

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~RACON~~

400/89

199

DATE OF DECISION 16.7.90

K.M.Rajan Applicant (s)

Mr. O.V.Radhakrishnan Advocate for the Applicant (s)

Versus

Supderintendent of Post Respondent (s)
Offices, Irinjalakuda Division
& 3 others.

Mr. P.Santhosh Kumar (for R1-3) Advocate for the Respondent (s)
Mr.Aravindakshan (for R-4)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

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? Yes
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

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 5th July 1989, as amended on 15th January, 1990, the applicant has prayed that he should be declared to be fully eligible and qualified for regular appointment of the post of Extra Departmental Branch Post Master (EDBPM), Konnakuzhi Branch Office and Respondents 1, 2, 3 and 5 directed to consider him for selection. He has also challenged the letter issued by the Post Master General, Kerala Circle dated 11th June 1986 at Exbt.A7 laying down that in so far as

Kerala Circle is concerned, the Extra Departmental Agents should be permanent residents within a delivery area of the Post Office concerned. The material facts of the case are as follows:

2. The applicant had passed SSLC with a total mark of 259 and his name was sponsored along with other candidates by the Employment Exchange for the post of B.P.M., Konnakuzhi Branch Office under the Periyaram Sub Office. According to him, he was residing at Kodamparamban House, within Mothirakandi Post Office of Pariyaram Village and he changed his residence from February 1988 to Naramangalam House, Konnakuzhi within Kanjirapilly Post Office of Pariyaram Village. According to the instructions issued by the DGP&T at Exbt. A4, EDBPM should be a permanent resident of the village where the Post Office is located. The applicant's grievance is that the Post Master General by an order dated 11th June 1986 at Exbt. A-7 changed the residential qualification laying down that the ED Agent must be residing within the delivery jurisdiction of the Branch Post Office. On that ground and because he was residing previously at Mothirakandi of Pariyaram village which was not within the delivery jurisdiction of Konnakuzhi

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Branch Post Office, he was not called for interview.

Under the interim orders of this Tribunal, however, he was interviewed. According to him, since he had changed his residence within the jurisdiction of

Konnakuzhi Branch Post Office in February 1988 he is eligible for being considered for the post of EDBPM.

His allegation is that the 1st Respondent is interested in giving appointment to Respondent-4 even though the applicant got the highest marks among the candidates

in SSLC and is otherwise eligible. According to

Respondents 1 to 3, the PMG's letter at Exbt.A7 is only

a clarification of the instruction issued by the DGP&T in certain areas

because in Kerala Circle ^{in certain areas} there are more than one Post

Office in the same village and residents of the same

village had to be qualified by the residence within the

delivery zone of individual Post Offices. Respondent-4

whose selection has been challenged by the applicant in

the counter affidavit has indicated that the Branch Post

Office at Konnakuzhi was opened on 11.8.89 on the basis

of the interview conducted and Respondent-4 was appointed

as EDBPM there as he was a resident in Ward No. VIII

within the delivery zone of that Post Office. He has

further indicated that in accordance with the latest

voters' list, the applicant's name is indicated in Ward-X

of the Pariyaram Panchayat which is not included within

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the delivery jurisdiction of Konnakuzhi Branch Post Office. Accordingly, the applicant is not eligible.

He has alleged that the applicant who was resident of Mothirakandi in Ward (X) managed to get temporary accommodation within the delivery zone of Konnakuzhi Post Office and got a ration card newly issued to him. He has argued that the PMG, as a delegatee of the DGP&T, is authorised to issue instructions clarifying that the residential qualification will be with respect to not the village but the delivery zone of the Post Office. He has also argued that in accordance with the rules, the Postmen are prohibited from going outside the delivery zone of the Post Office and since after delivering the post he is to report to the BPM, the BPM has to be within the delivery jurisdiction of the Post Office, otherwise, the Postman will have to leave the delivery zone to report to the residence of the Branch Post Master.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We feel that it is not necessary for us to go into the allegations made by the Respondents that the applicant manoeuvred the change of residence from Mothirakandi to Konnakuzhi Post Office area so that he becomes eligible for the post of EDBPM of Konnakuzhi Branch Post Office. This is because this Tribunal has

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already decided that in case of EDBPM, the residential qualification pertains to residence in the village where the Post Office is situated even if the candidate resides outside the delivery zone of that Post Office. In O.A.525/89 we delivered the judgement on 31.5.90 in which we held that the eligibility instructions issued by the DGP&T on 29th March 1981 stating that EDBPM/EDSPM must be permanent resident of the village where the Post Office is located and ED Agents of other categories may, as far as possible, reside in or near the place of their work, cannot be deemed to have become obsolete by the earlier instructions of the PMG, Kerala Circle dated 22.2.80 by which permanent residence within the delivery zone of the Post Office had been prescribed. The following extracts from the judgement will be relevant to this case:

"We are not at all convinced by the aforesaid argument of the respondents. The Director General is the competent and higher authority in prescribing the qualifications for EDDAs and his later directions dated 29th March 1981 cannot be deemed to have become obsolete by the earlier instructions of the Post Master General dated 22.2.80. A lower authority cannot by an earlier instruction render the later instructions of a higher authority obsolete. Since the applicant is resident of the same village in which the Post Office is situated, the applicant cannot be considered to be ineligible for regular appointment in accordance with the residential qualification prescribed by the Director General. In the judgement of this Tribunal dated 30.3.90 in OA 30/90 even in the case of an EDBPM it was held that since the applicant therein resided in the same locality as the Branch Post Office he could not be disqualified for regular recruitment. In another case in OA 60/89 where the applicant after marriage left the village which was in the delivery zone of the Post Office

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and started residing with her husband in the neighbouring village, it was held that the condition of residential qualification was intended only to facilitate easy availability for work and cannot be held to disqualify the applicant so long as she is easily available."

4. In the instant case before us, Respondents 1 to 3 in para 4 of their counter affidavit dated 4th October 1989 have conceded that "Konnakuzhi is one of the localities in Pariyaram Village where a new Branch Post Office is proposed to be opened." Respondent-4 in his counter affidavit dated 15th June 1990 has indicated as follows:

"The applicant is clearly not a resident coming within the delivery jurisdiction of Konnakuzhi Branch Post Office. The latest voters list published by the authorities indicate that the applicant's name is included in Ward No.X of the Periyaram Panchayat, Ward No.X of the Periyaram Panchayat is not included within the delivery jurisdiction of the Konnakuzhi Branch Post Office. A true copy of the relevant portion of the voters list containing the applicant's name published in 1989 by the authorities for Ward No.X of Periyaram Panchayat is produced herewith and marked as Annexure-R4(a). In Annexure-R4(a) at Sl.No.69 the applicant's name is indicated, therefore, it is clear that the applicant is a permanent resident of Ward No.X of Periyaram Panchayat, coming within the delivery jurisdiction of Mothirakanny Post Office and that the applicant is not a permanent resident of Ward No.VIII coming within the delivery jurisdiction of Konnakuzhi Post Office."

5. From the above, it is clear that even though the applicant may not be a permanent resident within the delivery zone of Konnakuzhi Branch Post Office, according to all the Respondents he is resident of Ward-X of Periyaram Village where the Branch Post Office is situated. So long as, therefore, it is not denied that he is resident of Periyaram village where the Branch Post Office is admittedly situated, he cannot

be disqualified on residential qualification for the post of EDBPM, Konnakuzhi Post Office. What transpires is that the applicant originally resided in Ward-X of Periyaram Village which falls within the delivery jurisdiction of Mothirakandi Post Office and subsequently shifted to Ward-VIII coming within the jurisdiction of Konnakuzhi Post Office which is also situated in Periyaram Panchayat. In other words, whether we take his old residence or new residence, the applicant remains a resident of Periyaram Village where the Konnakuzhi Branch Post Office is situated. Thus, he is fully eligible so far as residential qualification is concerned.

6. Under the interim orders of this Tribunal, the applicant was considered along with other candidates. The relevant file shown by Respondents 1 to 3 indicates that the applicant studied upto Pre-Degree and obtained 259 marks in the SSLC, whereas Respondent-4, Shri N.L.Satheesan, studied only upto SSLC and got 255 marks. The applicant was written off as 'non-local'. His income was shown as Rs 1750 as against the annual income of Rs 1800 shown for Shri Satheesan. If the residential disqualification is set aside, on the basis of the higher marks obtained by the applicant in SSLC, the applicant will be the most suitable candidate in accordance with the guidelines issued by the PMG at Exbt. A6. Under the head

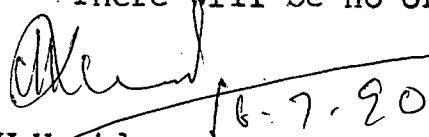
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in the guidelines
'mode of selection', it has been indicated/as
follows:

"For matriculation and candidates possessing qualification above matriculation, the criteria for selection will be the percentage of marks obtained in the matriculation/SSLC. The candidates who has secured the highest marks will have the best chance of selection, provided that candidate was found physically fit."

7. In the facts and circumstances, we allow the application, set aside the impugned order dated 11th June 1986 at Exbt. A7 and declare that the applicant is fully eligible for regular appointment to the post of EDBPM, Konnakuzhi Branch Post Office situated in Periyaram Village and direct the 1st Respondent to consider him for appointment as EDBPM, Konnakuzhi Branch Post Office deeming him to be fully satisfying the residential qualification and keeping in view the guidelines for such appointment. Decision about the applicant's regular appointment should be taken within a period of one month from the date of communication of this order. The appointment of Respondent-4 will be subject to the decision taken on the applicant's appointment on the above lines.

There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

RA-90/90 ^{ERNAKULAM} in

O. A. No. 400/89

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DATE OF DECISION 8-11-1990

NL Satheesan - Review Applicant (s)

M/s K Usha &

NS Aravindakshan

Advocate for the Applicant (s)

Versus

KM Rajan & 4 others

Respondent (s)

M/s OV Radhakrishnan &

K Radhamani Amma

Advocate for the Respondent (s)

Mr P Santhoshkumar, ACGSC

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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 SP Mukerji, Vice Chairman)

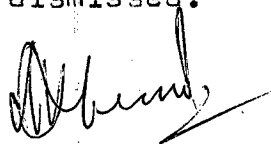
Heard the learned counsel for the review applicant.

The learned counsel indicates that in paragraph 6 of our judgement dated 16.7.1990 the factual observation that

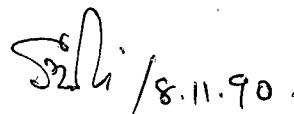
"...If the residential qualification is set aside, on the basis of the higher marks obtained by the applicant in SSLC, the applicant will be the most suitable candidate in accordance with the guidelines issued by the PMG at Exbt.A6." (emphasis added)

unduly
has ~~undoubtedly~~ weighed with the selecting authorities infavour
in the judgment
of the original applicant. We find that the factual observation
as above followed by the quotation *from* of the guidelines cannot in
any manner be taken as any recommendation or direction of the

Tribunal in favour of the original applicant. In any case, this is not any error apparent on the face of record warranting a review of our aforesaid judgement. If the review applicant is aggrieved by the selection made subsequent to that judgement, he will be at liberty, if so advised, to challenge that selection in appropriate forum, in accordance with law. The review is dismissed.



(AV HARIDASAN)
JUDICIAL MEMBER



(SP MUKERJI)
VICE CHAIRMAN

8-11-1990

trs