

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 13 1990
~~Am. No.~~

DATE OF DECISION 29.6.90

M.T. Sreemathy Applicant (s)

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

Versus

Union of India rep. by Respondent (s)
Secretary, Ministry of Communications
and two others.

Mr. T.P.M. Ibrahim Khan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N.Dharmadan, Judicial Member

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

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 1.1.90 the applicant who has been working as an Extra Departmental Stamp Vendor under the Senior Superintendent of Post Offices, Ernakulam, has prayed that the impugned notification dated 16.11.82 should be set aside and the applicant declared to be eligible to appear for examination for recruitment to Group 'D' post and that the respondents be directed to allow her to take the examination. The brief facts of the case are as follows:

2. The applicant has been working as Extra Departmental Stamp Vendor from 24.11.82. Her date of birth is 2.8.52.

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2/3/90

ED Agents like her who had rendered 3 years of service could appear for examination for recruitment to the regular cadre of Grade D posts in the Postal Department. Till 1982 the upper age for EDAs for appearing in the aforesaid examination was 42 years for non-SC/ST candidates and 47 years for SC/ST candidates. The Recruitment Rules were amended by the impugned notification dated 16.11.82 by which for those EDAs who were appointed after the issue of the notification the upper age limit was reduced from 42 years to 35 years for general candidates and from 47 years to 40 years for SC/ST EDAs. Since the applicant was appointed as Extra Departmental Stamp Vendor on 24.11.82, i.e. only 8 days after the issue of the notification, she is excluded from 1988 onwards by the revised age limit by the aforesaid notification. Her contention is that no recruitment test was held for Grade D posts in the Ernakulam Division between 1982 and 1986 when she was within the revised age limit. When the first test was held in 1986 she was not called for the test as she was not within the seniority zone. In 1987 also when a test was held because of her low seniority she was not invited to appear in the test. In 1988 when she came within the zone of consideration she submitted a representation for being allowed to take the test even though she had crossed the upper age limit of 35 years by then. Her representation was not considered by the respondents and the holding of the examination was announced without calling her. However, by the interim order of the Tribunal dated 19th January, 1990, it was ^{selection test} directed that the applicant be allowed to appear in the test.

being held on 28.1.90 or any deferred date provisionally and subject to the outcome of this application. The applicant's contention is that since the age of retirement of EDAs is 65 years and they have no other promotional chance except to enter Group D category, by lowering the age limit from 40 years to 35 years in case of those appointed after 16.11.82, the respondents have arbitrarily, irrationally and unreasonably deprived her of promotion and subjected her to hostile discrimination violative of Articles 14 and 16 of the Constitution. She has referred to the ruling of the Supreme Court wherein it was observed that ~~the~~ reasonable promotional opportunities should be made available in every wing of public service.

3. The respondents have stated that at the time of entering service as EDA the applicant very well knew about the notification dated 16.11.82 prescribing the upper age limits for promotion to Group D post. They have stated that Group D examinations were held in the Ernakulam Division in 1984 and 1987. In 1989 she was not permitted to appear in the examination as she was over-aged. Since there is no provision for relaxation of the upper age limit her representation was rejected.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. An identical question challenging the revised age limits prescribed in the notification dated 16.11.82 was considered in OA 100/89 filed by 4 ED Packer and ED

some of whom

Branch Postmasters [✓] had been recruited after 16.11.82.

They were also not allowed to appear in the examination held on 19.2.89 or thereafter for promotion to Group D post on the ground that they were over-aged. Their representations were rejected on the ground of amendment of the Recruitment Rules. This Tribunal in its judgement dated 28.2.90 to which one of us was a party (Shri S.P.Mukerji) after detailed discussions concluded as follows:

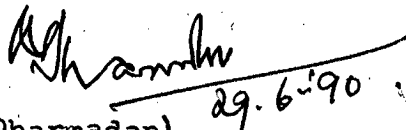
"9. We are satisfied that in the instant case before us, the fixation of upper age limit of 35 years for EDAs recruited after 16.11.82 has no scientific or rational basis and does not stand to any reason of efficiency. When these EDAs are expected to work for Extra Departmental assignments including 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 16.11.92 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 16.11.92 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 EDAs for reckoning the upper age limit."

5. In view of the aforesaid decision, we allow this application and declare that the upper age limit of 35 years for non-SC/ST EDAs and 40 years for SC/ST EDAs appointed

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after 16.11.82 is unconstitutional. The applicant
for the purpose of upper age limit should be treated at
par with EDAs who were recruited before 16.11.82 and
considered for appointment on the basis of the results
of the test in which she appeared under the interim orders
of this Tribunal, if she is otherwise eligible and falls
within the zone of consideration and zone of appointment.
Action on the above lines should be completed within a
three
period of 4 months from the date of communication of
this order. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(S. P. Mukerji)
Vice Chairman