

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF JUDGMENT: 3.1.90

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. No. 99/89

Ravikuttan. K

Applicant

vs.

1. Union of India represented by
its Secretary to the Ministry
of Post and Telecommunication,
New Delhi

2. The Post Master General, Kerala
Circle, Trivandrum and

3. The Senior Superintendent of
Post Offices, Ernakulam Division

Respondents

M/s M. R. Rajendran Nair & P. V. Asha

Counsel for the
applicant

Mr. K. Karthikeya Panicker, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant approached this Tribunal for a direction to the respondents to allow him to sit for the examination proposed to be held on 19.2.1989 for selection and recruitment to the cadre of Group 'D' post.

2. The applicant at present is working as Chowkidar in the non-test category in the Head Post Office, Ernakulam. Though he entered the service on 4.10.1987

W

..

as Extra Departmental Delivery Agent, he became Chowkidar w.e.f. 24.12.1987. The post in which he is now working is also a group 'D' post, but it is a non-test category. There is also a test category of group 'D' post carrying the same scale of pay. For getting further promotion the applicant should be included in the test category.

Passing of the present test proposed by the respondents is a condition for inclusion in the test category.

3. When the second respondent by memo No. B.32-Gr.D Exam/88 dated 19.8.1988 announced the proposal to conduct the examination for promotion to the cadre of group 'D' on 20.11.88 notifying 24 vacancies, the applicant also applied since he satisfied all eligibility criteria mentioned in the instructions at Annexure-I. The applicant's name was included as Sl. No. 1 in Annexure-II list of ED officials permitted to appear for the examination. But it was postponed to 19.2.1989 since it could not be held on 20.11.1988 as scheduled earlier.

4. The second respondent published on 7.2.1989 a list of 66 candidates found eligible to appear for the test. The name of the applicant was not included in the list. On enquiry it was understood that because of a disciplinary proceeding for having participated in a demonstration of workers on 14.7.1988 his name was not included. Though he filed objection, the third respondent passed Annexure-III proceedings which read as follows:-

h/

" I, Hilda Abraham, Senior Superintendent of Post Offices, Ernakulam Division, Cochin-11 do hereby order that the next one increment of Shri K. Ravikuttan, Chowkidar, Ernakulam Head Office be withheld for a period of two years from the date on which it falls due without cumulative effect."

The applicant filed an appeal against Annexure-III and it is pending consideration before the Appellate authority. But the respondents did not include his name in the list. Hence the applicant filed the present application seeking a direction for allowing him to sit for the examination.

5. The respondents filed counter affidavit and objected to the prayer of the applicant. They relied on the eligibility conditions clause (a) in Annexure-I which reads as follows:

" Non-test category class IV officials with a 'satisfactory record of service' are eligible to take the examination. No age limit is prescribed for non-test category Class IV officials."

According to the respondents the applicant has not 'satisfactory records' and not eligible to sit for the examination because of the disciplinary proceedings which culminated in Annexure-III order.

6. The case of the respondents cannot be accepted for the following two reasons:

i) The applicant was originally found to be an eligible candidate having satisfied all criteria for sitting for the test. His service records were found to be satisfactory and the respondents have included him in the list, Annexure-II published on 4.11.1988.

✓

This was after Annexure-III proceedings dated 17.10.88. The inclusion of the name of the applicant in the list published by the second respondent after the above proceedings of the third respondent indicates really an admission on the part of the respondents about the satisfactory nature of the service records of the applicant for being included in the list. It may be presumed that the second respondent may have issued the list without knowing the proceedings of the third respondent. But when once a list had been issued including the name of the applicant, it cannot be deleted on the ground of unsatisfactory service records without issuing notice and hearing him on that question. Admittedly such a notice was not issued to the applicant. The action of the respondents is bad and violative of the principles of natural justice.

(ii) It is not explained by the respondents in the counter affidavit or even at the time of the argument as to how when Annexure-3 proceedings, which are pending in appeal, affects the service records of the applicant and how they become unsatisfactory so as to deprive him of the right of at least sitting for the examination. The offence charged against the applicant is only of a minor nature of having participated in a demonstration. It is not a very serious offence so as to take the drastic action against the applicant of barring him

from sitting for the examination to make a selection from the non-test category to a test category. It is only a preliminary step of the selection. Any action intended to be taken against the candidates who sit for the examination can be continued even after the passing of the test and before giving them the promotion. There is no justice in preventing candidates from sitting for the test without convincing reasons. Moreover, his appeal against Annexure-III order, which is now pending before the competent authority, the applicant cannot be prevented from sitting for the examination on the flimsy and technical ground of having passed Annexure-III proceedings against him.

7. A similar question came up for consideration before this Tribunal in TA 166/87 in which disciplinary proceedings were taken against the applicant there-in for his involvement in some trade union activities and when he sought permission to sit for a competitive examination he was prevented from it on account of the disciplinary action initiated against him for his involvement in the trade union activities. The Tribunal considered the matter and observed as follows:

" The arguments of the respondents that the disciplinary proceedings had nothing to do with the question of admission to the examination which is based solely on the assessment of his five years of service is not very convincing. If it was so, how is it that the respondents could come to the conclusion that the applicant's five years of service was unsatisfactory in 1985, but could not arrive at the conclusion in so far as the question of his five years of service to be assessed in 1984 is concerned. For the 1985 Examination, the assessment of 5 years

of service had to be done by them, say for the period from 1980 to 1985 but, for the 1984 Examination they could not do the assessment till today about the quality of the applicant's service for the period between 1979 and 1984. Could the assessment for the year 1979 hold back the five years assessment for the 1984 Examination when the respondents had no difficulty in grading the performance of the applicant for the period between 1980 and 1987? One gets from the above, the irrefragable feeling that it is only the pendency of the disciplinary proceedings in March, 1984 and its culmination in punishment extant in March, 1985 that made all the difference whereby the applicant was allowed provisional admission to the 1984 Examination, but was denied admission altogether to the 1985 Examination.

6. The pith of the matter is whether the eligibility criterion of five years of satisfactory service merely to let a candidate appear in the examination should be overdone to such extent as to deny him even admission to examination which is the real objective test of a person's calibre. We feel that the eligibility is only the threshhold of the selection process and should not take over the selection process itself. This will be making a mockery of the selection process itself and will give overwhelming power to the authority at the threshhold, subjectively to admit or deny admission to the candidates to the main selection process.

X

X

X

Where certain remarks have been made which could be or deemed to be adverse, but were either not communicated or having been communicated representations are pending, such adverse remarks as per the judicial pronouncements should be ignored as if they did not exist and admission should not be denied. If certain punishment as a result of disciplinary proceedings have been awarded, unless the proven charges are of grave misconduct, the punishment should not be allowed to inflict a double punishment of denial of admission to the selection test. The competent authority in assessing whether the service is satisfactory, for the limited purpose of admission to the selection test, should exercise his judgment only in the extreme cases of delinquency while allowing the border line cases and cases of no adverse remarks or cases of uncommunicated adverse remarks pass muster for taking the selection test."

8. While agreeing with this view expressed by the Tribunal in the above case, we would like to make it clear that preventing a person from appearing for such

h
v

examination would be unfair unless there is some satisfactory and convincing reason justifying such action on the part of the administrative authority in these days when the chance of getting promotions are rare and very much competitive.

9. Considering the facts and circumstances of this case we feel that there is no legal justification on the part of the respondents in preventing the applicant from merely sitting for the examination on account of the disciplinary proceedings which are pending before the appellate authority. In fact the order passed in such proceedings are admittedly pending in appeal and the respondents ought to have adverted to it and allowed him to take his chance by sitting for the examination. We feel that the applicant should have been allowed to sit for the examination.

10. At the time of the admission of this Original Application on 17.2.1989 the Tribunal had passed an interim order directing the respondents to allow the applicant to participate in the test for group 'D' test-category to be held on 19.2.89 or on any subsequent date. It is submitted by the Government counsel that the applicant has been permitted to sit for the examination but the results have not been announced.

11. In the result, we allow the application and direct the respondents to publish the result and if the applicant is successful in the test, he should be given all consequential benefits as per rules.

12. There will be no order as to costs.

M. Dharmadan
(N. Dharmadan)
Judicial Member

3.1.90

N. V. Krishnan
(N. V. Krishnan)
Administrative Member

N. V. Krishnan
3.1.90

kmn