

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 18.1.90

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

O.A. 401/89

K Palani : Applicant

Vs.

1 The Sub Divisional Inspector of
Post Offices, Munnar Sub Division,
Munnar, Kerala -685 312.

2 The Post and Telegraph Department
rep. by the Postmaster General,
Kerala Circle, Trivandrum.

3 The Union of rep. by the Secretary
Ministry of Communications,
New Delhi.

4 S Subbaraju C/o Kanakaraj,
Ellappatti Estate, KK Division,
Munnar- 685 612.

5 The Sub Postmaster,
Ellappatti P.O., Via, Munnar-685615: Respondents.

Shri R Sreekumar : Counsel of Applicant

Shri PVM Nambiar, SCGSC : Counsel of R 1-3 & 5.

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Shri NV Krishnan, Administrative Member.

The applicant challenges in this application
the appointment of Respondent-4 as Extra Departmental
Delivery Agent at Ellappatti Post Office and seeks a
direction to Respondent-1 to appoint the applicant as
Extra Departmental Delivery Agent at the above Post Office
or in the alternative, to direct Respondent 1 & 2 to
consider the applicant's long service of more than
1000 days as Extra Departmental Delivery Agent and give

him the permanent appointment as an Extra Departmental Delivery Agent any-where.

2 This application has been filed in the following circumstances: By an order dated 20.5.83 (Annexure I) the Sub Division Inspector, Munnar (Respondent-1) approved the appointment of the applicant by the regular incumbent T Mariappan as a substitute during the period he was permitted to proceed on leave. The applicant was thus functioning as a substitute Extra Departmental Delivery Agent.

3 While he was thus continuing, Respondent-1 issued an order dated 14.2.89 appointing the applicant provisionally to the post of Extra Departmental Delivery Agent, Ellappatty as the regular incumbent T Mariappan had expired on 5.2.89. The ad-hoc appointment was for a period of 89 days from 7.2.89, which was liable to be terminated without notice or assigning any reasons before that date.

4 Thereafter, the applicant was relieved of his charge on the 8th May, 89 when it was handed over charge to a reliever nominated by the competent authority.

5 The Respondent-1 invited applications to fill up the post of Extra Departmental Delivery Agent, Ellappatty by the memo dated 1.5.89 (Annexure A XII).

6 Only two candidates were apparently interviewed namely, the applicant and Respondent-4. On coming to know that the Respondent-4 suffered from certain disqualifications

the applicant sent a representation dated 2.6.89

it was alleged that (Annexure A XVII) to Respondent-1. In that representation Respondent-4, who is also a claimant for the post, is not a resident of Ellappatty, but a resident of a neighbouring locality, Pannaiar Estate. It is also stated that the Respondent-4 has a brother of the same name working in Ellappatty Estate. Therefore, there is a confusion of names and identity and the applicant is really ~~is~~ not a resident of this area. It was further alleged that the Respondent-4 was already employed in the Primary School at Veeravel, which is a totally different locality.

7 However, inspite of the representation, Respondent-1 has appointed the 4th Respondent as Extra Departmental Delivery Agent at Ellappatty Post Office. It is against this appointment order that this application has been filed. The principal ground is that the Respondents has not considered the long service of the applicant on that post and further, the Respondents have ignored the disqualifications from which the Respondent-4 was suffering and to which their attention had been drawn by the Annexure A XVII representation.

8 The Respondents have filed a reply denying the allegations. It is stated that the place Ellappatty is situated on the Kerala - Tamilnadu border and it was verified and found that Respondent-4, selected for appointment, was a resident of Ellappatty. They have also stated that

Respondent-4 was working as a Menial in the Veeravel School, but had resigned that job before joining as Extra Departmental Delivery Agent.

9. It is also contended that as between the applicant and Respondent-4, the first Respondent found the latter to be more qualified, as he had passed the SSLC, which was the prescribed preferred qualification for the post, the applicant not having passed the SSLC. It is also added that most of the previous experience of the applicant was as a substitute of the regular incumbent as his nominee and this cannot be recognised. Even the experience gained from the provisional appointment made by the Respondent-1 by Annexure-A-VII order cannot be taken into account, as there is no such provision in the Extra Delivery Agents (Conduct & Service) Rules, 1954.

10. We have perused the records and heard the counsel.

11. We are satisfied that the fourth respondent fully satisfies the requirements of local residence, as stipulated in the instructions and his appointment cannot be impugned on this ground.

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12. We are also of the view that the appointment of Respondent-4 cannot be assailed by the applicant for, it is based on a regular selection. Respondent-4 has been found to be more suitable, he having passed the SSLC, to which the Recruitment Rules give a preference. No doubt, the Recruitment Rules are silent in the matter of giving preference to previous service like the one which the applicant has to his credit. For, such service is gained by being appointed as a substitute by the regular incumbent. If this is allowed any weightage, it is quite likely that this may induce, on a large scale, the practice of appointing substitutes merely for the purpose of gaining preference on this ground. It is, perhaps, for the same reason that no weightage is also given to the service rendered by a candidate, who has been appointed provisionally by the department itself, pending the selection of a regular candidate.

13. In the circumstances, there is no merit in this application and it has only to be dismissed.

14. We, however, notice that the applicant has filed a rejoinder stating that a vacancy of Extra Departmental

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Packer is likely to arise in Ellappatty Post Office. He seeks a direction the Respondents to consider his claim for regularisation on that vacancy or any future vacancy that may arise after particularly taking note of his past experience. In a statement made at the bar by the learned counsel for the Respondents, it was stated that the applicant's name will also be considered, if it is sponsored by the Employment Exchange as and when such a vacancy arises.

15. It is because of this prayer that the past experience of the applicant be considered that we find it necessary to make certain observation in this regard. At present, no weightage or consideration is given to this service, probably for the reasons given in para 12 supra. We are, however, of the view that the service rendered on the basis of provisional appointment made by the departmental authorities (eg, the Annexure-A-VII order in this case), as distinct from the service rendered as a mere substitute of a permanent incumbent - even if it is later on approved by the Department - stands on a different footing in this regard. The former

service is rendered when the Respondents were otherwise helpless to maintain the public service and therefore L needs recognition. The latter service is only a private matter between the permanent incumbent and the substitute. Further, the area of selection of the provisional limited and appointee ~~is~~ by the Department is very L confined to the jurisdiction of ^{the} Post Office and the choice is limited. Therefore, if a candidate has worked as a provisional appointee, pending the selection of a regular incumbent - even if it be for a short period - it is only proper that as between equals he be preferred over one who has no such experience. In addition, whether such experience should be considered to make good the relative deficiency in the educational qualifications in comparison to others and if so, to what extent are matters that need attention. These are matters which require consideration by the third respondent to whom a copy of this order is directed to be sent separately for this purpose. Except for making this observation, we do not, at this stage, wish to give any direction in this regard.

16. The application is dismissed and there will be no order as to costs.


(N. Dharmadan)
Judicial Member
18.1.90


(N.V. Krishnan)
Administrative Member
18.1.90