

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 155/95

Wednesday, this the 6th March of 1996.

CORAM

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN  
HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

M. Ravindran Nair,  
Extra Departmental Mailman  
(officiating as Group D Mailman)  
Head Record Office,  
Railway Mail Service "Trivandrum" Division  
Thiruvananthapuram.

....Applicant

By Advocate Mr. O.V. Radhakrishnan

Versus

1. Director General of Posts, New Delhi.
2. Director of Postal Services (Headquarters )  
Thiruvananthapuram.
3. Senior Superintendent  
Railway Mail Services "Trivandrum" Division  
Thiruvananthapuram.
4. Head Record Officer, Head Record Office,  
Railway Mail Services  
Trivandrum Division  
Thiruvananthapuram.
5. Union of India represented by its Secretary,  
Ministry of Finance, New Delhi. ....Respondents

By Advocate Mr. T. R. Ramachandran Nair, ACGSC.

The application having been heard on 6.3.1996  
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicant a 52 year old Extra Departmental Mailman, aspiring to become a group-D employee, challenges A1 rule issued by the Director General of Posts & Telegraphs fixing an upper age limit of 50 for appointment of Extra Departmental Agents, as group-D employees.

2. A6 rules framed under Article 309 of the Constitution confer the power of prescribing the age qualification, to the Director General of Posts & Telegraphs. By A7 amendment dated 16.11.82, this power of prescribing age qualification was taken away from the Director General with the result that age qualification can be prescribed under the rules. The rule then prescribed an age limit of 42 and 35, for those who entered service prior to the rule and thereafter, in that order. That prescription of age was struck down by a bench of this Tribunal in O.A.K. 557/88 (reported in 1990 (14)ATC 227). After the age prescription was struck down, the Director General issued A1 order prescribing an upper age limit of 50. This is under challenge.

3. According to learned counsel for applicant, the power which the Director General had, was taken away by the Statutory Rules (A7 amending A6). After the power was taken away from him, he cannot exercise it by issuing A1. In answer, Standing Counsel would argue that since the Statutory prescription was struck down, administrative rules can be issued. We find it difficult to accept this argument.

4. In the absence of Statutory rules, administrative rules can govern the subject and such rules can be made under the power vested in the executive by Article 73 of the Constitution. But once the legislative power is exercised, executive power cannot be exercised in respect of the same subject matter, except in areas not governed by the statutory rules. Even executive power can be exercised only by Union of India in the name of the President and in accordance with the allocation of Business Rules and not by an officer of the Union like the Director General. In the case on hand, the administrative power to make rules available under A6, has been taken away by A7 consciously. May be the prescription of age in the exercise of the statutory power has been struck down as arbitrary. But the fountain head or source of power remains under Article 309.

..3..

If one is to assume that invalidation of the exercise under Article 309 would enable the executive to make rules, that will be anathema in the constitutional scheme, enabling the executive to do what cannot be done by the statute. For this reason, A1 is unsustainable. It is not even an administrative rule because it is not referable to the power under Article 73. The decision in O.A.k.557/88 does not hold that age limit cannot be prescribed by statutory rule, it only holds that the upper age limit prescribed was not reasonable. We make it clear that all the powers available under the statutory rule can be exercised reasonably.

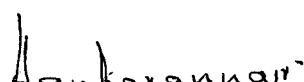
5. The impugned selection cannot stand. Fresh selection will be made with reference to the date of arisal of the vacancies considering the case of applicant on merits.

6. Application is allowed and A1 is quashed to the extent of prescribing an upper age limit, the relief prayed for, by applicant. This order will not affect promotions granted to those, who are not parties before us. Parties will suffer their costs.

Dated the 6th March, 1996.

  
P.V. VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

kmn

  
CHETTUR SANKARAN NAIR (J)  
VICE CHAIRMAN

List of Annexures

1. Annexure A1:- True copy of the letter No.44-31/87-SPB.I dated 28-8-90 of the 1st respondent.
2. Annexure A6:- True copy of the Indian Posts and Telegraphs (Class IV posts) Recruitment Rules, 1970 published as per notification dated 20-10-1970 of the Department of Communication.
3. Annexure A7:- True copy of the Indian Posts and Telegraphs Group 'D' posts Recruitment(Amendment) Rules, 1982 as per notification dated 16-11-1982 of the Department of Communications.