

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 415/2006

Wednesday this the 25th Day of October, 2006.

CORAM

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

1. E.Manojkumar,
G.D.S.M.D.,
Vengara B.O.,
Payyannur Sub Division,
Kannur.
2. E.P.Anil Kumar,
G.D.S.M.P., Mattul North B.O.,
Payyannur Sub Division,
Kannur.

... Applicants

By Advocate Mr.M.Sasindran

V/s.

1. Superintendent of Post Offices,
Kannur Division, Kannur.
2. Chief Post Master General,
Kerala.
3. Director of Postal Services,
Dak Bhavan, New Delhi
4. The Union of India,
Represented by its Secretary,
Ministry of Communication,
New Delhi.

... Respondents

By Advocate Mrs.Aysha Youseff.

The application having been heard on 25.10.2006 the Tribunal delivered the following:

O R D E R

Hon'ble Mr. N.Ramakrishnan Administrative Member

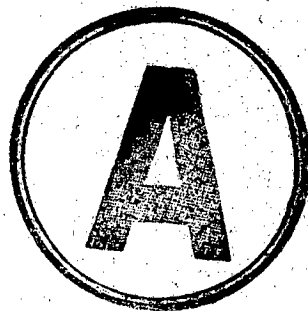
It is seen that during the last two out of three occasions, the applicant's counsel was represented. Today, counsel was absent even during the second call. This we feel shows lack of diligence.

Hence, we dismiss the OA for want of prosecution.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

abp



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 415 of 2004
with
Original Application No. 415 of 2006

Wednesday..., this the 17th day of January, 2007

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

1. O.A. No. 415 /2004

Haridas P.K.,
GDS MD - I,
Vellur G.D.S.O.,
Payyannur Sub Division,
Kannur.

... Applicant.

(By Advocate Mr. M. Sasindran)

versus

1. Superintendent of Post Offices,
Kannur Division, Kannur.
2. Chief Postmaster General,
Kerala.
3. Director of Postal Services,
Dak Bhavan, New Delhi.
4. The Union of India, Represented by its
Secretary, Ministry of Communication,
New Delhi.

... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

2. O.A. No. 415/2006

1. E. Manojkumar,
G.D.S.M.D, Vengara B.O.,
Payyannur Sub Division,
Kannur.
2. E.P. Anil Kumar,
G.D.S.M.P., Mattul North B.O.,
Payyannur Sub Division,
Kannur.

.... Applicants.

(By Advocate Mr. M. Sasindran)

versus

1. Superintendent of Post Offices,
Kannur Division, Kannur.
2. Chief Postmaster General,
Kerala.
3. Director of Postal Services,
Dak Bhavan, New Delhi.
4. The Union of India, Represented by its
Secretary, Ministry of Communication,
New Delhi.

... Respondents.

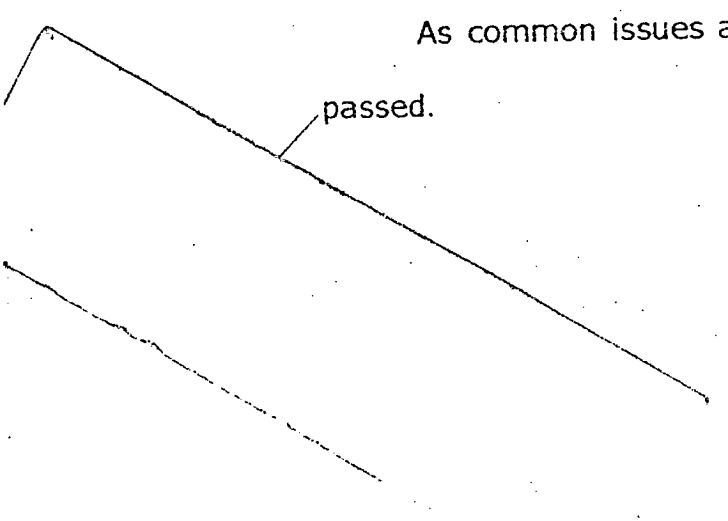
(By Advocate Mrs. Aysha Youseff, ACGSC)

These applications having been heard on 11.1.07, this Tribunal
on 17-01-07 delivered the following :

ORDER**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

As common issues are involved in these two O.As, common order is

passed.



2. The applicants are aggrieved by reduction in the age limit for appointment as PA under the category of 'promotion through competitive examination for serving GDS employees, inasmuch as, while the age limit earlier was 35 years, the same has been truncated to 28 years.

3. Brief Facts: The applicant in OA 415/04 has been functioning as GDS since 1994. There are two avenues available to such GDS - (a) promotion to group D posts and (b) promotion as Postal Assistants. Age limit for promotion to Group D post is 50 years. In so far as promotion to the post of Postal Assistant is concerned, the same, as prevalent in 1999 is as under:-

(i) Length of service : The EDAs should have minimum 3 years continuous satisfactory service as on 31.8.98.

(ii) Age : Should be within 35 years as on 31.8.98.

Upper age limit is relaxable :

1. In the case of SC/ST by 5 years.
2. OBC by 3 years (Caste certificate from Tahsildar to be attached).

(iii) Educational Qualifications : Should have passed 10+2 (Higher secondary Examination) or equivalent examination of recognised University or a Board (excluding vocational stream). If a candidate possess qualification of graduation or post graduation, the percentage of marks most beneficial to the candidate would be taken into account for the purpose.

4. In the Rules then in extant, weightage of 10% marks was allowed for G.D.S employees. The applicant was one of the aspirants to be promoted to the post of Postal Assistant and in 1999 when he participated in the exam, he could not however, be successful.

5. Again, in 2004, another notification was issued by the respondents and as per the same, the eligibility conditions stipulated, vide impugned Annexure A-3 order are as under:-

"1. They should possess minimum educational qualification of 10+2 standard (Senior Secondary excluding Vocational Streams) with English as compulsory subject and should have studied the local language as subject at least upto matriculation or equivalent level.

2. Only those Gramin Dak Sevaks shall be eligible for being considered who have secured marks not below the marks secured by the last direct recruit of the relevant category selected, as the case may be of other communities, SC, ST or OBC of the same year.

3. They should be within 28 years of age (33 years for SC, ST and 31 years for OBC) as on 31.3.2004 and have put a minimum service of 3 years."

6. The above notification was issued on the basis of the Recruitment Rules for the post of Postal Assistants, as per which the qualifications, age limit etc., prescribed are as under:-

"(a) 50% by direct recruitment.

(b) 50% by promotion through a Limited Departmental Competitive Examination failing which the unfilled vacancies shall be offered to Gramin Dak Sevaks of the Recruiting Divisions or Units subject to their fulfilling the following conditions, and if vacancies remain unutilised by the Gramin Dak Sevaks, they shall be filled by subsequent direct recruitment of other open market candidates, fulfilling the age and qualification conditions laid down in columns 7 and 8 :-

(i) They possess the minimum educational qualification of 10+2 standard (Senior Secondary) (excluding Vocational Streams) and have put in a minimum service of three years.

(ii) Only those Gramin Dak Sevaks shall be eligible for being considered who have secured marks, not below the marks secured by the last direct recruit of the relevant category selected, as the case may be, of Other Communities, Scheduled Castes, Scheduled Tribes or Other Backward Classes of the same year.

(iii) They should be within 28 years of age (33 years for Scheduled Castes or Scheduled Tribes communities and 31 years for Other Backward Classes community) as on the crucial date fixed for the direct recruitment of the same year.

Note: The procedure for recruitment shall be governed by the administrative instructions issued by the Department for time to time."

7. The latest rules do not afford the benefit of 10% marks to the GDS employees as earlier available. The applicant has, therefore, challenged the reduction in the age limit as well as withdrawal of the weightage of 10% marks for GDS employees, on various grounds as contained in para 5 of the OA and prayed for declaring that the age limit prescribed in the Recruitment

Rules and withdrawal of the weightage of 10% marks as illegal, for quashing the Annexure A-3 notification, and to direct the respondents to permit the applicant to participate in the examination, notwithstanding the age limit prescribed in Annexure A-3 notification and Annexure A-5 Recruitment Rules.

8. Applicant No. 1 in O.A. No. 416/06 belongs to OBC and entered as GDS in 1986 while applicant No. 2 belongs to Scheduled Caste and entered as GDS in 1998. The grievances of these applicants are also the same as of applicant in OA 415/04.

9. Respondents have contested the O.A. According to them, the action taken by the respondents is strictly in accordance with the Rules and hence, the OAs should be dismissed. It has also been contended that prescription of age limit etc., is a policy matter. In para 10 of the reply to the amended application (415/04), the respondents have stated as under:-

10. It is humbly submitted that when the Recruitment Rules to Pas/SAs cadre were reviewed later, it was observed that EDAs have been given relaxation to the extent of 10% marks from the last open market candidate selected as PA/SA and also 10 years of age in comparison to open market candidates for Pas/SAs. On the other hand, for appointment of PA/SA, EDAs are required to have minimum service of three years as EDAs. In comparison to the provision of minimum service, the extent of relaxation of age appeared to be disproportionately high. Similarly, the relaxation to the extent of 10% marks in comparison to the last open market candidate was also disproportionately high in comparison to the perceived experience and ability that would have been acquired by an EDA by serving for three

years in that capacity. It appeared that these provisions weighed heavily in favour of EDAs. Since the Department now requires intelligent and energetic PAs to handle various new services and products and also to be eligible for deputation to APS, it was felt that the relaxation given to EDAs in notification dated 24.09.92 be restricted. Now as per the revised Recruitment Rules for PA/SA notified on 9th January, 2002 only those GDSs are eligible for recruitment to PAs/SAs (against the unfilled vacancies of departmental quota) who fulfill the following conditions:

- (a) They possess minimum educational qualification of 10+2 standard (Senior Secondary - excluding Vocational Streams) and have put in a minimum service of three years.
- (b) Only those Gramin Dak Sevaks shall be eligible for being considered who have secured marks not below the marks secured by the last direct recruit of the relevant category selected, as the case may be, of the other communities, Scheduled Castes, Scheduled Tribes or Other Backward Classes of the same year.
- (c) They should be within 28 years of age (33 years for Scheduled Castes or Scheduled Tribes and 31 years for Other Backward Classes community) as on crucial date fixed for the direct recruitment of the same year.

10. Counsel for the applicants has submitted that when in 1999 the age limit was 35 years and weightage was given to the extent of 10% marks for G.D.S. Employees, withdrawal of the same now is arbitrary and illegal. Per contra, counsel for the respondents submitted that no vested rights of the applicants have been taken away by amendment to the Recruitment Rules.

11. Arguments were heard and documents perused. At the time of induction of the applicants in these O.As, the rules provided for certain

weightage and higher age limit for participating in the departmental competitive examination for promotion to the post of Postal Assistant. The question is whether the same has afforded any vested right to the applicants and whether the same has been infringed is the question. At the time when the applicants were inducted as ED employees (now GDS), the conditions of service included the avenue for them to participate in the Departmental examination subject to the conditions prescribed therein, one of which dealt with the age limit, which at that time was 35 years for general category and relaxed age limit for reserved categories. According to the applicants, this condition of service having now been amended to their disadvantage, their vested rights get infringed. Is their contention legally tenable is the question.

Focussing on almost a similar issue, the Constitution Bench in the case of **Roshan Lal Tandon v. Union of India**, (1968) 1 SCR 185, has held as under:-

"6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade D and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure B, laid down that promotion to Grade C from Grade D was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but

by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.

(Salmond and Williams on Contracts, 2nd Edn.p. 12).

7. We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his

submission on this aspect of the case."

12. The above decision has been endorsed in a subsequent Constitution Bench Judgment in the case of ***Chairman, Rly. Board v. C.R. Rangadhamaiah, (1997) 6 SCC 623***, the Apex Court had occasion to explain what is vested/accrued rights and when is it said to be affected. The Court held as under:-

"24. In many of these decisions the expressions vested rights or accrued rights have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon, B.S. Yadav and Raman Lal Keshav Lal Soni*."

13. Keeping in view the above decision of the Apex Court if the case of the applicants is viewed, it would be evident that by amending the Recruitment Rules, no vested or accrued rights of the applicants can be stated to be taken away. As such, no fault could be found in the Recruitment Rules or the notification issued on the basis of the Recruitment Rules. The O.As therefore, fail. We may however, observe that if the respondents take a

stock of situation to work out as to how many of such GDS employees would be affected by the revised order and if the respondents consciously feel that taking into account the feeble promotional avenues, the provisions of powers to relax may be invoked for one or two occasions, it is for them to consider.

14. The Original Applications are dismissed with the above observation.
No costs.

(Dated, the 17th January, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

CVT.