

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, ALLAHABAD

413
1/2

.....
Registration T.A. No. 1640/86
(O.S. No. 766 / 1983)

Virendra Kumar Tripathi Plaintiff
vs.
Superintendent Post Offices,
Shahjahanpur and others Respondents

Hon' Mr K.J. Raman, A.M.
Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr J.P. Sharma, J.M.)

The applicant Sri Virendra Kumar Tripathi filed original suit No. 766 of 1983 in the Court of Munsif, Shahjahanpur on 12.9.83 impleading the Superintendent of Post Offices, Shahjahanpur and two private defendants namely, Genda Lal Srivastava and Lal Bahadur claiming the relief of declaration that the list of selection of the departmental candidates in pursuance of examination of class IV employees vide notification B/Exam/Group 'D'/83/ Shahjahanpur and Notification No. 3 P/Con/Exam/Group 'D'/83 dated 6.9.83 is against rules and be declared null and void and as a consequent Defendant nos. 2 and 3 be restrained from joining the post of Class IV employees (Clerk). The suit stood transferred to the Tribunal u/s 29 of the A.T. Act, 85.

2. The case of the plaintiff/applicant is that he is a confirmed employee of Post Office and is posted as E.D.M.P. at Post Office Rajanpur, District Shahjahanpur.

3. Defendant No. 1 prepared a list of departmental candidate for the examination of class IV employees in which 68 departmental candidates were selected to appear in the examination. The applicant made a representation for inclusion of his name along with 4 others in the list of departmental candidates for the said examination of class IV employees. The plaintiff was not permitted to appear in the

examination in spite of the order of Post Master General and so, the plaintiff could not avail of the opportunity of examination and selection. The qualifying age to appear in the examination is 42 years for the general candidates and 47 years for the scheduled caste candidates.

4. Defendant No. 2 joined the department in 1956 and defendant no. 3 in 1959 and they crossed the prescribed age limit of 42 years, so their nomination as departmental candidates is against the rule and the defendant nos. 2 and 3 were placed in order of merit as Nos. 1 and 2 in the select list.

5. Defendant no. 1 filed a written statement on 9.3.84. Regarding the order of P.M.G. to allow the plaintiff to take the departmental examination, it has been stated that P.M.G. has given provisional permission to the applicant. It is further stated that the plaintiff is an extra departmental employee of the Post Office so, is not a confirmed employee. According to the rules, candidates 5 times of the number of the post to be filled, are allowed to appear in the examination strictly according to their seniority as laid-down in D.G.P&T order No.47/5/80-SPV-1/Pt. dated 7.4.80. The plaintiff did not come in that range of Extra Departmental Agents, so there was no question of allowing the plaintiff in the examination held on 4.9.83.

6. That according to the record xxx of the office of the defendant, the private defendants 2 & 3 were within the age limit prescribed in Departmental Rules and were permitted to appear in the examination held on 4.9.83. According to school certificate of defendants 2 & 3, they were not found over age on 1.7.83. Both the private defendants being senior most after the selection, they were placed at numbers 1 & 2 according to merit and they were issued the posting orders and they are since working after joining in their respective posts.

7. The defendant no.1 has not done any undue favour to defendant nos. 2 & 3 nor any rule or provision of rules has been breached and nor the principle of natural justice has been violated. The examination and selection were fair and impartial. The plaintiff has not exhausted the departmental remedies and as such the suit is not maintainable.

8. Defendant nos. 2 & 3 also filed a written statement on 28.4.84 and 31.1.85 respectively almost stating the same facts as given out in the written statement of defendant no.1.

9. On 15.11.85 the learned Munsif has framed the following issues:

- (1) Whether the suit has been filed by the plaintiff without exhausting the procedure prescribed and so is not maintainable?
- (2) Whether the selection and examination of defendants 2 & 3 on 4.9.83 have been effected in legal way and they are working regularly and so the suit has become infructuous?
- (3) Whether the suit is bad for non joinder of necessary parties?
- (4) Whether the suit is barred by order 27 Rule 5 and 4 C.P.C.? And
- (5) Whether the plaintiff is entitled to any relief?

10. The suit stood transferred to Central Administrative Tribunal under section 29 of the Administrative Tribunals' Act, 1985.

11. From the side of the plaintiff, rejoinder affidavit was filed on 24.2.87 before the Tribunal. In this rejoinder, the plaintiff defendant deposed

X/14
X/9

that the date of continuous service of the plaintiff as admitted to the defendant no. 1 is 17.1.79 and those who are having continuous service from 1.9.79 were permitted to appear in the examination. All of them therefore, were junior to the plaintiff. This date of continuous officiation of the plaintiff has been accepted in the supplementary counter affidavit of the defendant no. 1, but it has been contended that there were 11 vacancies in the O.C. quota and 3 vacancies in the S.C. quota in the said year of the examination and 5 times of vacancies, the candidates were permitted to appear in the examination in the respective quota and in support of this a photostat copy of the rules has also been annexed which is Annexure-SA-1. The name of the plaintiff could not be reached as he is at serial number 127 and only junior SC candidates were permitted to take the examination. The defendants have filed the list according to seniority of the extra- departmental agents which is paper no. 33-C where 169 such candidates have been shown. The name of defendants 2 & 3 is at serial numbers 1 and 2 of this list and the name of the plaintiff is at serial number 127. Paper 34-C has also been filed by the defendant no. 1 of the eligible persons to take the departmental examination. In these name of the plaintiff does not appear. In this list the date of continuous service of any of the candidates of O.C. category is not earlier to the date of continuous service of the plaintiff and it is the only SC candidates who have later date of continuous service.

12. Thus the defendant no. 1 and private defendants 2 and 3 have defended the various points raised in the suit by the plaintiff. All the issues framed by the learned Munsif are taken together as they are interconnected.

13. The relief claimed by the plaintiff is regarding

a declaration that the selection and examination of private defendants 2 & 3 is not according to rules. But Annexure-SA-1 dated 7.4.80 is the relevant rule on the point which is copy of communication No. 47/5/80-SPB. I/pt. dated 7.4.80 from D.G.P.& T., New Delhi to all Heads of Postal Circle and copy to others. It is regarding/absorption of Extra Departmental Agents as Postman/ Class IV. Nothing has been shown by the Plaintiff that there has been any breach of the instructions issued in the aforesaid communication by D.G.P.&T. The plaintiff's case is that if the private defendants 2 & 3 are excluded as they were over age, then the plaintiff would have been eligible to take the said departmental examination as on 6.8.83, but, this is not so. The name of the plaintiff appears at sl.No. 127 as is evident by paper no. 33-C/4 which is the seniority list and it has not been challenged in the suit nor any relief has been claimed to struck down this seniority list ^{and} when it has been accepted by the plaintiff then by any stretch, by calculation, he cannot come within the prescribed limit of 5 times number of vacancies of the persons eligible to take the departmental examination.

14. Secondly regarding the fact that defendants 2 & 3 are over age, the date of birth of Lal Bahadur Tripathi in school leaving certificate is 31.12.42 and that of Genda Lal other defendant is 7.5.42. The contention of the learned counsel for the plaintiff is that this date of birth is taken as correct than the date of service since 1960 of both the private defendants cannot be accepted, but, there is no reason for this. There was a boy service referred to in the written statement of defendant no.1. Moreover, the plaintiff cannot challenge the date of birth which has been accepted by the employer i.e. defendant no. 1. Although the plaintiff has filed the

photostat copy of the Kutumb Register of village Rati Tahsil Tilhar of defendant Lal Bahadur in which date of birth is recorded as 1.3.1926. While the Annexure-A filed by the plaintiff himself shows the date of birth as 31.12.42. However, this extract of Kutumb register cannot be taken to relating to Lal Bahadur defendant no. 3. Moreover, the plaintiff has no vested right to challenge the date of birth of defendants 2 & 3.

15. The relief desired by the plaintiff also cannot be granted because the examination has already been held and he has come to the Court after the declaration of the result and when defendants 2 & 3 have joined. The suit has been filed by the plaintiff on 12.9.83. Paper No. 14-C shows that the result was declared on ^{decree} 6.9.83, this was filed by the plaintiff himself. The charge was taken by defendant nos. 2 & 3 as is evident by paper no. 49-C. The defendants are already serving since 1983 as a result of the examination and selection and now it cannot be said that they were not duly selected or that they were selected against the rule.

16. During the course of arguments, the learned counsel for the plaintiff placed more reliance on the fact that the seniority list in which the plaintiff has been shown at serial number 127 is wrong, but mere arguments will not take the place of proof in a case where the seniority list has not been challenged. We are of the view that the issue nos. 1 to 4 are decided against the plaintiff and the plaintiff is therefore, not entitled to any relief. The suit / application is dismissed and parties to bear their costs.

J. M. Rao
MEMBER JUDICIAL

(sns)

March 16, 1990
Allahabad.

K. M. Rao
MEMBER ADMINISTRATIVE