

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.508/93

Friday, this the 1st day of July, 1994

CORAM:

HON'BLE SHRI JP SHARMA(J)
HON'BLE SHRI S KASIPANDIAN(A)

K Muthuswamy,
UDC, Office of the Post Master, General,
Kerala Circle,
Thiruvananthapuram.

- Applicant

By Advocate Vellayani Sundararaju

Vs.

1. The Director General of Posts,
Directorate of Postal Department,
Dak Bhavan, New Delhi.
2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
3. Assistant Director(Recruitment),
Kerala Circle, Thiruvananthapuram.
4. TA Vijayamma,
IRM, RMS Ernakulam Division. - Respondents

By Advocate Mr S Krishnamoorthy, ACGSC (for R.1 to 3)

By Advocate Mr MR Rajendran Nair (for R-4)

O_R_D_E_R

JP SHARMA(J)

The applicant is a Upper Division Clerk(UDC) in the office of the PMG, Kerala Circle, Thiruvananthapuram. He belongs to Scheduled Caste community. There was an examination for the post of Inspector of Railway Mail Service which was held infrom 26th to 28th June 1990 for which eligibility condition

was that a person should be having 5 years service in the grade of LDC or Sorting Assistant would be eligible and the applicant though initially was not granted permission to take the said examination, but subsequently on a judicial review of his grievance in OA-1157/90 by the order dated 1.10.1991, the applicant was provisionally allowed to take the examination, but with his bad luck failed. In one of the papers securing 20% marks while the aggregate in all the papers he acquired 190 marks out of 500 (more than 38%). The general candidates, two of them were appointed in the result declared on 23rd September 1991. Since no S.C. candidate could qualify, the matter was taken up as per Government of India Instructions giving relaxation in the case of SC/ST candidates in the O.M. dated 19th December 1978. This prescribes that any individual obtained at least 33% marks should be there and in the aggregate of all the papers there should be 38% marks. However, another relaxation was given by another O.M., a copy of which is annexed (Annexure-E) to the application. This provides that such of those candidates should be allotted grace marks, even such marks subject to the condition that they are not considered unfit for promotion on the basis of over all assessment of their service records. The contention of the learned counsel for the applicant is that respondent-4 Smt Vijayamma who failed in 3 papers securing 24%, 23% and 18% marks in Paper-II, IV and V respectively and that her aggregate was also less than the

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applicant was offered appointment and therefore it is violative of Articles 14 and 16 and hence the present application has been filed for a direction to the respondents to give the applicant an appointment to the post of Inspector of Railway Mail Service. He has also prayed that the result of the examination be declared as malafide.

2. Respondents were given notice, contested the application by filing separate reply, one through the standing counsel for Union of India and the other by the counsel for respondent No.4 Smt Vijayamma. Rejoinder has also been filed by the applicant. We perused the pleadings of the case and heard the learned counsel for applicant at considerable length. During the course of hearing, it has been pointed out that another O.A.761/93 was filed by against the present respondents including the private respondents which was decided by the order dated 15th June 1994. In that case the applicant therein was given an opportunity to make a representation which shall be disposed of. The counsel for the private respondents Smt Vijayamma rightly pointed out that the application can be disposed of on the earlier direction. However, we find that in the present case the prayer of the applicant is that he has been discriminated against in not being granted grace marks as per the relevant relaxation of office memoranda of different dates referred to above particularly Annexure-E and so the case has to be decided on that basis.



3. Normally a person who succeeds, success gives him the fruit or promotion to higher post. Failure dooms career of a person unless condoned by the persons in authority. A special protection is given to SC category candidates by virtue of the fact that they may not have fared well taking into account the standard of examination for a particular post. In view of this, from time to time besides maintaining the standard of efficiency of the service, certain rules as a concession by way of relaxation are allowed in giving grace marks in order to make failure turn into success for such category of candidates. *Prima facie*, the argument of the learned counsel regarding discrimination vis-a-vis Smt Vijayamma appears plausible. When scrutinised in the light of the judgement in OA-1157/90 given on his own application, we get certain idea of service records of the applicant since 1982. He suffered 3 punishments and 4 years service period has been treated as *dies-non*. No such aberrations are apparent in the service career of respondent-4 Smt Vijayamma and that has been rightly conceded by the counsel for the applicant. When we go through Annexure-E on record, it goes to show that the award of grace marks will follow the scrutiny of service records of the concerned candidate. In the case of the applicant, his service period from 1982 to 1989 is under a cloud and is smeared with the stigma of punishment.



The counsel for the applicant during the course of the argument referred to a fact that the administration has now given the applicant the benefit of counting the 4 year service during which he ~~was~~ under suspension to be counted for the purpose of only pensionary benefits. This goes to show that his service of 4 years remains totally uncounted for an active service either for grant of promotion or increment or other ancillary service benefits. In view of this we find that the order not giving grace marks to the applicant in preference to Smt Vijayamma cannot be said to be discriminatory.

4. We are not touching other points because of the fact that there is another direction in OA-761/91 and do not give any finding about the correctness or otherwise of the appointment after selection of respondent-4, Smt Vijayamma.

This O.A. is confined to the fact that whether the present applicant is entitled to grace marks to beat respondent-4 in getting posting on the result of selection of 1991.

5. We find that the present O.A. is devoid of merit and the applicant is not entitled to the grant of any relief. The application is dismissed as stated above, without any order as to costs.

Dated, this the 1st July 1994.

S. Kasi Pandian
(S KASIPANDIAN)
MEMBER(A)

JP Sharma
(JP SHARMA)
MEMBER(J)

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