

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA No.238 of 92

: Date of Decision: 14-9-99

Shri G.P. Negi.

: Petitioner (s)

Mr P.H. Pathak

: Advocate for the petitioner(s)

Versus

Union of India & Ors.

: Respondent(s)

Mr.B.N. Doctor

: Advocate for the respondent(s)

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The Hon'ble Mr. V. Radhakrishnan

: Member(A)

The Hon'ble Mr. P.C. Kannan

: Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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Shri. G.P. Negi
C/o. S.D. Office
Ahmedabad 380 003.

- Applicant -

(Advocate : Mr. P.H. Pathak)

V/s.

1. Union of India
Notice to be served through
Director General of Post
Dept. Of Posts
Ministry of Communication
New Delhi.
2. Asstt. Director Postal
Service (P M T)
Gujarat Circle
Ahmedabad 380 009.

- Respondents -

(Advocate : Mr. B.N. Doctor)

JUDGEMENT

O.A 238 OF 1992

Date : 14-9-99

Per Hon'ble Shri. P.C. Kannan : Member (J).

We have heard Mr. Pathak, counsel for the applicant and Mr. B.N. Doctor, counsel for the respondents.

2. The applicant who is a Group-D employee, is aggrieved with the action of the respondents in not promoting him on the basis of the result of the examination

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conducted in 1987 to the post of Postal Assistant Cadre. The applicant states that he was appointed in Group-D service in the year 1980. In the year 1981, he was sent for Army Postal Services and he worked in the Army Postal Services from 1981 to 1987. In the year 1987, an examination was conducted to fill up the post of Postal Assistant Cadre and the applicant appeared in the said examination and secured 61% of marks. That in spite of securing 61% marks, the applicant contends that the respondents did not include him in the select list and not granted him the benefit of further promotion to the post of Postal Assistant Cadre.

3. The respondents addressed a letter to all the Organisation in Gujarat circle about the 52 available vacant posts of Postal / Sorting Assistants / Clerks in the scale of 950-1500 (Annexure A). The appointment is on the basis of the result of the examination conducted by the respondents. The applicant appeared in the said examination and secured 61% marks (Annexure A-2). However, he was not included in the select list (Annexure A-3). The applicant states that as per the terms of enrollment of the volunteers for the Army Postal Service conditions are concerned, they are entitled to get promotion to the post of IPOs / IRMs cadre by merely qualifying in the examination. The applicant also produced a copy of the letter dated 29.07.89 (Annexure A-5). The applicant contends that persons who are serving in Army Postal Services are eligible to be promoted by merely qualifying in the examination. In view of the above condition, it is stated the applicant is entitled to be promoted as he has qualified in the said examination. He submitted a representation to the PMG on 12.04.88 in this regard (Annexure A-4). The respondents vide letter

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dated 22.02.88 (Annexure A-5/2) and letter dated 23.11.90 (Annexure A-7) intimated the applicant that he could not be included in the select list as he was not within the merit position of the successful candidates. The applicant also sent a notice through his counsel vide letter dated 24.05.87 (Annexure A-8).

4. The respondents in their reply stated that the applicant belong to Ahmedabad City Division and in terms of the rules governing promotion to the post of Postal Assistant, he will be considered against vacancies to the post of Postal Assistant in the Ahmedabad City Division only. After filling the post in A'bad City Divn., the list of surplus qualified candidates will be prepared on the basis of marks obtained in the above mentioned examination to fill-up unfilled vacancies in other Divisions. As there were no vacancy for the post of Postal Assistant in Ahmedabad City, the applicant was included in the select list of surplus qualified candidates. Seven candidates from the list were promoted (Annexure R-1) and the last candidate who secured appointment had obtained 131 out of 200 marks. The applicant had secured 122.5 out of 200 marks and therefore the applicant's case could not be considered. During the pendency of the O.A, this Tribunal issued an interim order dated 03.07.92 directing the respondents to dispose of the representation dtd. 24.05.91 of the applicant and accordingly, the competent authority disposed of the same by a speaking order dated 07.08.92 (Annexure R-2). So far as the circular dated 29.07.89 (Annexure A-5) is concerned, the respondents stated that the said circular is applicable only to the IPOs / IRMs examination subject to certain conditions namely minimum three years of service in APS as JCO, etc, and this

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relaxation is not applicable to other examination. The question of limitation was also raised at the time of hearing. The respondents therefore, submitted that the O.A is devoid of any merit.

5. We have carefully considered the submissions of both the counsels and also examined the pleadings.

6. Mr. Pathak relied on Annexure A-5 which highlights the benefits of Army Postal service. One of the benefit referred to in the said circular is that promotion to the post of IPOs / IRMs Cadre would be made by merely qualifying in the examination. Mr. Doctor however, refers to the circular in which it is clearly indicated that the said circular would apply only to the staff of the ^{level of our} Postal Assistant and for promotion to the post of IPOs / IRMs Cadre. It would not apply in the case of the applicant. The relevant portion of the circular reads as follows :-

" At present there is acute shortage of warrant officers in APS due to paucity of volunteers from the "Postal Assistant" cadre of the Department of Posts. Perhaps this is due to lack of awareness about facilities given in APS. You are requested to give wide publicity regarding APS to all staff of the level of Postal assistant under your control. Particularly young and unmarried postal assistants and TRPS. The benefits of APS are once again summarised below. "

7. A perusal of the circular shows that there is a shortage of warrant officers in the Army Postal Service and therefore, the volunteers are required. Accordingly, the respondents proposed to give certain concessions to the warrant officers. As

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the applicant is grade-D staff, we hold that this circular would not apply to the case of the applicant.

8. The appointment to the post of Postal Assistant is in accordance with the rules and regulations of the respondents. The circular given at Annexure A clearly indicates the vacancy position in different units. The applicant belongs to Ahmedabad City Divn., and in accordance with the rules, he would be first considered for appointment in the said division and along with other successful candidates of the examination, he would be considered against vacant posts in other divisions on the basis of the merit. The merit list prepared in this case (Annexure R-1) shows that the last surplus qualified candidate included in the said list was the candidate who obtained 131 marks whereas the applicant had secured only 122.5 marks. The claim of the applicant has also been examined by the Assistant Director General, Dept., of Posts, New Delhi in his letter dated 07.08.92 (Annexure R-2). He has observed as follows :-

" I am to refer to your office above letter on the subject mentioned above and to state what is referred as representation dated 24.05.1991 of the official is a notice on his behalf from Shri.P.H. Pathak, Advocate. However, the contentions in the said notice have been examined, it is seen that the P & T Manual Vol. IV Fourth Edition has been superseded by Fifth Edition and in the said Edition the Appendix 9 is Recruitment Rules for the posts of time scale Clerks and sorters and the said rules do not contain any provision as reproduced in the said notice. As per the said rules, 50% of the vacancies are to be filled by direct recruitment and 50% by promotion of departmental officials through a test. Hence the question of promotion of the official on the basis of the rules reproduced in the said notice does not arise. The contention in the said notice that the employees in APS should be selected on the

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basis of qualifying marks obtained by him is also not correct as the same is not applicable to the examination for lower Grade Officials for promotion as Clerks / sorters. It is applicable only to the examination for promotion as Inspectors and that too is subject to the candidates' fulfilling certain conditions such as minimum three years' service in APS as JCO etc. Also, vacancies in the clerical cadre are filled up on divisional / unit basis. There was no vacancy in the unit in which Shri. Negi was working. In the units where sufficient number of candidates do not qualify in the examination, the vacancies are filled up by surplus qualified officials of other units prepared on the basis of merit for the circle as a whole. The last surplus qualified candidate included in the said list was the candidate who had obtained 131 marks, whereas Shri. Negi had secured only 122.5 marks. The total number of vacancies announced for the circle has no relevance, since as stated above, the recruitment being division / unit wise for getting promotion the candidate should come within the merit list for the vacancies announced for the Unit / division. In the circumstances, I am to say that no merit has been found in contentions put forward in the above said notice and hence the official's plea for promotion on the basis of his performance in the above said examination has been rejected. He may be informed accordingly. These submissions may be put forward before the CAT also effectively. "

We are in full agreement with the above observations :-

9. The applicant in this O.A has challenged the action of the respondents in 1987 & 1988. On 22.02.88 (Annexure A-5/2), the applicant was intimated about his merit position and also of the results. The applicant thereafter continued to make representations and filed this O.A only in April'92. It has been authoritatively held by the apex court that repeated representations do not save limitation. No satisfactory reasons for the delay have been furnished by the applicant. The O.A which was filed

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after a delay of about two years is therefore liable to be dismissed on the ground of delay and laches.

10. In the facts and circumstances, the O.A fails and accordingly dismissed. No costs.

Dra. Kannan

V. Radhakrishnan

(P.C. KANNAN)
MEMBER (J)

(V. RADHAKRISHNAN)
MEMBER (A)

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