

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.155/97 and O.A.No.1714/98

Friday, this the 22nd day of October, 1999.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR J.L. NEGI, ADMINISTRATIVE MEMBER

(i) O.A.No.155/97

1. D. Anitha, D/o Pushpangathan,
Extra Departmental Branch Postmaster,
Kazhuvur P.O., Pulluvila-695526.
2. O. Sreekala, W/o B. Vijayan,
Extra Departmental Packer,
Perumpazhathur Post Office,
Neyyattinkara.
3. S. Santha Kumari Amma, W/o M.N. Sreekantan Nair,
Extra Departmental Branch Postmaster,
Lourdipuram, Puthiyathura P.O.,
Puthuvila-695526.
4. A. Chandrasekharan Nair, S/o Achuthan Nair,
Extra Departmental Delivery Agent,
Kodunganoor P.O., Vattiyoorkavu.

...Applicants

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. The Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Superintendent of Post Offices,
Trivandrum South Division,
Trivandrum.
3. Union of India represented by
Secretary to Government,
Department of Posts,
Ministry of Communications,
New Delhi.

...Respondents

By Advocate Mr Govindh K. Bhaŕathan, Sr.CGSC.

(ii) O.A.No.1714/98

1. Sathya Narayanan, S/o N.K. Govindankutty Adiyodi,
Branch Postmaster Iyyankode,
P.O. Iyyankode,
Via: Nadapuram - 673504.
2. Radhakrishnan V, S/o Late Kunjurama Kurup,
E.D.D.A, Iyyankode P.O. -673504.
3. Baburajan.K, S/o Krishna Kurup,
E.D.D.A, Chemmarathur P.O.Pin: 673104,
Vadakara.

...Applicants

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. Union of India represented by
the Secretary to Government of India,
Ministry of Communications,
Trivandrum.
2. The Chief Postmaster General,
Kerala Circle,
Trivandrum.
3. The Superintendent of Post Offices,
Vadakara Division,
Vadakara.

...Respondents

By Advocate Mr P. Vijayakumar, ACGSC.

The applications having been heard on 21.9.99, the
Tribunal delivered the following on 22.10.1999.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicants in O.A.155/97 seek the following
reliefs:

"(i) To quash Annexure A9;

(ii) To declare that Clauses 'a', 'b' and
'c' of Rule '2' of Annexure A2, the
Department of Post (Postal Assistants and
Sorting Assistants) Recruitment (Amendment)
Rules, 1992 are arbitrary, unreasonable
and unjust and therefore unconstitutional;

(iii) Direct the respondents to consider
the applicants and other Extra Departmental
Agents for promotion as Postal
Assistants/Sorting Assistants in a just
and fair manner by appropriate procedure
in accordance with law;

(iv) Grant such other reliefs as may be
prayed for and the Tribunal may deem fit
to grant; and

(v) Grant the cost of this Original Application."

2. Applicants in O.A.1714/98 seek the following reliefs:

"(i) declare that the limitation in Clause (b) of Rule 2 of Annesure A1 that only E.D. Agents securing not less than 10% marks in comparison with the marks secured by the last open market candidate of the previous selection will be eligible for being considered for recruitment as Postal Assistant is unjust, arbitrary and discriminatory and hence void as violative of Articles 14 and 16 of the Constitution of India;


(ii) declare that applicants are eligible to be considered for appointment as Postal Assistants on the basis of their merit in the selection process, not limited by the marks obtained by any candidate in previous selection;

(iii) direct the resspndents to fill in the 3 vacancies of Postal Assistants arising from shortage of eligible department candidates by appointing E.D. Agents of Vadakara Division on the basis of their merit.


(iv) grant such other relief as may be prayed for and the Tribunal may deem fit to grant; and

(v) grant the costs of this Original Application."


3. Applicants are Extra Departmental Agents. They say that they are possessing the required minimum qualifications prescribed for direct recruitment as Postal Assistants/Sorting Assistants. As per the provisions contained in the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990, the category of Postal Assistants and Sorting Assistants are classified as General Central Service-Group C Non Gazetted (Ministerial). Clause '5' of the Schedule of the rules indicates that the posts are not either selection posts or non-selection posts.



The Recruitment Rules stipulate that 50% of the posts must be filled by direct recruitment and 50% by promotion through Departmental Promotion Committee. Column '11' of the schedule of the Recruitment Rules was amended by Department of Posts (Postal Assistants and Sorting Assistants) Recruitment (Amendment) Rules, 1992. In column 11 in item '6' amendments were made to the effect that unfilled vacancies shall be offered to ED Agents of the recruiting divisions/units subject to their fulfilling certain conditions. One of the conditions is that they should possess the minimum educational qualification of 'plus two' (Senior Secondary) and have put in a minimum service of 3 years. There is a further stipulation that only those ED Agents would be eligible for being considered who have secured not less than 10% marks in comparison to the last open market candidate considered. The condition for promotion is harsh and unrealistic. The departmental examination was conducted on 29th of May, 1994 and the list of selected candidates was published from the office of the 1st respondent on 5.10.94. As per A4, only 65 candidates are included in the list. 152 vacancies are available for being filled up by ED Agents. Non-availability of lower grade officials is on account of fixation of minimum qualifying marks in the departmental examinations. Applicants in O.A.155/97 approached this Bench of the Tribunal by filing O.A.1770/94. That was disposed of as per order dated 19.9.95 permitting the applicants to take their grievances before the 3rd respondent. The representation of the 1st applicant was rejected as per A9 order in O.A.155/97.



4. Respondents resist the O.A. contending that by virtue of the amendment to the Recruitment Rules, the department is seeking the services of young and meritorious ED Agents recruited to the Postal Assistants cadre. The conditions prescribed cannot, therefore, be described as harsh and unrealistic. It is not correct to say that there were 217 vacancies of Postal Assistants and Sorting Assistants in Kerala Circle. Unfilled vacancies under the departmental quota are to be offered to ED Agents of the concerned Postal Division. A major share of posts of Postal Assistants/Sorting Assistants go to the lower grade officials who are initially recruited as ED Agents. The applicants, therefore, cannot, complain about fixing the minimum qualifying marks in the departmental examination. ED Agents are having enough promotional avenues even now and there is no necessity to relax any of the provisions in the Recruitment Rules. Including ED Agents as a feeder category subject to the conditions in the Recruitment Rules, is a concession extended to ED Agents to provide for those who are young and meritorious among them a faster track for promotion as Postal Assistants/Sorting Assistants. This cannot be held as unjustified or unreasonable. Applicants cannot contend that the position will be while even direct recruit may get appointment with lower marks in a particular recruitment year, ED Agents will be refused consideration on the ground that they did not obtain a particular minimum marks prescribed. This is because, the ED Agents are also free to apply for the post as outsiders and if they are qualified to be recruited as outsiders, they can be selected. In case they are well qualified and do not come in the zone of consideration they can also avail



the chance for getting recruited to the cadre in accordance with the departmental orders if there are unfilled vacancies in the departmental quota.


5. Learned counsel appearing for the applicants in O.A. 155/97 submitted that in respect of the second prayer, the relief of declaration that Clauses 'a' and 'c' of Rule '2' of A2 are arbitrary, unreasonable and unconstitutional is not pressed.

6. The question for consideration is whether Clause 'b' of Rule '2' of A2, Amended Recruitment Rules, is arbitrary, unreasonable and unconstitutional.

7. Rule 2 'b' of A2 reads thus:

"(b) Only those Extra Departmental Agents would be eligible for being considered who have secured, not less than 10% marks in comparison to the last open market candidate considered i.e., if in the last recruitment the last open market candidate selected had secured 75% marks, the Extra Departmental Agents to be considered should have obtained at least 65% marks. Bonus marks as admissible to open market candidates will also be admissible to those Extra Departmental Agents who are Graduates or Post Graduates."


8. According to applicants Rule 2 'b' of A2 is bad in law and it is unrealistic for the reason that if in the last recruitment the last open market candidate had secured 75% marks, the ED Agents to be considered should obtain at least 65% marks, that this is a varying figure dependent on uncertainties and that the rule is therefore suffering from the vice of uncertainty. The applicants also say that while even direct recruit would get appointment with lower marks in a particular recruitment year, ED Agents will not be considered on the ground



that they did not obtain the particular minimum marks prescribed.

9. Unfilled vacancies as per A2 shall be offered to E.D. Agents of the recruiting division/unit. That being so, it is possible that while in one division/unit direct recruits obtaining 80% marks and above only are selected, in the other division/unit direct recruits obtaining 70% marks are selected. It can also be a case that in a particular division/unit in a particular year direct recruits obtaining 80% or more marks alone are selected while candidates like the applicants may get selected when they have secured only 60% marks if in the last recruitment the last open market candidate selected had secured only 70% marks. Article 14 does not insist that classification should be scientifically perfect or logically complete.

10. In this context it is relevant to note that the respondent have stated in the reply statement that ED Agents are having enough promotional avenues even now, that including them as a feeder category subject to the conditions in A2 is a concession extended to them to provide for those who are young and meritorious among them a faster track for promotion as Postal Assistants/Sorting Assistants, and that they are free to apply for posts as outsiders and if they are qualified to be recruited as outsiders, they can get selected. It is further stated in the reply statement that in case they are well qualified and do not come in the zone of consideration they can also avail the chance of getting recruited in the cadre in accordance with the departmental orders if there are unfilled vacancies in the departmental quota.




11. Learned counsel appearing for the applicant drew our attention to Malpe Vishwanath Acharya and others Vs State of Maharashtra and another (AIR 1998 SC 602). It is a case dealing with Bombay Rents, Hotel and Lodging House Rates Control Act. The said ruling has no application to the fact of the cases at hand.

12. Another ruling relied on by the learned counsel for the applicants is Chandigarh Administration Vs Sumesh Kumar and others [(1997) 2 SCC 205]. We have gone through the said ruling. It has no direct application to the facts of the cases at hand.

13. Learned counsel appearing for the applicants drew our attention also to the ruling in State of Bihar and others Vs Bihar Rajya Sahkarita Prabandhak Seva Sangh, Patna and others [1998 (8) SCC 218]. This ruling does not apply to the facts of the cases at hand.

14. Ruling in Satpal and others Vs State of Haryana and others with Ramlal and others Vs State of Haryana and others [1995 Supp (1) SCC 206] also brought to our notice by the learned counsel for the applicants. This ruling also does not apply to the facts of the cases at hand.

15. Learned counsel appearing for the applicants also drew our attention to the ruling in E.N. Srinivas Vs Bangalore University [1994 (7) SLR-232]. The question involved therein was whether a public authority is justified in aborting the recruitment sequence prior to its reaching a stage of finality. That is not the question involved here. In the said case the respondent-university unjustifiably and clandestinely varied the categorisation of the posts. There is no such cases here.



16. In J. Rangaswamy Vs Government of Andhra Pradesh and others (AIR 1990 SC 535) it has been held:

"It is not for the Court to consider the relevance of qualifications prescribed for various posts."


17. In Commissioner, Corporation of Madras Vs Madras Corporation Teachers Mandram and others [(1997) 1 SCC 253] it has been held:

"It is a well-settled legal position that it is the legal or executive policy of the Government to create a post or to prescribe the qualifications for the post."


It is also held therein that Court or Tribunal is devoid of power to give such direction to create a post or to prescribe the experience as may be required as an incumbent to hold the post.

18. Applicants say that Rule 2 (b) of A2 is violative of Articles 14 and 16 of the Constitution of India.

19. Equal protection means the right to equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed. From A2, the amended rules, it is seen that the applicants apart from being free to apply for the post as outsiders in case they are well qualified and do not come in the zone of consideration, they can avail the chance of getting recruited to the cadre in accordance with the rules. This is an additional or extra opportunity made available to the applicants apart from other promotional avenues available. So, it cannot be contended that while no such minimum mark is prescribed for open market candidates, prescribing of minimum mark for the applicants is violative of the provisions of Article 14 of the Constitution of India.




20. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of the different classes of persons often require separate treatment. Differential treatment does not 'per se' constitute violation of Article 14. If a law deals with members of well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to others. The applicants, ED Agents, as a well defined class is given another opportunity for promotion apart from other avenues of promotion available. No service rule can satisfy each employee. What Article 14 prohibits is class legislation and not reasonable classification. In order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. It cannot be said in the cases at hand that the classification is not founded on an intelligible differentia which distinguishes persons or things that are grouped together and others left out of the group. The object sought to be achieved by Rule 2(b) of A2, according to the department, is to attract young and meritorious ED Agents for recruitment to the Postal Assistants Cadre. The department wants to give an additional opportunity to those young and meritorious ED Agents to keep up excellence in service. So, rule



2(b) of A2 prescribing a differentia has a rational relation to the object sought to be achieved.

21. Article 16 of the Constitution of India is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, Article 16 does not debar a reasonable classification of the employees in the matter of appointment or promotion, provided that the classification is made with reference to the objective sought to be achieved. Article 16 does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. It is open to the appointing authority to lay down such prerequisite conditions for appointment as would be conducive to efficiency or proper discipline amongst government servants. Article 16 permits a classification between direct recruits and promotees and special recruits and also higher and inferior classes or grades in the same service calling for different degrees of efficiency and responsibility. Here it is not a case that no guide is offered by the relevant provision which leaves to the government or an executive officer the power to select any suitable person to an higher cadre, thus giving them an arbitrary power of patronage.

22. Applicants in O.A.1714/98 say that the test conducted on 31.10.98 was extremely tough and apprehend that they may fail to secure the prescribed mark. Respondents have stated that the applicants in O.A.1714/98 have failed in the test.



23. In Om Prakash Shukla Vs Akhilesh Kumar Shukla and others (AIR 1986 SC 1043) it has been held thus:

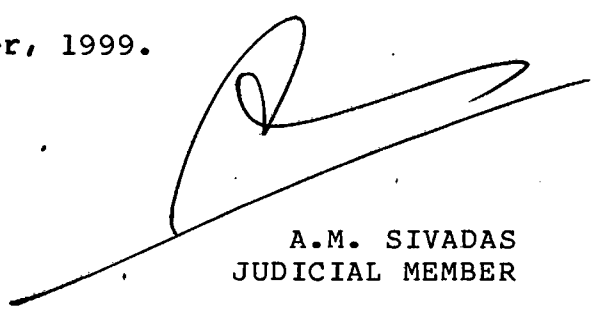
"...this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination."

In O.A.1714/98 the applicants appeared for the test without any protest. It is clear from the pleadings that the applicants have realised that they would not come out successful in the test. That being so, they are not entitled to any relief.

24. Both the Original Applications fail and are dismissed. No costs.

Dated the 22nd of October, 1999.


J.L. NEGI
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

P.211099

List of Annexures referred to in the order

A1, True copy of the Recruitment Rules 1990 vide No.60/90-SPB-I dated 27.12.90 issued by the Assistant Director General (SPN) Ministry of Communications, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi.

A2, True copy of the Recruitment (Amendment) Rules, 1992 vide letter No. Rectt/4-1/Rlgs/92 dated 24.11.92 issued by the Assistant Director General (SPN), Department of Posts, New Delhi.

A3, True copy of the letter No.Rectt/10-3/94 dated 7.10.94 issued by the 2nd respondent.

A4, True copy of the letter No.Rectt/10-3/94 dated 5.10.94 issued by the Assistant Director (A/Cs & Rectt.) of the 1st respondent.

A9, True copy of the Order No.66-6/95-SPB-I dated 13.6.96 issued by the Director (Staff) Office of the 3rd respondent to the 1st applicant.
