

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 427/89
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DATE OF DECISION 8-10-1990

VM Cyriac _____ Applicant (s)

M/s Mathai M Paikeday, P Mohanan
John Thomas & Biju Abraham Advocate for the Applicant (s)

Versus
The Chairman, ISRO, _____ Respondent (s)
Bangalore & 3 others

Mr P Santhoshkumar, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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

(Mr AV Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed that the respondents may be directed to appoint the applicant in the post of Office Clerk-A in Vikram Sarabhai Space Centre, Trivandrum as originally proposed by Annexure-A5 order of appointment with retrospective effect from 10.5.1988, with back wages and attendant benefits. The facts of the case can be briefly stated as follows.

2. The applicant, who is a Commerce Graduate with a Diploma in 'Commercial Practice' was selected in an interview

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dated 4.12.1985 as a Technical Apprentice(Commercial Practice) by VSSC for a period of one year from 11.4.1986 on a monthly stipent of Rs.320/-. He was admitted to the apprenticeship after scrutinising his certificates and other testimonials. On successful completion of the Apprenticeship Training, he was given a certificate of Apprenticeship Training by the VSSC on 10.4.1987. Based on the successful completion of his Apprenticeship, the VSSC considered his name for the post of Office Clerk-A and advised him vide letter No.VSSC/RMT/9.0/721/EE-581 dated 3.6.1987 to appear for a written test and typing speed test. He was also asked to produce his original certificates and testimonials to prove his educational qualifications etc. at the time of the test. Having passed in the written test, he was asked to appear for an interview on 11.8.1987. In the call letter for interview, copy of which is produced as Annexure-A2 also he was asked to produce his original certificates and testimonials in evidence of his qualification, experience etc. After the interview, the VSSC gave him a letter offering employment as Office Clerk-A on a temporary basis. This letter dated 15.10.1987 issued by the Administrative Officer, VSSC is at Annexure-A3. Thereafter, by office order dated 4.11.1987, the applicant was appointed as Office Clerk-A on a temporary basis from 26.10.1987 to 9.12.1987. His temporary service was extended till 22.1.1988. Thereafter he was again chosen to work in another temporary vacancy from 21.3.1988 to 4.5.1988. This term was further

extended till 23.5.1988. While the applicant was thus continuing as a temporary Office Clerk-A, the second respondent on 4.5.1988, issued an offer of appointment to the applicant on a regular basis stating that he would be on probation for a period of one year. By this letter, he was asked to convey ^{of} his acceptance/ the offer of appointment and to join duty on or before 23.5.1988. The applicant requested the Administrative Officer to relieve him from the temporary duty so as to enable him to join the regular post and the Administrative Officer by Annexure-A6 letter dated 9.5.1988 relieved him from his temporary post. On 10.5.1988, the applicant conveyed his acceptance of the offer of appointment. After completing all the formalities like pre-employment, medical examination etc. when the applicant approached the Recruitment Section of VSSC on 10.5.1988 to join the post of Office Clerk-A on regular basis with all his certificates, he was not permitted to join duty. On 12.5.1988 he was informed orally that he cannot be allowed to join duty as he had not obtained 50% marks in the SSLC Examination. The applicant on 14.5.1988 sent a letter to the second respondent requesting him to permit the applicant to join duty. The second respondent informed the applicant that the matter was under consideration. The applicant on 13.6.1988 made a representation to the first respondent requesting him to intervene in the matter. This was followed up by another representation dated 19.7.1988. He also made a representation to the Prime Minister. Finally, the impugned order

dated 19.9.1988 of the fourth respondent was received by the applicant by which he was informed that since he did not have 50% marks in the SSLC Examination, which is a basic educational qualification for recruitment to the post of Office Clerk-A, he could not be appointed in the service of the USSC. The applicant states that the stand of the respondents that the requirement of 50% marks in the SSLC Examination stipulated in the Recruitment Rules to the post of Office Clerk-A cannot be relaxed is unjustified because the respondents had on several previous occasions in the case of other employees relaxed such qualifications. Aggrieved by the Annexure-A8 order, the applicant has filed this application praying that the respondents may be directed to appoint him in the post of Office Clerk-A. It has been averred in the application that the requirement of 50% marks in the SSLC Examination for appointment to the cadre of Office Clerk-A even in the case of a Graduate while such a requirement is not prescribed even for the higher posts is irrational and unjustified. It is further averred that the Recruitment Rules for the O.C-A have been later amended, taking away the requirement of 50% of marks in the SSLC Examination in the case of Graduates and that as such there is no legal impediments in appointing the applicant now and in terms of the Recruitment Rules, the respondents are bound to appoint him on the basis of the Annexure-A5 offer of appointment. It is further alleged that as the respondents had on several occasions verified the certificates including the

SSLC certificate of the applicant and since they have empanelled him for appointment as Office Clerk-A and also allowed him to work as O.C-A on a temporary basis for some time, the respondents are estopped from now refusing regular appointment to him as O.C-A solely for the reason that he did not get 50% marks in the SSLC Examination.

3. The respondents in the reply statement have contended that in terms of the Recruitment Rules for the post of O.C-A at the relevant time when the offer of appointment (Annexure-A5) was issued to the applicant, a person who had not obtained 50% marks in the SSLC Examination was not eligible to be appointed, that it is not possible to appoint the applicant in the service of the VSSC as Office Clerk-A because he does not fulfil the qualification prescribed by the Recruitment Rules and that the Annexure-A5 order was issued on a wrong interpretation, that in the case of a Graduate, the requirement of 50% marks need not be insisted upon. However, it is that made clear in the reply statement/now that the Recruitment Rules have been amended taking away the necessity of the candidates for the post of O.C-A to have obtained 50% marks in the SSLC if the applicant is again sponsored by the Employment Exchange and if he satisfies all the other qualifications, he can be considered for appointment in terms of the amended Recruitment Rules.

4. The applicant has filed a rejoinder stating that it will be impossible for the applicant to be sponsored afresh for the post since he has crossed the upper age limit and as

he was within the age limit at the time when he applied and since he has been selected made to work provisionally and offered appointment on regular basis, equity demands that he is given a posting as Office Clerk-A.

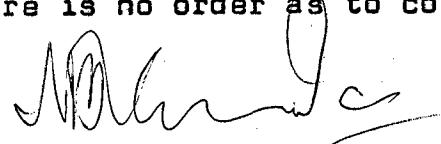
5. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. The applicant is a Commerce Graduate with Diploma in Commercial Practice. He was selected as Apprentice by the VSSC and on successful completion of the Apprenticeship he was given a certificate. As admitted by the respondents, he was considered for appointment as Office Clerk-A and was empanelled. On the basis of the above empanelment he was given provisional appointment in leave vacancies. He was also admittedly given Annexure-A5 offer of appointment for a regular post in the cadre of O.C-A. He got himself relieved from the temporary post in order to accept the regular appointment. It was at the time when the applicant went to join the ~~xxxxxxxxxx~~ regular post that he was told that he could not be appointed since he had not obtained 50% marks in the SSLC Examination. The respondents had several opportunities to know that the applicant did not have 50% marks in the SSLC Examination before the Annexure-A5 offer was issued. On several occasions previously the applicant had produced his certificate for verification by the authorities in the VSSC. The contention of the respondents is not that they did not know that the applicant did not have 50% marks in

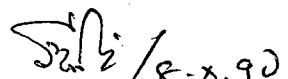
the SSLC Examination but that they were under mistaken impression that in the case of Graduate, the requirement of 50% marks in the SSLC Examination need not be insisted upon. So it was a mistake committed by the respondents. The learned counsel for the respondents argued that it is open for the respondents to withdraw the offer of appointment once the mistake came to light. In support of this position, the learned counsel invited our attention to the decision of the Hon'ble High Court of Kerala in the Kerala Public Service Commission V. Jayadev, reported in 1977 KLT, 85 wherein it was held that it was open for the Public Service Commission to cancel the advice memo of appointment if the Commission comes to know that the advice was issued by the reason of a mistake. It is well settled that an offer issued under a mistake can be rescinded before the offeree has obtained a vested right by virtue of the offer. In this case, it cannot be said that the respondents cannot validly rescind the offer. But the circumstances under which the offer was issued, the long period for which the applicant has been working with the respondents as Apprentice and also as provisional employee and the fact that the requirement of 50% marks in the SSLC Examination in the case of a Graduate to be appointed to the post of O.C.A has been taken away by the amendment in the Recruitment Rules(Annexure-A10), we are of the view that equity demands the respondents to allow the applicant to join the post of Office Clerk-A on a date after the amendment of the Recruitment Rules taking away the requirement of 50% marks

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in the SSLC Examination. The offer contained in Annexure-A5 was accepted by the respondents and the same has not so far been withdrawn by another order of the respondents. As evidenced by Annexure-A10, the Recruitment Rules to the post of O.C-A have been amended and the qualification prescribed to the post now is SSLC/SSC with 50% aggregate marks or Graduate of a recognised University/Institution, the candidate should possess a speed of 40 W.P.M. in English Typewriting etc. The applicant is a Commerce Graduate and he has got additional educational qualifications also. He has been trained as Apprentice by the VSSC and he has also worked as O.C-A for some period on a provisional basis. Now that the Recruitment Rules have been amended with effect from 6.4.1989 and as the applicant satisfies all the requirements as per the amended Recruitment Rules especially when the offer of appointment has not been expressly rescinded or cancelled by any specific order, we are of the view and equity that the interest of justice/warrants a direction to the respondents to allow the applicant to join as Office Clerk-A.

6. In the result, we allow the application and direct the respondents to appoint the applicant to the post of Office Clerk-A on the basis of Annexure-A5 offer of appointment within a period of two months from the date of communication of this order. The prayer of the applicant for retrospective effect in appointment and to the back wages is disallowed. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

8-10-1990

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