

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

DATE OF DECISION: 24.4.1990

P R E S E N T

HON'BLE MR.N.V.KRISHNAN - ADMINISTRATIVE MEMBER

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.406/89

M.Vijayakumaran - Applicant

Versus

1. Superintendent of Post Offices, Palghat
2. Director of Postal Services, Northern Region, Calicut.
3. Union of India rep. by its Secretary, Ministry of Communications, New Delhi.
4. K.Sreekumaran, E.D.Packer, Kottayi.S.P.O., Palghat.

- Respondents

M/s OV Radhakrishnan & K Radhamani Amma - Counsel for applicant

Mr.K.Narayananakurup, ACGSC - Counsel for respondents 1-3

Mr.T.Ravikumar - Counsel for R.4

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

The applicant was a candidate for selection to the post of Extra Departmental Sub Postmaster, Varode-Kottayi which fell vacant on 31.5.1989. Being qualified to apply for the post, he was sponsored along-with eight other candidates by the Employment Exchange, Palghat. Coming to know that the first respondent was taking steps to appoint the 4th respondent who is an E.D.Packer in

Sub Post Office, Kottayi in the post of Extra Departmental Sub Postmaster(EOBPM), Varode without considering the candidates sponsored by the Employment Exchange pursuant to the requisition made by him in the behalf, the applicant made a representation to the first respondent marking copies of the same to the Post Master General, Kerala and the Employment Officer, Palghat on 4.5.1989. Thereafter the applicant received a communication from the 1st respondent, directing him to submit an application in the prescribed form with attested copies of certificates. He promptly submitted his application. But as he did not hear anything further, he made a representation to the first respondent on 14.6.1989 for which there was no response. Now the applicant has understood reliably that the 4th respondent has been offered the post. The applicant has therefore, filed this application under Section 19 of the Administrative Tribunals Act, challenging the above decision of the respondents L against Rules and procedure, and violative of Articles 14 and 16 of the Constitution of India and praying that the respondents may be directed to make a regular appointment to the post after making a proper selection, considering all the applicants sponsored by the Employment Exchange. It has been alleged in the application that the department has no right under the Rules and regulations governing the appointments to the post of E.O. Agents to appoint the E.O. Packer as an EOBPM discarding the claims of other

applicants sponsored by the Employment Exchange for consideration for appointment to the post.

2. That the applicant and some other candidates were sponsored by the Employment Exchange in response to the requisition made by the first respondent is admitted in the reply statement filed by respondents 1 to 3. It has also been admitted that as Srikumaran, E.D.Packer, Kottayi, the 4th respondent who submitted an application for appointment as EDSPM has been found and that to be suitable, he has been selected for appointment without considering the applications of the candidates sponsored by the Employment Exchange. This selection has been justified on the ground that the instructions contained in Director General, Posts letter No.43-27/85 -Pen(EDC and Trg.) dated 12.9.1988 permit such appointments. The respondents contend that, neither the applicant nor any other candidate sponsored by the Employment Exchange is entitled to challenge the above decision.

3. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced.

4. Annexure-A1 is a copy of PMG letter No.Rectt/11-1/85-11 dated 12.8.1987 regarding the methods of recruitment of E.D.Agents. Paragraph 7 of this letter reads as follows:

"TRANSFER OF ED AGENTS FROM ONE POST TO ANOTHER: Transfer of ED Agents from one

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post to another is not permissible under rules. There is no preference for working ED Agents for selection to another ED Post. The orders regarding preference for working ED Agents issued under this office letter No. STA/1026-VI/76 dated 7.11.78 are cancelled. However, if they apply for a post in response to local notification (where Employment Exchange has not furnished nominations) or are nominated by the Employment Exchange such application will be considered on merits along with other applications. But if such ED Agents are selected they will have to resign from the old post and forget past service."

The learned counsel for the applicant argued in the face of the above instructions, the action of the respondents 1 to 3 in deciding to appoint the fourth respondent as ED Packer, Kottayi in the post of EDSPM Varode without considering his suitability and merit in comparison with the candidates sponsored by the Employment Exchange like the applicant is irregular and unsustainable. The learned counsel for the respondents 1 to 3 on the other hand sought support from the instructions contained in DGP&Ts letter No.43-27/85 Pen(EDC and Trg.) dated 12.9.1988 which according to the learned counsel permits appointment of a working ED Agent in another post if he is suitable and if he fulfills all the conditions. Annexure-A2 is a copy of the letter of the DGP&T. It reads as follows:

"Sub:- Transfer of ED Agents from one post to another.

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As per orders contained in this letter No.43-27/85-pen dt. the 6th May, 1985 (copy enclosed for ready reference) the ED Agents desirous of seeking transfer from one post to another are required to seek it through the agency of Employment Exchange like any other applicant for fresh appointment. Normally the Employment Exchange does not register/sponsor the names of persons already in employment except in the cases for appointment to higher posts.

A proposal that EDAs may, therefore, be considered in a limited manner for appointment in other ED posts without coming through the agency of Employment Exchange in exceptional cases has been under examination.

Normally EDAs are to be recruited from local areas and they are not eligible for transfer from the post to another but in cases where a post has been abolished EDAs are to be offered alternate appointment within the sub division in the next available vacancy, in accordance with Directorate orders No.43-24/64-pen dt. 12.4.64 and further clarified in No.43-1/22-pen dt.23.2.79. As per orders, those EDAs who are held as surplus consequent to the abolition of ED posts are to be adjusted against the posts that may occur subsequently in the same office or in the neighbouring offices. In view of this it will not be corrected to allow transfers of EDAs freely from one post to other. However, it has now been decided that exception may be made in the following cases:-

(i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided/he/she is suitable for the other post and fulfils all the required

conditions.

(ii) In cases where EDAs become surplus due to abolition of posts and they are offered alternate appointments in a place other than the place where they were originally holding the post, to mitigate hardship, they may be allowed to be appointed in a post that may be subsequently occur in the place where they were originally working without coming through Employment Exchange."

A careful reading of the above letter would make it clear that, it cannot be taken as an authority authorising the appointment of an ED Agent to another Post on his mere request straight away without making a process of selection and without evaluating his suitability in comparison with other eligible candidates who have applied for the post. The relaxation in the case of ED Agents contained in the above letter is only that the requirement of their nomination by the Employment Exchange is dispensed with. The post of ED Packer and that of EDSPM are not comparable posts. A candidate for the post of EDSPM should possess higher educational qualification than one for the post of ED Packer. The monthly allowance for the post of EDSPM is Rs.620/- whereas an ED Packer's monthly allowance is only Rs.420/- Therefore, while considering an ED Agent for appointment to another post which carries higher remuneration, in the light of the existing rules and instructions on the subject it is not permissible to exclude all other eligible candidates who have applied. In this view of this

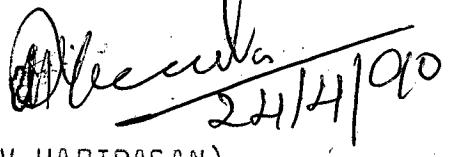
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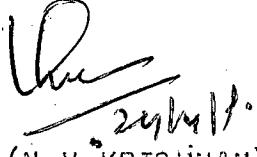
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matter, we have no hesitation to hold that the decision of the respondents to appoint the 4th respondent to the post of EDSPM without making a process of selection considering all the eligible candidates who have applied is against rules and is unsustainable. Even assuming that it was open to the department to appoint an ED Agent if he is found suitable to another post without resorting to a selection process, once they have initiated the recruitment process by notifying the Employment Exchange and receiving applications from eligible candidates, then they cannot legitimately abandon the recruitment process only because a working ED Agent has on a subsequent date made a request that he may be appointed to that post.

5. In the conspectus of the facts and circumstances of the case, we are of the view that the decision of the respondents 1 to 3 to appoint the fourth respondent as EDSPM, Varode-Kottayi without making a selection considering all the eligible candidates including the applicant is unsustainable and we, therefore, quash the same and direct the respondents 1 to 3 to make a regular appointment to the post of EDSPM, Varode Branch Office only after making a selection from all the eligible candidates including the applicant who have applied for the post. The respondents 1 to 3 are also directed to complete the process of selection and to make the appointment within

a period of two months from the date of communication
of this order. There is no order as to costs.


24/4/90
(A.V.HARIDASAN)
JUDICIAL MEMBER


24/4/90
(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

24.4.1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

RA 83/90 in O.A. No. 406/89
T.A. No.

100

DATE OF DECISION 23-7-1990.

Mr. K. Sreekumaran

Applicant (s) /4th Respondent in RA

Mr. P.S. Biju

Advocate for the Applicant (s)

Versus

Mr. M. Vijayakumaran & 3 others

Respondent (s)

Mr. DV Radhakrishnan

Advocate for the Respondent (s) -1

Mr. TPM Ibrahim Khan

Advocate for Respondent 2 to 4

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member.

The Hon'ble Mr. A.V. Haridasan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Shri N.V. Krishnan, Administrative Member

Heard. The Review petitioner was the 4th Respondent in OA 406/89.

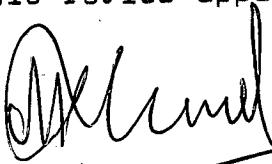
He has filed this review application against the order dated 24.4.90 on the ground that there has been a wrong interpretation of the A-2 order in the original case. He has also filed MP 538/90 for condonation of delay. In the view that we propose to take after having heard the counsel, we condone the delay in filing this review application.

2. The review applicant, who is ED Packer, Kottayi Sub Post Office, applied for a transfer to the post of ED Sub Post Master, Varode Branch Post Office which is also stated to be in the same place. The request for transfer is based on the instructions of the DG, P&T (Annexure-A2 in the original case) and accordingly the applicant was selected and appointed which was challenged in the aforesaid OA.

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3. We found that transfer was made while regular selection proceedings had already been started. Further, the transfer should be made atleast from one post to another similar post, if not to identical post. The transfer of the review applicant in this case would have been from the post of ED Packer to ED Sub Post Master which are not comparable posts. Therefore, the instruction referred to above does not squarely apply to him. His candidature had to be considered along-with other applicants in the OA.

4. We find that the applicant has failed to raise any reasonable ground for reviewing the order. Hence, this review application is dismissed.



(A.V. Haridasan)
Judicial Member


23.7.90

(N.V. Krishnan)
Administrative Member

23.7.1990.