

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION

: 28.2.90

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.100/89

1. K.A Baby
2. N.K Bhanu
3. K.C Joseph
4. Seethalakshmi T.B .. Applicants

v.

1. Union of India, represented by its
Secretary to Government,
Ministry of Communication,
Department of Posts, New Delhi.
2. The Post Master General,
Kerala Circle, Trivandrum.
3. The Senior Superintendent of Post Offices,
Ernakulam. .. Respondents

M/s. M.R Rajendran Nair, P.V Asha .. Counsel for the
applicants

Mr.K.Karthikeya Panicker, ACGSC .. Counsel for the
respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 16.2.1989 filed under Section 19 of the Administrative Tribunals Act, the applicants who have been working as Extra Departmental Packer and Extra Departmental Branch Post Master from various dates between 1.7.82 and 29.2.1984 have challenged the notification dated 16.11.82 (Annexure-IV) amending the Recruitment Rules to prescribe lower age limits of 35 years for non SC/ST candidates and 40 years for SC/ST candidates for ED Agents for promotion to Class IV posts as also the instructions issued dated 20.6.83 prescribing lower age limit for EDAs for recruitment to the post of Postman/clerical cadres. Since they were recruited after 16.11.82 they will be governed by the lower age limits and debarred from appearing in the qualifying test. They have prayed that they should be

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allowed to appear in the examination to be held on 19.2.89 or thereafter. They had applied for admission to the examination which was to be held on 20.11.1988 but they were not admitted in the examination because of being overaged. Their representations were also rejected. The respondents have justified their exclusion from the eligibility list on the ground of the amendment to the Recruitment Rules. They have also indicated that even if the age conditions are relaxed, some of the applicants will not fall within the seniority zone which is fixed at five times the number of the vacancies. Promotion is made on the basis of seniority cum securing qualifying marks in all the papers. Since there was no provision in the Rules to admit overaged EDAs, they could not be allowed to sit in the examination.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The Recruitment Rules for Class IV posts which were notified on 20.10.1970 prescribed the age limit of 18-25 years as on the 1st July of the year of recruitment for direct recruitment. The rules are silent as regards percentage of vacancies to be filled up by direct recruitment, promotion or transfer. It indicated against the column entitled "whether age and educational qualifications prescribed for direct recruitment apply in case of promotion" in column 7 ^{as} ~~are~~ "not applicable". In column 10 against the heading "in case of recruitment by promotion, deputation, transfer, grades from which promotion/deputation/transfer

27
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to be made", the following was indicated:-

*Promotion

Boy Peons failing which by
direct recruitment and transfer
of officials mentioned at II below
through a test (for test see Note I below)

Notes:-

1. The syllabus of the test and the minimum pass marks for recruitment to posts at 1 in subordinate offices shall be as laid down by the DG,P&T from time to time , before commencement of the examination.
2. Extra Departmental Staff may be considered against the vacancies for direct recruitment in subordinate offices subject to such conditions and in such manner as may be decided by the DG P&T from time to time.
3. Casual Labourers and Part-time casual labours may be considered against the vacancies for direct recruitment subject to the such conditions laid down by the DG P&T from time to time".(emphasis added)

From the above it is clear that Extra Departmental staff are to be considered for appointment in Class IV posts not as a matter of promotion or direct recruitment, but as a matter of transfer through a Departmental qualifying test where they have to obtain some minimum pass marks. In accordance with Note 2, as quoted above, the D.G, P&T issued instructions dated 7.4.80 , the relevant extracts of which, are quoted below:-

"(1) The age limit of EDAs is raised from 40 to 42 for appearing in examinations for promotion to Postman/Class IV . In case of SC/ST this limit will be 47 years.

(ii) The number of ED candidates appearing for the qualifying examination for recruitment to the departmental cadres will be normally limited to five times the number of vacancies. However, the candidates will be selected only to the extent of vacancies announced and no waiting list would be maintained. If sufficient number of ED candidates do not qualify a supplementary examination for ED candidates would be held, before throwing open the vacancies to other category of employees.

(iii) In case where vacancies remain unfilled in departmental cadres from ED candidates casual labour candidates etc. of any division under the existing orders and if such of these vacancies are to be thrown open to the candidates of E/Exchange, these vacancies may be first offered to the eligible candidates of neighbouring division before approaching the E/Exchange. For this purpose in the case of unfilled vacancies in RMS they may be thrown open to the Postal division where the appointing unit of RMS Sub division is situated and vice versa. In the case of PSD or MMS the unfilled vacancies may be given to the Postal Division or RMS Division from which their clerical or Class IV are deputed as the case may be. Before considering EDAs of neighbouring divisions it should be ensured that no eligible official is available in the recruiting divisions."

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The above instructions would clearly show that the upper age limit for EDAs was fixed as 42 years for non SC/ST and 47 for SC/ST EDAs. It also indicated that the examination was qualifying and the number of those admitted in the examination will be five times the number of vacancies. The fact that the age limit fixed was not 25 years as for direct recruitment, goes to show that the EDAs appointed to Class IV posts under the Recruitment Rules are not to be treated as direct recruits though they may be considered against the vacancies of direct recruitment. It may also be noted that casual labourers are also to be considered for recruitment if EDAs are not available and just like EDAs they are to be held against direct recruitment vacancies. It may also be noted that for casual labourers the D.G, P&T's aforesaid instructions do not indicate any upper age limit. When this point of discrimination between the EDAs and the casual labourers

72

was pointed out to the learned counsel for the respondents Shri Thomas John, he took some time to get clarification and the case was adjourned. In the next hearing, he pointed out that casual workers are to be treated as direct recruits and the age limit of direct recruits would apply to them. We are not impressed by this argument because casual labourers like EDAs have been shown to be considered against vacancies for direct recruitment and not as direct recruits. If casual labourers were to be appointed as direct recruits, they would not have been mentioned in column 10, which refers to recruitment by promotion, deputation and transfer. They should have been mentioned in columns 4, 5 or 6 of the schedule to the Recruitment Rules. Further Note 3 in the schedule in column 10 refers to appointment of casual labourers under such conditions as would be laid down by the D.G, P&T from time to time. This also shows that the casual labourers are not to be treated as direct recruit, otherwise subjecting their recruitment to the D.G, P&T's instructions would not have arisen. Notes 2 and 3 in the aforesaid schedule, as quoted above, were deleted by the amendment notification dated 16.11.82

and were substituted as follows:-

- 22
- "(2) (a) Extra Departmental Agents who have been recruited earlier to the date of this notification would be eligible for recruitment to Group 'D' posts in the Subordinate Offices if they are within 42(47 for SC/ST) years of age and have put in at least 3 years of continuous service as ED Agents.
 - (b) Extra Departmental Agents who are appointed after the date of issue of this notification will be eligible for recruitment to Group 'D' posts in Subordinate Office if they are within 35 years(40 years for SC/ST) of age and have put in at least 3 years continuous service as ED Agents, provided they have been recruited as ED Agents through Employment Exchanges. The condition of recruitment of Extra Departmental Agents through Employment may be waived in cases where no candidates were sponsored by

Employment Exchanges within the time as stipulated time did not fulfil the conditions as prescribed by the P&T Department for appointment as Extra Departmental Agents of the specified categories. Extra Departmental Agents so recruited will also be eligible for recruitment to Group 'D' posts subject to the condition of restriction of age 35 years (40 years for SC/ST) and a minimum length of continuous service of 3 years as ED Agents.

- "3. Casual Labourers/Part-time casual labourers engaged through Employment Exchanges will be eligible to be recruited to group 'D' posts provided they have put in 240 days service in each of the preceding two/four years. Broken periods of service shall be taken into account for this purpose, provided that each such period of service is six months or more. Casual labourers, part-time casual labourers shall get the benefit of the period spent by them as casual, part-time labourers for reckoning their eligibility in respect of the prescribed maximum age limit". (emphasis added)

By the amendment, the upper age limit of EDAs who are appointed after the date of notification, was reduced from 42 to 35 years for non SC/ST EDAs and from 47 to 40 years in case of SC/ST EDAs. It was also laid down that only those EDAs would be eligible for recruitment to Class IV posts who complete 3 years of service as EDA. As regards casual labourers 240 days of service in each of the preceding 2 or 4 years was prescribed and in the matter of upper age limit, they were given the benefit of the periods spent by them as casual/part-time labourers added to the maximum upper age limit. This benefit of addition of period of service put in to the upper age limit was not extended to the EDAs. From the above it is clear that there is a patent discrimination not only in the fixation of upper age limit but also in the matter of giving the benefit of past service put in for reckoning the upper age limit, between the EDAs and the casual labourers, both of whom are eligible to be considered against the direct recruitment vacancies.

22

3. The learned counsel for the respondents argued that reducing the upper age limit is an administrative policy and cannot be subjected to judicial review. He cited the ruling of the Supreme Court in State of Andhra Pradesh and another v. V.Sadanandam and others, AIR 1989 SC 2060 in which it was observed that choice of mode of recruitment is a matter of policy which falls exclusively within the purview of the executive. In that case, however, the Supreme Court observed that since the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals and Court of law. In the instant case, however, we have to exclude the element of discrimination or arbitrariness before the judicial review can be excluded. The learned counsel for the respondents cited still another ruling of the Supreme Court in K.Nagaraj and others v. State of Andhra Pradesh and another, AIR 1985 SC 551, in which it was held that the power to frame rules under Article 309 of the Constitution and to amend the rules under that Article is of a legislative character and ^{in is} being plenary/nature/within the field demarcated by the Constitution and accordingly the exercise of that legislative power cannot be challenged. In that case the decision of the Andhra Pradesh Government of reducing the age of retirement from 58 to 55 years had been challenged. That policy decision was upheld as it was not found to be arbitrary or irrational. It cannot be stated that this ruling would keep every rule framed under Article 309 of the Constitution beyond the pale of judicial review even when arbitrariness, discrimination or unreasonableness or malafide is alleged. It may be recalled in passing that the Supreme Court in Superintendent of Post Offices v. P.K Rajamma, AIR 1977 SC 1677 ^{has} held that the Extra Departmental Agents hold civil posts under the Posts

22

and Telegraphs Department. Since the casual labourers cannot be deemed to be holding civil posts the EDAs are in a superior level of employment under the Government than the casual labourer. For instance while the EDAs are entitled to the protection under Article 311 of the Constitution, the casual labourers are not so protected. In the circumstances, any benefit of age relaxation which has been extended to the casual labourers as indicated

above cannot be denied to the EDAs who are equally eligible under the Recruitment Rules for promotion to Class IV posts of the P&T Department. Since the amendments to the rules does not prescribe the same upper age limits for the casual labourers as for the EDAs and since the EDAs are not given the benefit of adding the period of service rendered by them to the upper age limit, there is an obvious discrimination in the amendment, which has not been satisfactorily explained by the respondents as having any nexus with the objective in view.

4. Even though the EDAs and the casual labourers are recruited in Class IV posts against direct recruitment vacancies, as discussed above, the mode of recruitment is not direct recruitment, but by transfer. The respondents have not been able to explain why an upper age limit of 35 years has been clamped for EDAs who are recruited after 16.11.82 while for casual labourers, there is no such upper age limit prescribed in the amendment. The respondents have feebly argued that fixing the upper age limit as 35 years was in the public interest and in the interest of efficiency of Class IV posts. But they have conceded that for appointment of non test category to Group D staff there is no upper age limit for promotion to the cadre of Mailman which is included in the Class IV cadre of P&T Department.

32

The fact that EDAs who were recruited before 16.11.82 are appointed ^{to Class IV cadre} upto the upper age limit of 42 years and yet are expected to carry out duties of Class IV staff adequately goes to show that there is no particular magic of efficiency at the upper age limit of 35 years. On the other hand the EDAs who can be kept upto 65 years of age if recruited after 16.11.82 as EDA will have to rot for 35 years as EDAs as there would be no avenue of promotion for them after attaining 35 years of age. In Council of Scientific and Industrial Research and another v. K.G.S Bhatt and another, AIR 1989 SC 1972, the Supreme Court held that when a person is recruited in an organisation it is not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Hence the young EDAs recruited after 16.11.1982 cannot be shut out completely for recruitment to Class IV staff of the P&T Department.

5. The EDAs before us are more or less similarly circumstanced as were the Constables, Head Constables etc. of the Punjab Police for whom an upper age limit was fixed before they ^{could} ~~can~~ be allowed to appear in a qualifying examination before they became eligible for selection for the next higher post of Head Constable, Sub Inspector etc. This issue came up before the High Court of Punjab and Haryana more than once. In Kirpal Singh v. State of Punjab and others, 1969 S.L.R 120, it was held that if the Government prescribes any qualification for being eligible, it must also provide opportunity to the officer concerned to acquire that qualification and if the examination or a training course is held or conducted

by the Government, every officer willing to undergo that examination or course in order to qualify himself for promotion should be allowed to pass that examination or go through that course. No obstacle can be placed in his way by prescribing a method of selection or age limit. In that case an upper age limit of 45 years relaxable in appropriate cases was prescribed for Assistant Sub Inspectors for inclusion in a list prepared on the basis of a selection for admission to a training course. His selection for promotion is made only after his name is brought on that list and he has undergone the necessary training course. It was held by the High Court that the prescription of upper age limit was bad in law. The same High Court in *Ram Labhaya v. State of Punjab*, 1972 S.L.R 775 held that every Head Constable on list 'C' has the right to be sent for the Intermediate School Course in the order of his seniority and no provision for test and age can be made for admission to promotion course. Test is a hurdle in way of Head Constables to acquire necessary qualifications for next promotion as Assistant Sub Inspector. It was held that the prescription of age of 40 years for the Head Constables on attaining which they are debarred from being considered for the promotion course for Head Constables under the amended Rules is unconstitutional and has to be struck down. It was further held that the restriction of age can also not be provided as it has no nexus to the object to be achieved, that is , promotion of Head Constables to the post of Assistant Sub Inspector. This provision is arbitrary as no reason has been shown for its fixation. It also violates the Fundamental Right of the Head Constables under Article 16 of the Constitution and is liable to be struck down.

6. Still in another case the Punjab and Haryana High Court in *Superintendent of Police, Gurdaspur and others v. Kashmir Singh Constable and others*, 1975 (2)

S.L.R 116, held that prescription of the age of 30 years for Constables, on attaining which they are debarred under rule 13.7(2) from being considered for selection for admission to the Promotion Course for Constables at the Police Training College is unreasonable and an infringement of their fundamental rights under Article 16 of the Constitution of India and that the restriction of age cannot be provided for as it has no nexus to the object to be achieved thereby, i.e. promotion to the post of Head Constable. The following pertinent observations of the High Court are relevant to this case also:-

" Now coming to the next contention of the learned counsel for the appellants regarding fixation of age limit in rule 13.7(2). I do not find any merit in it. I agree with the findings of the learned Single Judge that rule 13.7(2) is unreasonable and ultra vires Article 16 of the Constitution. The age of superannuation of constables is 58 years in Punjab and it seems highly unreasonable and arbitrary that the constables after having attained 30 years of age are debarred from consideration for further promotion for a period of 28 years. Hence this provision regarding age limit is arbitrary as no reason therefor has been indicated in the rules. Rather this fixation of age limit debarring the constables for further promotion after they become 30 years of age, would lead to frustration and resting and will result in inefficiency in the Police Force. In that event the constables who have crossed 30 years of age, would have no incentive to hard work and honesty because they know that their future career is blocked as they cannot be promoted even to the next rank of Head Constables, what to say of consideration for higher promotion. Thus rule 13.7(2) has no relation with the object to be achieved thereby and goes contrary to Article 16 of the Constitution. The only object to be achieved in Police Force is honesty, hard work and efficiency. I fail to understand how this object can be achieved by blocking the future career of the constables at the age of 30 years when they have still 28 years of service to go with no incentive. This bar or restriction on the age is unintelligible as no object will be achieved by framing these rules. The bar has been placed on a constable at such an early stage of his life that it has denied him the chance of any promotion during the last 8 years of his service career. This at any rate has to nexus with the object to be achieved thereby. The counsel for the appellants had for his contention relied on A.Naronha v. State of Mysore, A.I.R 1966 Mysore 267, which is clearly distinguishable. In that case the age of superannuation was 55 years and the rule prescribed that for promotion as Deputy Superintendent of Police the Inspector concerned

52

should not have completed the age of 52 years. That seems to be quite reasonable because if a person could not show any merit upto the age of 52 years, he cannot do so during the remaining three years. But in the case in hand, the prescription of the age of 30 years seems to be highly unjust. The maximum age limit of entry as constable is 24 years and if a person who joins as constable at the age of 24 years, is unsuccessful to get admission in list 'B' for another six years, he is condemned for future promotion for the rest of 28 years of his service career. It is really very harsh. Hence agreeing with the learned Single Judge, I hold that rule 13.7(2) so far as it prescribes age limit at 30 years for the constables for entry into the list 'B', is unreasonable and ultra vires Article 16 of the Constitution." (emphasis added)

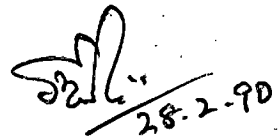
9. We are satisfied that in the instant case before us, the fixation of upper age limit of 35 years for EDAs recruited after 16.11.82 has no scientific or rational basis and does not stand to any reason of efficiency. When these EDAs are expected to work for Extra Departmental assignments including those of Branch Post Master etc. efficiently upto the age of 65 years, to cut down their career of further promotion at the age of 35 years, is arbitrary and unreasonable. The amendment is also discriminatory, as indicated earlier, as no such upper age limit has been prescribed, in the amendment for casual labourers. Unlike casual labourers, no allowance has been made for the service rendered as EDAs.

10. In the conspectus of facts and circumstances we allow the application to the extent of declaring that the amendment fixing the upper age limit of 35 years for non SC/ST (40 years for SC/ST) of age for EDAs appointed after 16.11.1982 as unconstitutional. We also direct that the Extra Departmental Agents should be given the same benefit of the period spent by them as EDA for reckoning their eligibility in respect of prescribed maximum age limit in the same manner as has been allowed to casual labourers in the impugned notification dated 16.11.82 at Annexure A-3. The respondents are directed

to consider those applicants who had been provisionally allowed to appear in the selection test for appointment to Class IV cadre, if they are eligible, fall within the zone of consideration and zone of appointment keeping in view the aforesaid declaration of the upper age limit as void and the benefit of service rendered ^{as EDA's} for reckoning the upper age limit.



(A.V HARIDASAN)
JUDICIAL MEMBER


28.2.90

(S.P MUKERJI)
VICE CHAIRMAN

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