

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 427 1991

DATE OF DECISION 26-8-92

V. Ramachandran & 13 others

Applicant (s)

Mr. K.R.B. Kaimal

Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary to Govt., Ministry of Communications, New Delhi & others

Mr. N.N. Sugunapalan, SCGSC

Advocate for the Respondent (s) 1-4

CORAM: Mr. P. Rahim for R 5-17.

Mr. K. Ramakumar for R 18-19.

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

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

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

The applicants are E.D. employees working under the Trivandrum South and North Postal Divisions under the control of the third and fourth respondents, the Supdt. of Postoffices Trivandrum South and North Divisions. They are fully eligible for appointment as Postman/Mail Guard in the 50% of the vacancies meant for the Postal Division. According to Annexure-I Recruitment Rules of Postman/Mail Guard issued by the Director General, Posts, New Delhi dated 7.4.89, 50% of the posts are to be filled by promotion from Department candidates failing which by E.D. Agents on the basis of their merit in Departmental examinations. The remaining 50% is to be

filled up by E.D. Agents in the recruiting division or units in the following manner:

- (i) 25% from amongst E.D. Agents on the basis of their seniority in service and subject to their passing departmental examination failing which by E.D. Agents on the basis of merit in the departmental examination;
- (ii) 25% from amongst E.D. Agents on the basis of their merit in the Departmental Examination.

The Director General also issued Annexure-II letter dated 28.8.90 laying down conditions for making appointment of E.D. Employees in the vacancy of Postman/Mail Guard arising on or after 1.1.1991. The applicants were admitted in the examination and selection proceedings when such proceedings were conducted division wise through common examination for the entire Postal Circle. The third respondent and 4th respondent published the list of candidates who were successful in the Examination and eligible to be promoted as Postman/Mail Guard as per Annexures III and IV. Since the applicants' name were not included in the list, they have filed this application challenging both the lists and praying for the following reliefs:

- "(i) An order quashing/setting aside Annexure III & IV
- (ii) An order directing Respondents not to fill up vacancies of Postmen/Mail Guards, arising after 1.1.1991, by appointing candidates included in Annexures III and IV lists.
- (iii) An order directing respondents to conduct an examination in conformity with the provisions of Annexure-II, for filling vacancies arising after 1.1.1991."

2. The respondents 1 to 4 and the contesting respondents have filed separate reply statements and the applicant has also filed rejoinder.

3. The learned counsel Shri K.R.B. Kaimal, appearing on behalf of the applicants raised two contentions:

- (i) The answer papers of the candidates who appeared in the Trivandrum Region has been valued by person in the same Region, which is contrary to the mandate in Annexure-I Recruitment Rule.
- (ii) The selected persons were appointed not only to the vacancies which arose prior to 1.1.91, but also to the vacancies ^{arising} after the said date which is against the provisions in Annexure-II modified letter of the ADG (SPN).

4. It is an admitted fact that the applicants have not passed in the examination and qualified for appointment as Postman/Mail Guard. The technical objections are now raised after finding that they failed in the qualifying examination and their names were not included in the impugned list Annexure-III and IV.

5. Annexure-I letter of the DGP No. 44-44/82/SPB-1 dated 7.4.89 issued by the DG with a view to rationalising the existing system of recruitment to the cadre of Postman/Villages Postman provides inter alia the following provisions:

"2. The examination for filling up vacancies of Postman/Postmen of Village/Mail Guards from amongst Group 'D' officials and EDAs will be conducted with the syllabus as communicated in Directorate letter No. 10-6/86-PCC/SPB-I dated 28.6.88 and the examination will be common for both Group-'D' and EDAs. It will be conducted only once a year. The Regional Director will be responsible for ensuing final action to hold the examination. He may set the Question papers. The Regional Directorate may nominate officers who are working another Region of the same circle, in consultation with the other Regional Directors for valuation of answer papers. If there is only one Region in the Circle, the valuation should be done by officers other than the concerned Divisional Head.

14. These instructions will be applicable to all the examinations for filling up vacancies in the cadre of Postmen/Village Postmen/Mail Guards to be announced after the date of issue of this letter."

6. Annexure-II is a further letter dated 18.9.90 issued by the ADG (SPN) supplementing Annexure-I. It contains the following terms:

"... This recruitment procedure will be effective for vacancies occurring on or after 1.1.91.

1.2. EDAs who are above the age of 50 years (55 years in the case of SC/ST communities) will not be eligible for appointment as Group-D. The crucial date for determining age will be 1st July of the year in which the recruitment is made."

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2.9 The new procedure now being laid down will apply to recruitment for vacancies occurring on or after 1.1.91.

3. Further action may be taken accordingly. The required amendments to the recruitment rules are being notified separately."

7. Relying on the aforesaid provisions in Annexure-I and II, the learned counsel for the applicant built up the arguments that the Regional Director/make nominations in respect of officials for valuing the answer papers. But in making the nominations, the Regional Director may fix persons for valuation of papers from one region by officers from different region. But the Regional Director's decision appears to be final. In the instant case, according to the learned counsel for the applicants, valuation of papers was conducted by persons, nominated by the Regional Director, who are in the same region. This is a serious irregularity which vitiates the entire selection proceedings.

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8. The respondents/in the reply statement denied the statement that the answer papers of the applicants were valued in the same region and stated that valuation in respect of the Trivandrum Division was done by officers nominated from the office of the PMG, Kerala Circle. The tabulation and publication of the results were done by the respective Divisional Heads. They further submitted that the basic principle governing the provision dealing with nomination and valuation thereof is that the valuation of the answer paper of a Division should not be valued by the same Divisional Supdts.

9. From the pleadings, it is clear that the valuation of the answer papers were not valued by the same Divisional Supdts. under whose supervision the examination was conducted. On the other hand, the valuation was done by the officers nominated from the office of the PMG, Kerala Circle. Under these circumstances, we do not see any irregularity in the valuation of the answer papers and the argument of the learned counsel for the applicant based on para 2 of Annexure-I cannot be accepted.

10. Equally unsustainable is the next contention. It is after the announcement of the vacancies upto 31.12.1991 for the 1990 Examination that the Department has conducted examination under the existing rules. According to the respondents, even though Annexure-II order had been issued on 18.9.90, the required amendment to the statutory Rules will be separately notified. Such a notification has not

been issued so far. This has been disputed by the applicants.

Nevertheless, the respondents 1 to 4 has stated that until such a statutory rule amending Annexure-II the procedures contemplated under the existing rules are to be followed.

The fourth respondent further clarified the position in the statement filed by him on 22.2.90. He has stated that the examination was conducted on 27.10.90 in all the Division in Kerala including Trivandrum Division, in which the applicants are working. Even before the examination, the vacancies announced in Trivandrum North Division was 44, out of which 14 was for the period upto 31.12.90 and 30 for the period commencing from 1.1.91. ^{were} Posting/made from list Annexure-III and IV 7 plus 9, for 1990 and 28 for 1991. In the other Divisions 42 vacancies were announced- 18 for the period ending 31.12.90 and 24 for the period ending 1.1.91. 32 ^{were} selected candidates were appointed so far in the southern Division- 18 for vacancies of 1990 and 14 for 1991. This date has not been disputed by the applicants.

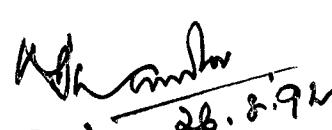
11. Annexure-II stated that the Recruitment procedure mentioned therein will be effective for vacancies occurring on or after 1.1.91. It does not in any manner prohibit the appointment of some candidates who were selected in the 1990 Examination ^{in 4} and their posting/ the vacancies arising after 1.1.91 as contended by the applicant. According to the applicant, all appointments made after 1.1.91 without following the procedure envisaged in Annexure-II would be null and void. On going through Annexure-II, we are not able to find

such a provision in Annexure-II. The procedure contemplated in Annexure-II would only apply to the recruitment of vacancies occurred on or after 1.1.91. This does not bar or prevent the Department from filling up of some of the posts with a candidate who had already passed in the 1990 Examination. Persons, who have been selected by the Department on the basis of pass in the 1990 Examination, have a right to be appointed in the then existing vacancies as per the notification already issued declaring the vacancies prior to the Examination. These notified vacancies are earmarked for the candidates who are successful in the Examination. Their right cannot either be curtailed or taken away by an executive order issued after the declaration of vacancies and enlistment of candidates. Annexures-III & IV persons in these tests are prepared after the examination. They are entitled to be absorbed in the vacancies. In fact, according to us, Annexure-II does not stand in the way of filling up of some of the vacancies with such candidates who have already been included in the Annexure-III and IV lists. In this view of the matter, we see no force in the arguments advanced by learned counsel for applicants in this behalf.

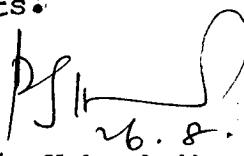
12. Having regard to the facts and circumstances of the case, after careful consideration of the arguments advanced by the parties, we are of the view that the applicants failed in establishing a case for interference.

13. Accordingly, we dismiss the application.

14. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

26.8.92


(P. S. Habeeb Mohamed)
Administrative Member

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