

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 535/97 & 536/97

THURSDAY, THIS THE 2ND DAY OF JULY, 1998.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

O.A.-535/97

T.G. Minimol
Extra Departmental Stamp Vendor
Mattancherry Jetty Post Office
Kochi-2.

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Assistant Superintendent of Post Offices
Kochi Sub Division, Kochi.
2. Director General of Posts,
Department of Posts, New Delhi.
3. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi.
4. K.B.Jishy
Kavathara House,
Kumbalangi P.O.
Ernakulam District.

..Respondents

By Advocate Mr. James Kurian, ACGSC for R 1-3

O.A.-536/97

V. A. Gopakumar
Extra Departmental Packer cum Letter Box Peon
M.G. Road Post Office
Kochi-16.

..Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Assistant Superintendent of Post Offices,
Kochi Sub Division,
Kochi-682 001.

Director General of Posts,
Department of Posts,
New Delhi.
3. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi.



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4. V.S. Sunil
Vayalelathu House
Kavaleswaram Road,
Thiruvankulam.

..Respondents

By Advocate Mr. James Kurian, ACGSC for R 1-3

The applications having been heard on 23.6.98, the Tribunal delivered the following on 2.7.1998:

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

In O.A. 535/97, the applicant is working as an Extra Departmental Stamp Vendor (EDSV), Mattancherry Jetty Post Office, Kochi, (the post for short) on a provisional basis. She had approached this Bench earlier on the ground that her name had not been included in the list forwarded by the concerned Employment Exchange when the first respondent was making regular appointment to that post. She had submitted a representation dated 17.1.97 to the first respondent requesting for a consideration of her candidature for regular appointment. The applicant had not been called for the interview/selection for regular appointment which was scheduled for 7.4.97. The applicant sought the relief of a direction to the first respondent to consider her candidature for selection for regular appointment in that O.A. 120/97. That O.A. was allowed by this Bench by its order dated 24.7.97. The first respondent was directed to consider the applicant also for selection for regular appointment to the post of EDSV, Mattancherry Jetty Post Office, along with other eligible candidates in accordance with law.

2. The grievance of the applicant in the present O.A. is that though she contacted the office of the first respondent on the scheduled date, i.e. 17.4.97 no interview or test was conducted by the first respondent for the purpose of selection. No question whatsoever was put to the applicant and only the documents produced by her were verified by the first respondent, she has alleged. She has challenged the



appointment of the 4th respondent to the post by the first respondent by his order dated 11.4.97 (A5). According to the applicant, the 4th respondent has been selected merely on the basis of the higher marks obtained by her at the SSLC Examination which basis, the applicant has alleged, is legally untenable.

3. The applicant has sought the following reliefs:

"i) To call for the records relating to Annexure A5 memo dated 11.4.97 and to set aside the same;

ii) to declare that the selection of the 4th respondent for regular appointment as Extra Departmental Stamp Vendor, Mattancherry Jetty Post Office made solely on the basis of the marks secured in the preferential qualification of SSLC as illegal, arbitrary, unconstitutional and void;

iii) to issue appropriate direction or order directing the 1st respondent to conduct oral interview/test for assessing and evaluating the capacity, suitability and merit of candidates for selection for regular appointment to the post of Extra Departmental Stamp Vendor, Mattancherry Jetty Post Office in the absence of written test for the selection to the above post.

iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and

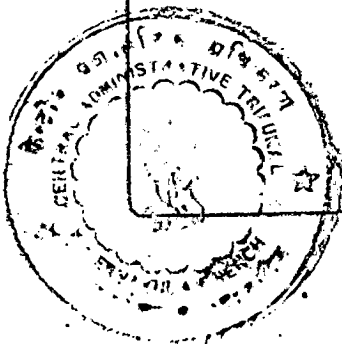
v) to award costs to the applicant."

4. In O.A. 536/97, the applicant, who is now working as an Extra Departmental Packer (E.D. Packer) on a provisional basis at the M.G. Road Post Office, Kochi, has similar grievances about the selection to that post held on 7.4.97 and the selection of the 4th respondent under A4 order there. He has claimed the following reliefs:

"i) to call for the records relating to Annexure A4 memo dated 11.4.1997 and to set aside the same;

ii) to declare that the selection of the 4th respondent for regular appointment as Extra Departmental Packer cum Letter Box Peon, M.G. Road Post Office made solely on the basis of the marks secured in the preferential qualification of SSLC as illegal, arbitrary, unconstitutional and void;

iii) to issue appropriate direction or order directing the 1st respondent to conduct oral interview/test for



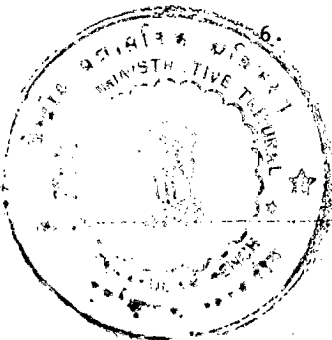
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assessing and evaluating the capacity, suitability and merit of candidates for selection for regular appointment to the post of Extra Departmental Packer cum Letter Box Peon, M.G. Road Post Office in the absence of written test for the selection to the above post;
iv) to give such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and

v) to award costs to the applicant."

5. The main grounds urged by the applicants in the above two O.As for the reliefs prayed for by them are that under the existing instructions pertaining to the method of recruitment for the posts of EDSV and E.D. Packer (E.D. Agents), though a candidate with a pass in SSLC may be preferred, there is no valid rule for preferring those who have secured relatively higher marks vis-a-vis others at the SSLC level and that for assessing the relative merits of the candidates, inter se, a proper interview should have been held which has not been done. The applicants have specifically contended that any further preference among those who have passed SSLC based on the marks obtained by them is not warranted in the light of the existing instructions. According to the applicants, the candidates for the post should principally have been assessed for their merits as per the existing instructions. They have maintained further that such merits could be assessed only through a proper interview. Since the instructions of the Director General of Posts communicated under letter D.O.17-108/94/ED-Trg dated 14.12.94 (R1⁴⁹(A) in O.A. 535/97) reiterates that the basis of selection must be merit, it was wrong on the part of the first respondent, who is the common first respondent in both these O.As, to have made the impugned selections based only on the relatively higher marks obtained by the concerned individual party respondent in each of the above two O.As, i.e., the 4th respondent, vis-a-vis the respective applicant at the SSLC Examination.

6. The learned counsel of the applicants has then



strenuously argued that the extant body of rules called "the P&T E.D Agents (Conduct & Service) Rules, 1964" and the instructions issued by the Director General of Post Offices, Department of Posts, New Delhi i.e. the 2nd respondent, on the "Method of Recruitment" cannot be considered either as statutory rules framed and issued under Article 309 of the Constitution or as executive orders issued by the Central Government under Article 73 thereof for regulating the service conditions including the method of recruitment for E.D. Agents. Therefore, there is a legal vacuum which makes such selections ipso facto illegal, he has contended. According to him, unless statutory rules or executive instructions prescribe the service conditions and in particular that candidates with relatively higher marks at the SSLC level are to be preferred for selection to the posts of E.D. Agents vis-a-vis those with relatively lower marks, the impugned appointments made to these posts of E.D. Agents would not be legal. That would amount to the Selection Committee themselves framing the criteria for selection which will be against the well known and important dictum laid down by the Hon'ble Supreme Court prohibiting such an action on the part of the Selection Committee, has argued the counsel.

7. The official respondents 1 to 3, who are common in these two O.A.s, have contested the reliefs sought by the applicants. According to them, there have been no irregularities in the selection of the respective 4th respondents in these O.As made by the first respondent.

8. The main defence advanced by the official respondents is that the rules called the 'Method of Recruitment' found in Section III of Swamy's "Compilation of Service Rules for Extra Departmental Staff in Postal Department" read with "the Posts and Telegraph Extra Departmental Agents (Conduct and Service)



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Rules, 1964" found in Section II of the same compilation do not specifically prescribe any oral interview or award of marks separately at the interview for the post of EDSV, ⁴⁹ ~~as per E.D. Packer~~ ⁴⁹ They have stated that the applicants, ⁴⁹ along with other candidates, were called for interview/selection for the purpose of production of original documents to prove age, educational and other qualifications and for the first respondent to verify the overall suitability of the candidates. Since the respective 4th respondent ⁴⁹ in these two O.As were found to be otherwise suitable and to possess more merit, having secured higher marks in the SSLC than the applicants, they were selected in preference to the applicants.

9. The official respondents in this context have referred to the provisions of the instructions conveyed under DG (P), New Delhi letter dated 14.12.94 (Annexure R1(a) already mentioned above).

10. We observe that those instructions have evidently been issued to prevent the alleged malpractices in the matter of selection of E.D. Agents. They strictly enjoin upon the appointing authority in charge of selection of ED Agents to ensure that merit should be the only criterion.

11. We have carefully gone through the pleadings in the case and heard the learned counsel appearing for the parties.

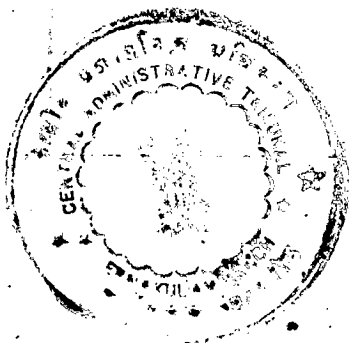
12. These O.As. at the initial stage were ordered to be clubbed with the O.A. 367/97. However, at the stage of hearing, it has been found that in O.A. 367/97, the major grounds for attacking the legality of the present set of service rules and instructions for E.D. Agents in the P & T Department, namely, the "Post & Telegraph E.D. Agents(Conduct and Service) Rules



1964" (Service Rules for short) and the ⁴⁹Method of ²⁸Recruitment (recruitment instructions for short) found in Section II and Section III respectively in Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department, which we have referred to above, have not been taken. Further in O.A. 367/97 the party respondent, i.e. the 2nd respondent there, has also filed a separate reply statement which should be dealt with appropriately. In that view of the matter, our order here does not deal with O.A. 367/97. However, as observed above, the grounds urged in the two O.As. i.e. O.A. 535/97 and O.A. 536/97, are similar and the defence taken by the official respondents therein is also similar. Hence, we have decided to deal with the two O.As. O.A. 535/97 and O.A. 536/97 together and pass the present common order.

13. Regarding the legality of the present set of Service rules and recruitment instructions, mentioned above, we should observe that the uncontrovertible ⁴⁵position regarding the power of the executive to make rules for regulating conditions of service for the persons appointed by the Govt. has been explicitly laid down by the Hon'ble Supreme Court in Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others (1995 (5) SLR 337). It is worthwhile to quote the dictum laid down by the Hon'ble Supreme Court in para 29 of that judgment:

"Now power to make rules regulating the conditions of service of persons appointed on Govt. posts is available to the Governor of the State under the Proviso to Article 309 and it was in exercise of this power that the present rules were made. If the Statutory Rules in a given case, have not been made, either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 162) to issue executive



instructions. However, if the Rules have been made but they are silent on any subject or point of issue, the omission can be supplied and the rules can be supplemented by executive instructions. (See Sant Ram V. State of Rajasthan-(1967 SC 1910))

(Underlined by us for emphasis)

14. Further, we find that the rules which provide for appointment of E.D. Agents called "the P & T Extra Departmental Agents (Conduct and Service) Rules 1964" as notified on 10.9.1964 which deal, inter alia, with categories of posts and appointing authorities, have expressly been issued under the authority of the Govt. of India as mentioned in the preamble of those Rules. Thus, though there could be no doubt that these rules are not statutory rules issued under Article 309 of the Constitution, they are obviously rules framed by the Govt. of India.

15. However, the learned counsel for the applicants has maintained that had these Service Rules and the supplementary recruitment instructions (Sections II and III in Swamy's compilation referred to above) been framed as executive instructions issued by the Govt. of India in exercise of the power vested in them under Article 73 of the Constitution, these should have been expressed to have been issued in the name of the President as required under Article 77(1) thereof. Since the service rules and the recruitment instructions do not specifically mention that they have been notified and issued in the name of the President of India, they do not have the authority of executive instructions, he has contended.

16. In this context it will be necessary to quote the entire Article 77 of the Constitution of India. Therefore, it is quoted below:



"77.(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

(emphasis supplied)

17. In Sham-Sher Singh Vs. State of Punjab (AIR 1974 SC 2192) it has been held by the Hon'ble Supreme Court that even those functions which are required by the Constitution to be performed on the subjective satisfaction of the President could be delegated by Rules of Business made under Article 77 (3) to a Minister or to a Secretary to the Government of India or to some other officer. In such cases, the decision of a Minister or Officer under the Rules of Business becomes the decision of the President. (This point has been specifically discussed in Shorter Constitution of India by Sri Durga Das Basu, 10th Edition).

18. The learned counsel for the applicants has not made available to us any material in support of his contention that the above mentioned rules and instructions for regulating the



conduct and service of E.D. Agents of Postal Department, including the method of their recruitment, are not executive or administrative instructions which have been competently issued by the Govt. of India.

19. In fact, in the Report of the Justice Talwar Committee on Postal E.D. Agents submitted on 3.6.97, there is a reference to the Civil Appeal No. 3385-86/96 decided on 2.2.96, in para 3.11.2 of that Report at page 15. It is mentioned there that the Hon'ble Supreme Court while deciding that Civil Appeal has declared that the E.D. Agents are civil servants regulated by these very Conduct rules. The learned counsel for the applicants while taking us through the legal status of the E.D. Agents had specifically referred to this Report and has graciously made available to us a copy of the Report. We quote that para No. 3.11.2 of the report below:

"The position has been further crystallised by the Supreme Court. While holding that extra-departmental agents are not workmen attracting the provisions of the Industrial Disputes Act, 1947, it has been reiterated that E.D. Agents "are civil servants regulated by these Conduct Rules". (Civil Appeal No. 3385-86 of 1996 decided on 2nd February, 1996)"

20. While it is true that the Justice Talwar Committee has reiterated the position that the 1964 Conduct Rules are not statutory rules, as we have observed above, Service Conditions including the mode of recruitment can be regulated not merely by the statutory rules, but also by executive and administrative instructions.

21. We will now examine more specifically the alleged lack of legality of executive instructions issued in exercise of powers



vested in Govt. of India under Article 73 of the Constitution without expressly stating that such instructions are issued in the name of the President of India, as required under Article 77(1) of the Constitution. In our considered view the matter has been set at rest by the Hon'ble Supreme Court in one of their early judgments declaring that the requirement for such an express statement under the corresponding Article 166¹³ for a State Government, which provisions are couched in a practically identical language, ^{49 as Article 77(1)} except that there it is the Governor of a State whereas under the Article 77(1) it is the President of India, is not mandatory, but only directory. We quote below from that judgment Dattatraya V. State of Bombay (AIR 1952 SC 181):

"...Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down, but an omission to comply with those provisions does not render the executive action a nullity....."

"19. Even if Cl.1 of Art. 166 is taken to be an independent provision unconnected with Cl.(2) and having no relation to the purpose which is indicated therein, I would still be of opinion that it is directory and not imperative in its character. It prescribes a formality for the doing of a public act. As has been said by Maxwell (Maxwell on Interpretation of Statutes pp 379-380):

Where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of actions done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of;the Legislature, such



prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or in other words as directory only.

In the present case the order under S.11(1) of the Preventive Detention Act purports to be an order of the Government of Bombay and is signed by the officer who was competent to sign according to the rules framed by the Governor under Article 166 of the Constitution and in these circumstances I am unable to hold that the order is a nullity eventhough it has not been expressed to be made in the name of the Governor. The result is that both the grounds fail and the petition is dismissed."

(emphasis supplied)

22. In the light of the analysis above, we hold that the 1964 Service Rules and the instructions on 'Method of recruitment' are valid executive instructions issued under Article 73 read with Article 77 of the Constitution and, thus, they hold the field regulating the service conditions of the E.D. Agents including the method of their recruitment.

23. We further hold that till the statutory Rules are framed under the Article 309 of the Constitution, these executive instructions, along with the general and supplementary administrative instructions issued by the competent authorities, which have not been set aside, will continue to be valid and relevant for the purpose of regulating the service conditions of the E.D. Agents of the Postal Department.

24. We are further of the opinion that for minor posts like E.D. Agents what should be the nature of interview and whether



a separate marking system for interview should be prescribed or not, is a matter which falls within the exclusive purview of the administrative policy. The adequacy or otherwise of the present system of interview for E.D. Agents, it seems to us, is not really a justiciable matter. Assessment of relative merits of the contending candidates cannot be made contingent, we feel, primarily on the adoption of a well developed system for interview for the posts of E.D. Agents, even though E.D. Agents admittedly hold civil posts under the Government of India. Since the Director General of Posts (DG(Posts)) has not issued any instructions prescribing an elaborate interview, in supplementation of the Service Rules and the Method of recruitment orders referred to above, the 1st respondent was not required to hold any such interview.

25. It is well settled that the Courts and Tribunals cannot interfere in a matter where the relevant weightage of an interview has been raised as an issue. On this point, we would like to quote from the celebrated ruling of the Hon'ble Supreme Court in Lila Dhar Vs. The State of Rajasthan and Others-(1981 (3) SLR 56). The operative part of the judgment is quoted below:

" As already observed by us the weight to be given to the interview test should depend on the requirement of the service to which recruitment is made, the source material available for recruitment, the composition of the interview Board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the provision to Art. 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight be attached to the various tests. If we do that we would be rewriting the rules but we guard ourselves against being understood as saying that



we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case."

(emphasis supplied)

26. We are unable to accept the position that where⁴⁶ a candidate is otherwise found fit and suitable, on verification of his/her educational and other qualifications and when he/she presents himself/herself for selection, preference is then given to him/her because he/she has secured comparatively higher marks at the level of the preferential qualification, namely a pass in the SSLC Examination, vis-a-vis other and similarly suitable candidates, it constitutes a violation of any of the sacrosanct constitutional principles of equal treatment before law or equal opportunity for public service.

27. On the contrary, we feel that a pass in S.S.L.C. being a preferential qualification, relative performance of the candidates in the form of marks at S.S.L.C. can certainly be considered as an objective and unbiased criterion for assessing their relative merits.⁴⁷ Even though we accept the basic proposition that merit as an attribute is difficult to quantify and assess precisely, the relative performance at the SSLC level in our considered opinion can be treated as an index of merit and, therefore, following this criterion the selection of the respective 4th respondents in these two O.As cannot be considered as not being in conformity with the executive instructions validly prescribed at Annexure (R10) instruction above. In the related⁴⁸ O.A. 367/97, where we have had an occasion to adjudicate the⁴⁹ point, we have dealt with it more comprehensively there.

28. In the light of the above discussions, we do not find any convincing grounds for interference with the decision of the official respondents to select and appoint the respective



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4th respondents in these two O.As. to the post of Extra Departmental Agents, i.e. EDSV and E.D. Packer-cum-Letter Box Peon, respectively in the respective post offices.

29. In the event, the two O.As. are dismissed. There shall be no order as to costs.


Dated the 2nd July, 1998.

Sd/-
S K GHOSAL
ADMINISTRATIVE MEMBER

Sd/-
A V HARIDASAN
VICE CHAIRMAN



CERTIFIED TRUE COPY
Date 9.7.98


Deputy Registrar

LIST OF ANNEXURES

1. Annexure A4: Application form for the post of EDSV.
2. Annexure A5: Memo No.EDSV/M.C.Jetty dated 11.4.1997 of the first respondent.
3. Annexure R1(a): Letter No.17-108/94-ED & TRG dated 4-12-1994 of the Director General of Posts, New Delhi.

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