

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 549/89

189

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DATE OF DECISION 18-10-1990

A Rajendran

Applicant (s)

M/s MR Rajendran Nair &
PV Asha

Advocate for the Applicant (s)

Versus

Union of India & 2 others

Respondent (s)

Mr P Santhoshkumar, ACCSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

&

The Hon'ble Mr. AV Haridasan, Judicial Member

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

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant, a deaf and dumb person working as Labourer in the Government of India Press, Koratty has filed this application praying that the respondents may be directed to consider his representation at Annexure-VI dated 22.5.1989 afresh on the basis of his qualification and on compassionate grounds and to direct them to post him as Bindery Assistant with effect from the date of occurrence of first vacancy after he passed the trade test for Bindery Assistant in 1984. Shorn of details the allegations in the application are as follows.

2. The applicant, a deaf and dumb person joined the services of the Government of India Press as a Labourer in the scale of Rs.196-232 with effect from 1.8.1983. After completion of probation, he was confirmed in the post with effect from 23.11.1988. After passing the 7th standard, he had done one year course in printing and binding in K.C.T. College, Trivandrum and had 13 years of experience in printing and binding. Shortly after joining the Government Press, he submitted an application on 1.1.1984 to provide him a job in printing or binding. He appeared for the trade test for Bindery Assistant(external quota) held on 30.8.1984 and passed the same with highest marks. Thereafter he submitted an application on 17.10.1985 to the second respondent requesting for a posting as Binder Grade-II in the Post Master General's Press. As he was not granted promotion as Bindery Assistant on the ground that a ban existed, he requested for a posting in the P.M.G's Press by transfer/deputation. Finding that there was no response, he again submitted another representation on 13.1.1986 to the third respondent requesting for an then appointment as Bindery Assistant. On 17.1.1986/ he made another representation to the Director of Printing requesting that he may be put on the Printing Branch(Treddle) on a trial basis. To his representation, he received a reply on 28.5.1986 informing him that as per the Government orders, the identified posts for the deaf are Sweeper, Farash, Peon(if educationally qualified Labourer and Bindery Assistant) and that his request for putting him in Treddle machine could not be acceded to. The applicant

made a representation to the Prime Minister on 23.2.1987 for which also he did not get any favourable reply. Lastly, on 22.5.1989 he made a representation to the second respondent requesting that he may be appointed as Binder Assistant. Annexure-VI is the copy of the representation. Thereafter also he received Annexure-VII reply dated 22.6.1989 stating that there was no change in the position already intimated vide Annexure-V memo. The applicant states that the refusal on the part of the respondents to give him a posting as Bindery Assistant despite the fact that he had passed the trade test with the highest marks in the year 1984, while those who passed the test in 1989 were appointed is discriminatory and arbitrary. His grievance is that he has been discriminated because he is a deaf and dumb person and the authorities who rejected his request for posting as Bindery Assistant is without application of mind to the facts narrated in his representations. Therefore the applicant prays that the respondents may be directed to consider Annexure-VI representation afresh on the basis of his qualification and also on compassionate ground as he is a deaf and dumb person.

3. The respondents have in the reply statements filed admitted that the applicant has passed the trade test for Bindery Assistants(External quota) with the highest marks. But they contend that on account of the ban imposed by the Ministry in filling up vacancies in direct recruitment, the applicant and three other persons selected for the post of Bindery Assistant

against direct recruitment quota could not be appointed. The filling up of vacancies in the year 1989 is justified on the ground that the ban extended for direct recruitment only and that those who were appointed as Bindery Assistant being promo-tees, the applicant who was selected towards direct recruitment quota, cannot have a legitimate grievance. It is contended that 50% of the vacancies of Bindery Assistants are to be filled up by promotion failing which by direct recruitment and the remaining 50% by direct recruitment, failing which by deputation and that as the applicant was selected towards the direct recruitment, vacancies in view of the ban imposed by the Ministry in filling up of vacancies by direct recruitment which is still in force, the applicant could not be appointed to the post of Bindery Assistant. They have stated that the question of appointment of the applicant to the post of Bindery Assistant could be considered as and when the ban is lifted. It is further contended that as the identified post for deaf and dumb is at 37th in 100 Point Roster, time is not ripe for filling up xxxx that vacancy.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the records produced. The fact that the applicant came out successful in the trade test for Bindery Assistant held in August 1984 with the highest marks and that he is eligible to be appointed as Bindery Assistant by reason of his success in the test is admitted. The sole reason put forward in the reply statement for not appointing

the applicant in the post of Bindery Assistant is a Government ban on filling up of vacancies by direct recruitment. Along-with the additional reply statement the respondents have pro-duced Annexures-R(3) to R(7) which are orders issued by the Government of India, Ministry of Works & Housing(Finance Divi-sion - Budget Section). The first order Annexure-R(3) is dated 3.1.1984. The operative portion of this order reads as follows:

- "(a) Except in the most exceptional circumstances, no new posts should be created for the next nine month i.e. upto 30th September, 1984.
- (b) All existing vacancies, i.e. non-operational posts where recruitment action has not been taken, should not be filled up for the same period. However, Ministries etc. will have flexibility to readjust their existing staff in a manner as to avoid dislocation of work due to vacancies remaining unfilled.

2. The Ministry of Home Affairs etc. are requested to issue suitable instructions to all Departments, attached and subordinate offices under them, to ensure that these instructions are strictly observed. The Ministry of Home Affairs may also issue similar directions for observance of these instructions by Union Territory Administrations."

The action for recruitment for Bindery Assistant was initiated on 14.8.1984 by the Annexure-R(1). It was pursuant to this memo that the applicant applied for the post and underwent the trade test. It is stated in the reply statement that Annexure-R(1) was issued and the test was held without advertizing to the ban imposed by Annexure-R(3) order and that after the test was panel held and the / was prepared as the Annexure-R(4) order dated 17.7.1984 extending the ban came to the notice of the authori-ties, the appointments pursuant to the selection was kept in abeyance. The latest of the ban orders produced by the

respondents is Annexure-R(7) dated 15.4.1985. It reads as follows:

"In continuation to this Ministry's office Memo-
randum of even number dated 29th September, 1984, the
undersigned is directed to say that having regard to
the continued need for utmost economy in Government
expenditure, the Ministry of Finance, Department of
Expenditure have decided that the instructions stand
extended until further orders. The concerned adminis-
trative Divisions may please take suitable action for
observance of these instructions by Autonomous bodies
under them."

The learned counsel for the respondents submitted that this order is still in force. We are not convinced that the ban on recruitment imposed in the year 1984 still continues even after a lapse of five years. Every day we find the recruitment made to several posts falling vacant on account of retirement and also by creation of new posts. If there is such a total ban on any recruitment, it is not possible to make such recruitment. The learned counsel for the respondent could not explain this at all. As it is difficult to believe that the ban imposed in filling up of vacancies in the year 1984 still continues. Further, the respondents have admitted that persons have been recruited as Bindery Assistant in the year 1989. But the learned counsel for the respondents argued that this was done because the Government had relaxed the ban on filling up of vacancies by promotion. To substantiate this argument, the learned counsel invited our attention to Annexure-R(5) dated 16.8.1984 which reads as follows:

"The undersigned is directed to refer to this Ministry's O.M. of even number dated 17th July, 1984 on the subject cited above and to say that the following sub paras may be added after existing sub para(d) of para-3 of the aforesaid orders as per the latest guide-
lines received from Ministry of Finance, Department of Expenditure vide their O.M.No.7(1)-E(Coord)/84 dated 31st July, 1984:-

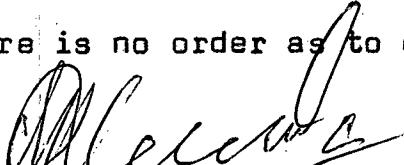
- (e) Vacancies to be filled up purely by promotion in terms of the relevant recruitment rules, provided the resultant vacancy in the lowest level of the cadre is not filled up during the period of the ban orders.
- (f) Vacancies caused by changeover of incumbents in the case of posts held on deputation tenure and vacancies to be filled by deputation/transfer in accordance with the recruitment rules, provided the resultant vacancy in the chain in the parent Department/Cadre is kept vacant till the ban is lifted."

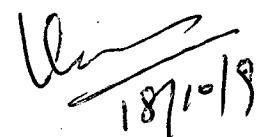
This shows that the ban is lifted to the extent of filling up of vacancies purely by promotion. The respondents have produced for our perusal the Recruitment Rules relating to the Bindery Assistant. According to the Recruitment Rules, 50% to be filled is/by promotion and 50% is by direct recruitment. As a policy it is open for the Government to decide that vacancies would not be filled up for a specified period. But once the Government decides to fill up the vacancies, it should be done strictly in accordance with the Recruitment Rules framed in exercise of powers conferred by Article 309 of the Constitution of India. According to the relevant Recruitment Rules, 50% vacancies of the Bindery Assistants are to be filled by promotion and the remaining 50% is to be filled by direct recruitment. In the guise/relaxing the ban for filling up of vacancies only by promotion, it is not open to the Government to dilute the Recruitment Rules framed under Article 309 of the Constitution of India. When filling up of vacancies is permitted, then in making appointments to fill up the vacancies, the Recruitment Rules have to be strictly adhered to. Therefore the administrative instructions contained in Annexure-R(5) permitting filling up of vacancies only by promotion and/appointment

by direct recruitment thus contravening the Recruitment Rules cannot be sustained because Recruitment Rules which have got statutory force cannot be modified by administrative instructions. Therefore we are of the view that there is no merit in the contention of the respondents that the applicant though became qualified for appointment as Bindery Assistant in the year 1984, could not be appointed because of the ban. Further, in Annexure-R(4) dated 17.7.1984 there is a clause which says that the ban would not apply to vacancies to be filled up on compassionate grounds or by appointment of handicapped persons in accordance with the procedure laid down in the Department of Personnel & A.R. and subject to the percentage quota laid down in the relevant orders. Further, in all the ban orders it has been stated that a certain amount of flexibility is permissible and that approval at the appropriate level can be obtained if filling up of vacancies is felt necessary. In this case since the applicant is a handicapped person with long experience in printing and binding and since he had passed the trade test as early as in the year 1984, the third respondent should have addressed the appropriate authorities for sanction to appoint him to that post. For the above said reasons, we find that the action of the respondents in not appointing the applicant as Bindery Assistant at least in the year 1989 when recruitment was made to the post of Bindery Assistant cannot be justified.

5. We are of the view that for more than one reason the applicant could have been appointed as a Bindery Assistant without violating any of the instructions provided by the Department. ~~Res.~~ The instruction dated 3.1.1984 Annexure-R(3) did not apply to the filling up of vacancies of operational posts and the post of Bindery Assistant is undoubtedly such a post. Again the applicant could have been appointed to the post in his capacity as a handicapped person which is covered by para-3(c) of the Annexure-R(4) instruction. Lastly, when vacancies have been filled up by promotion, there can be no reason why the same should not be filled up by direct recruitment. In these special circumstances, we are of the opinion that this application has to be allowed and we order accordingly. We direct the respondents to consider the applicant, within a period of two months from the date of communication of this order, for appointment to the post of Bindery Assistant on the basis of his passing in the trade test with the highest marks in the year 1984 and if found suitable, to appoint him to that post with effect from 20.3.1989 i.e. the date on which two vacancies were filled up by promotion, as if the ban, if any, against such recruitment, does not apply to this case.

There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


18/10/90
(NV KRISHNAN)
ADMVE. MEMBER

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