

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 614
T. A. No.

1991

DATE OF DECISION 22.12.92

K. K. Dayanandan & K. Chandran Applicant (s)

Mr. M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

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

Mr. V. V. Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? no
3. Whether their Lordships wish to see the fair copy of the Judgement? to
4. To be circulated to all Benches of the Tribunal? no

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicants are aggrieved by the non-inclusion of their name in the list of candidates selected for the post of Postman published after the departmental examination held on 21.10.1990. They have also challenged Annexure-III 'Rules for Recruitment to Postmen and Mail Guards.'

2. The applicants are E.D. Agents. They appeared for the examination held by the Department on 21.10.90 for selection prepared to the post of Postman. Annexure-I is the list of candidates/ seniority and pass in to on the basis of their/ the examination. The applicants are ranked as 16 and 15 respectively. The applicants claim

that they are eligible to be selected as Postman on the basis of their higher seniority in Annexure-I list. They challenge the method of recruitment to the post of Postman as arbitrary and illegal. They contend that as per the existing rules, 50% of the total vacancies in the 50% quota must be filled by E.D. Agents on the basis of their merit in the departmental examination irrespective of the unit or division of recruitment. It is stated that candidates in other units/divisions with lesser marks are selected and therefore the applicants are also entitled to be selected. It is also submitted that the selection on the basis of examination held on 30.7.79 was on the basis of length of service from among qualified E.D. Agents and there is no reason to deviate from this procedural precedent. The revised procedure if any was not circulated or made available to the applicants. Hence, they filed this application for the following reliefs:

- "i) to permit the applicants to file a single application.
- ii) to declare that the provisions under column 11 of the Annexure-III Rules in so far as it denies promotion to E.D. Agents on the basis of seniority cum fitness is null and void;
- iii) Delcare that applicants are entitled to be included in the select list on the basis of their seniority in Annexure-I
- iv) Alternatively to declare that the applicants are entitled to be included in the select list for appointment in preference to any other candidates in Kerala Circle with lesser marks.
- v) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant..."

3. The respondents, in their reply statement ~~xxxx~~ have denied all the averments made in the Original Application. They have stated that the Postmaster General, Calicut had approved 13 vacancies for selection of candidates of which 7 in the departmental quota and six outside quota and that

while calling for applications for the examination, it was clearly mentioned that the selection will be made as per the recruitment rules stated in para 1 and 11 of DGP's letter No. 44-44/82-SPB dated 7.10.89. Since there was no candidates from departmental quota, the vacancies earmarked for departmental candidates were added to those admissible to E.D. Agents coming under merit quota. There was only three vacancies in outside seniority quota. The three persons selected in this quota were more senior than the applicants. The eight persons selected in outside merit quota are having higher marks in the examination than the applicants.

4. They have also stated that as far as Department of Posts is concerned, ED Agents are treated as outsiders for recruitment to departmental posts and as per the schedule to recruitment Rules, 50% of vacancies meant for outsiders are to be filled by E.D. Agents who qualify in the examination according to their seniority. It is also stated that the three persons selected in seniority quota are having higher seniority than the applicants. The persons selected in the merit quota are having more marks than the applicants. Hence, the applicants are not entitled to be included in the select list either in seniority quota or in merit quota.

5. We have heard the arguments and perused the documents. In fact, in the reply statement the respondents have stated

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that there were only 13 vacancies and the applicants were at Sl. No. 16 and 15 respectively. In filling up these 13 posts, the applicants' case cannot be considered because of their low seniority and merit.

6. We have considered similar issue in O.A. 320/91 and pronounced our judgment on 20.1.92. In the facts and circumstances of this case, we are of the view that this application can be disposed of following the judgment in that case. The relevant portion of the judgment reads as follows:

"6. The applicants next contention that the chances of promotion of EDA based on the allocation in col.11 would be reduced equally is unsustainable. The Supreme Court in Union of India and others V. L. Dutta and another, AIR 1991 SC 363 indicated that reduction in chance of promotion is not a condition of service. The Court held as follows:

"...As has been laid down more than once by this court, the court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force quo the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same... These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reason of their training and experience. The question is, therefore, whether this change can be said to be arbitrary or malafide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing...."

7. The provisions of allocation of seats as contained in column 11 of the Rules for Recruitment to Postmen and Mail Guards read as follows:

"....Column 11 Method of recruitment
(1) 50% by promotion failing which by Extra Departmental Agents on the basis of their merit in the Departmental Examination.

(2) 50% by Extra Departmental Agents of the Recruitment Division or unit in the following manner namely:-

(i) 25% from among ED Agents on the basis of their seniority in service and subject to their passing the Departmental examination failing which by E.D. Agents on the basis of merit in the Departmental examination.

(ii) 25% from amongst ED Agents on the basis of their merit in the Departmental examination.

(3) If the vacancies remained unfilled by EDAs of the recruiting Division, such vacancies may be filled by the EDAs of the Postal Division falling in the zone of the Regional Directors.

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7. Under these rules, 50% of the seats are earmarked for promotion of group-D officials who have put in three years of regular service. Rest of the 50% is set apart for the EDAs dividing them equally into two categories viz. seniority and merit. This allocation appears to be fair. The E.D. Agents cannot be equated with group-D employees. The rule making authority have given an equitable distribution and the allocation contained in the method of recruitment cannot be struck down for reasons mentioned in the application. There is no force in the contention of the applicant. The application is liable to be rejected."

7. Hence, we follow the above judgment and dismiss the Original Application.

8. There shall be no order as to costs.

Dharmadan
22.4.92

(N. DHARMADAN)
JUDICIAL MEMBER

Krishnan
22.4.92

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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