91
Vice Chairman

28-8-1991