

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.

115/91

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DATE OF DECISION 30-12-91

V.P. BALAKRISHNAN

Applicant (s)

Shri M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus

SUPDT. OF POST OFFICE, BADAGARA

AND 2 OTHERS Respondent (s)

Shri K.A. Cherian, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, M(A)

The Hon'ble Mr. N. Dharmadan, M(J)

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? W
4. To be circulated to all Benches of the Tribunal? A

JUDGEMENT

N. Dharmadan, M(J)

The applicant's grievance is against Axe-I
a list of candidates, prepared by the Supdt. of Post
Offices, Badagara Division for appointment to the
cadre of Postman, after the declaration of the results
of the departmental examination held on 21-10-90.
According to him his name should have included as
Sl. No.3 in Annexure-I.

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2. Annexure-VI is the new Recruitment Rules governing absorption of EDDAs as Postman, a class IV post. An EDDA with more than 3 years of service who is below 40 years is eligible to appear for examination for ⁴ to be held/appointment to the cadre of Postman. Selected candidates are appointed against the quota reserved for out side candidates. If the number of qualified ED agents are more than the number of vacancies, out side candidates are selected on the basis of the order of merit in the examination upto the number of vacancies. The vacancies of Postman are thus filled up under the Rules from among the departmental candidates (Group-D staff) and outsiders(ED Agents) in the ratio of 1 : 1. The seniority list of ED agents was fixed and circulated as per Axe-III dated 28-9-90. The applicant is shown as Sl. No.3 in the said seniority list while 3rd respondent is No.9. By virtue of the seniority the applicant has a better claim for promotion and posting as postman. Annexure-IV discloses the vacancy position in Badagara Division which is as follows:

<u>... Departmental</u>			<u>Outsiders</u>		
OC	-	5	OC	-	4
SC	-	1	SC	-	1
ST	-	1	ST	-	1
		<u>7</u>			<u>6</u>
					...

According to the applicant it was unnecessary for setting apart any vacancies for departmental candidates for no Group-D candidate was available. Out of 13, seven vacancies were set apart for departmental candidates. This is because in Badagara division during 1988 there were 9 vacancies out of which five were set apart for departmental candidates. Again in 1987 out of 3 vacancies two were set apart for departmental candidates. According to the applicant, for making up the loss of vacancies of ED Agents in 1990 seven vacancies could have been reserved for ED Agents of which 4 vacancies would have been available for seniority quota among ED Agents and in which case the applicant would have found a place in select list even without sitting for the examination. However, the applicant submitted that in the seniority list published as per memo dated 28-9-90 the applicant was rank No.3 and in the examination the applicant secured the following marks out 100

	<u>Paper and subject</u>	<u>Marks obtained</u>
A (1)	Making entries in Postman Book	38
B	Arithmatic	40
C	Writing from dictation	33

But after the publication of the result, Axe-I list was issued, the applicant's name was not included in

the same. On the other hand the third respondent who was ranked below the applicant as No.9 in the seniority list as Sl.No.3 (Roll No.24) was included ^{by} It appears Axe-V a corrigendum, was issued by the Supdt. of Post Offices on 15-10-90 deleting the applicant's name from Axe-III Sl.No.3, and adding R-3 as Sl.No.2-A between Sl.No. 2 and 3.

3. According to the applicant Axe-V has been issued altering his seniority without any prior intimation or without giving any opportunity of being heard. The action of the respondents 1 and 2 is violative of principles of natural justice and liable to be quashed. He has also another reason for invalidating the selection as contained in Axe-I. Relying on A-VI new Rules governing absorption of ED agents as Postman the applicant submitted that when the number of qualified ED agents in the examination exceeded the number of vacancies reserved for outsiders the respondents 1 and 2 should have brought them on the approved list according to the total length of service as ED Agents upto the number of vacancies. Axe-VI which was subject to change by

DGP&T was modified by Axe-VII in which it was stipulated that the unfilled vacancies of departmental quota will be added to the one half of the quota meant for ED Agents on merit. In para 13 of the said letter it was specifically provided that it should be circulated to all concerned immediately. But unfortunately, according to the applicant it was circulated in Badagara Division only after the issue of Axe-I dated 6-12-90. The applicant further submitted that as it was expressly made known as per Axe-III that there was no departmental candidates the applicant reasonably believed that the departmental quota of 7 candidates would also be transferred to the out side quota (EDA) and 50% would have been filled up on the basis of seniority among candidates qualified in the examination and in that event the applicant would have normally got selected as Postman.

4. The respondents 1 and 2 have filed counter affidavit. In the reply it is stated that selection and publication of Axe-I list was made in accordance with the rules and that all the 3 persons selected under the seniority quota are ranked above the applicant by

virtue of their earlier entry in the E.D. Agents service. They submitted further that there was a factual error in Axe-III seniority list prepared on 28-9-90. This error was found out only when the third respondent has submitted his objection to it and the same was rectified by ordering the name of the third respondent to be shown as Sl.No.2-A instead of Sl.No.9 based on her correct date of entry in the Extra Departmental service which was 16-8-71 and not 11-8-73. But it was wrongly shown in Axe-III. It is invalid to the extent of applicant's seniority as shown above. Hence Axe-V was issued. This memorandum correcting the list of seniority was communicated to all candidates including the applicant as per Axe-V dated 15-10-90 before the examination which was held only on 21-10-90. Nobody including the applicant submitted any objection to the corrigendum. It is true that no candidate from Department quota was available and hence vacancies earmarked for the departmental candidates were added to those admissible to the Extra Departmental Agents i.e. outside candidates coming under merit which was prescribed as 50% of the outside quota. This was done in the light of the Departmental instructions, contained

in the letter No.44-44/B2 SPB I dated 7-4-89 of the DG(P). The applicants are fully aware of the seniority position as refixed as per corrigendum. Hence the statement that the applicant was senior to the third respondent cannot be accepted. Since the applicant did not object to Axe-V order which was communicated to him as in the case of earlier orders in-spite of genuine grievance at the appropriate time he cannot now be permitted to raise any such objection based on the corrigendum. The Rules and govt. orders do not envisage selection of all the candidates who are securing the qualifying marks, but the selection has to be limited to the number of vacancies as per the departmental Rules for each year selection should be apportioned equally both from departmental candidates and outsiders. Hence the division of vacancies as seven for departmental candidates and six for outsiders was correct. In 1988 only five vacancies were earmarked for departmental quota, and ~~xxx~~ one departmental hand passed in the examination. Hence the remaining vacancies were given to the outsiders category. Similarly in 1989, two vacancies reserved for the departmental candidates were added to out-side category as no departmental candidate qualified

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in the examination so far. In these circumstances the application is liable to be dismissed.

5. We have heard the arguments and considered the documents. The applicant has built up a case based on Axe-III seniority list which was issued on 28-9-90 long before the departmental examination which was held on 21-10-90. This seniority list was issued fixing R-3's rank as 9 based on a mistake in the entry of her service as EDDA. When this was pointed out by the 3rd respondent, by the corrigendum Axe-V, which was issued on 15-10-90, the mistake was rectified. This rectification proceedings were communicated to the applicant also. According to the respondents, the applicant did not either challenge this order in this application or xxxxxxxx file any objection before the examination. Hence it is to be presumed that the applicant sat for the examination held for the post of Postman on 21-10-90 after fully conversant with the fact that he is below R-3. Admittedly there was only 3 vacancies at the time. The persons who ranked above the applicant who secured more marks than him were selected and appointed. There is no illegality in the selection and appointment.

6. In the latest statement submitted by the respondents they have stated that there were 13 vacancies in the cadre of Postman in the subdivision. The result of this 13 were announced and 11 candidates were selected and appointed and two are awaited for absorption. The next arising vacancy will have to be offered to the 12th candidate. This statement has not been objected to by the applicant. This statement make the position clear that the applicant is not eligible to be appointed to ~~the~~ any of the vacancies so far announced on the result.

7. Annexure R-I(b) was issued on 4-10-90 even before the examination which was held on 21-10-90 giving correct details about vacancies, which inter alia stated that Badagara has total 13 vacancies of Postman, Mailguards for which the examination was to be held. Respondents 1 and 2 are now filling up only those 13 vacancies in accordance with the rules and the applicant has not been included within that 13 candidates considering his seniority among the EDAs. Hence his first contention based on Axe-III that he is eligible to be included in the outsiders quota cannot be accepted.

8. The next contention is based on some minor irregularities in the circulation of Axe-VII (failure to comply with the mandate in Axe-VII). Axe-VII stipulates that the list of EDAs(candidates) to be selected on the basis of length of service for one half of the outsiders quota should be circulated in advance and it should be circulated sufficiently in advance to all concerned immediately after the preparation. According to the applicant even the circular of DGP & T was circulated in Badagara Division only after issue of Axe-I list dated 6-12-90. The respondents in their reply answered this point by stating that the delay in communicating Axe-VII(Ext.R-I(a) would not vitiate the selection for it has no bearing on the performance of the candidates in the examination. There is no need to consider break-up of the recruitments in the earlier years as the shortfall in the departmental quota is fully adjusted by recruiting from the outsiders without any restriction as to the 50% of the announced vacancies. They also stated that the seniority list of eligible candidates was prepared and circulated to all concerned as per letter No.B.2/Postman/Exam/90 dated 19-7-90. Later Axe-V corrigendum was also circulated to

all offices in the division so as to enable the applicant and others affected can raise their objections. But no objection was raised against the correct seniority fixed by the respondents 1 and 2 at the appropriate time. Under these circumstances we are not in a position to accept the contention of the applicant. Considering the statement in the reply statement, we are of the view that there is no irregularity in the selection of Postman and the preparation of list at Axe-I as contended by the applicant.

9. In the result, the Original Application is dismissed. There shall be no order as to costs.

N. Dharmadan

30.12.91.

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(N.V. KRISHNAN)
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA 9/92 in O.A. No. 115/91
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109

DATE OF DECISION 13.3.1992

VP Balakrishnan Review Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus
Superintendent of Post Offices,
Badagara Division, Badagara Respondent (s)
and others.

Mr KA Cherian, AGCSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member
and

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? *to*
3. Whether their Lordships wish to see the fair copy of the Judgement? *to*
4. To be circulated to all Benches of the Tribunal? *to*

JUDGEMENT

Sh N Dharmadan, J.M

In this review application filed by the applicant in OA 115/91,
applicant *he* *raises* the ground that there are some factual errors in the
judgment which warrant a review and rehearing of this case, disposed
as per our judgment dated 30.12.91.

2 According to the applicant, he did not really get an
opportunity to file objection to Annexure-V Corrigendum dislocating
the seniority position of the applicant as evidenced in Annexure-III.

This corrigendum was never communicated to the applicant and it
causes injustice to him and this was brought to our notice at the
time of final hearing of the case.

3 We have heard the parties and considered this very question
in paragraphs 5 and 8 of our judgment on the basis of the specific
to reply in regard to this issue given by the respondents in their

reply statement. The respondents have clearly stated in the reply statement that Annexure-V corrigendum was communicated to all persons concerned, including the applicant, but none has objected to the same. Having regard to the facts and circumstances of the case, we came to the conclusion that the applicant did not either challenge these orders in the original application nor did he raise any objection before the examination which was held on 20.10.90.

4 Accordingly, we see no ground whatsoever to entertain this review application.

5 The learned counsel for the applicant, however, ^{Postman} submitted that vacancies of ED posts are become available under the respondents to accommodate the applicant and the respondents should have accommodated the applicant also taking into consideration his pass in the examination and the seniority. This is not a ground for review of our judgment in this case already passed after careful consideration of all the aspects. However, if the applicant has any right either to be accommodated against any existing vacancy, or to be posted in any ED Post without passing the examination any further, is matters to be placed by him before the concerned authorities for consideration, if he is aggrieved. Such right, if any, of the applicant is not foreclosed by this judgment. He has the liberty to agitate these matters before the appropriate forum for redressal of his grievance, if so advised, in accordance with law.

-3-

6 In the result, the Review petition is rejected.

NDharmadan / 13.3.92
(N Dharmadan) (NV Krishnan)
Judicial Member Administrative Member

13.3.1992