

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 157/91
XXX

DATE OF DECISION 30.7.1992

Mr A Gopinathan Nair _____ Applicant (s)

Mr G Sasidharan Chempazhan-
thiyil _____ Advocate for the Applicant (s)

Versus
Senior Superintendent of
Post Offices, Trivandrum & another Respondent (s)

Mr K Prabhakaran, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman
&

The Hon'ble Mr. AV Haridasan - Judicial Member

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

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

In this application, the applicant Shri Gopinathan Nair, E.D. B.P.M., Venkulum, has prayed that the memo dated 14th December, 1990 issued by the 1st respondent containing the list of candidates selected for appointment to the post of Postman in the examination held on 21.10.90 may be quashed inasmuch as it does not include his name and that the 1st respondent may be directed to appoint the applicant as Postman in Trivandrum North Division and to

revise the select list selecting 1/5th of the candidates who had appeared for the examination on 21.10.1990. The applicant's case can be briefly stated thus:

2. In pursuance to the announcement made by the 1st respondent on 9.7.1990 regarding the examination for recruitment of Postman/Mail Guards to be held on 30.9.1990, the applicant who had been an ED BPM with 12 years' of service also offered his candidature. The examination was actually held on 21.10.1990. As the applicant had a break in service taken on 25.5.1989 as he had part in the strike called by the ^h Trade Unions, he had rendered unconditional apology and had ^h represented for condonation of the break. The applicant was provisionally allowed to take part in the examination. The qualifying percentage of mark in the examination is 45. The applicant had obtained 117 marks out of 150. According to the recruitment rules, the number of ED Agents to be permitted to take part in the examination under the seniority/outsider quota would be 5 times the number of vacancies announced in that quota. The 1st respondent had by his letter dated 8.10.90 (Annexure V) circulated the list of 266 ED Agents who were permitted to take the examination. Though according to the instructions contained in the letter dated 7.4.89 (Annexure III) the 1st respondent was bound to announce the vacancies in the respective quota, this was not done. However, as 266 EDAs were allowed to participate in the examination, it should be assumed that the number of vacancies

in the seniority/outsider quota must be 53 and, therefore, the 1st respondent should have published a select list of 53 persons in the seniority quota. As against this, the 1st respondent on 3.12.90 (Annexure VI) published a list of 40 selected candidates including two whose results were withheld. Under the seniority-half of the outsider quota, the name of the person immediately above the applicant in the seniority list was shown as item No.19. The applicant who qualified came to know that he was the 20th person in the seniority quota whose result was withheld ~~XXXX~~ despite formal communication of ~~XXXX~~ condonation of break in service. After the persons whose names were included in the select list at Annexure VI had been sent for training ~~XXXXXX~~, the 1st respondent published the impugned list dated 14.12.90 at Annexure VII partially cancelling the Annexure VI list removing S1 Nos.12 to 19 from that list and announcing only 11 selected candidates in the seniority quota. Persons at S1 Nos 12 to 19 in Annexure VI filed an application before this Tribunal and ~~they had been~~ ^{why} provisionally sent for training. ~~Though~~ ^{the} applicant made a representation to the 1st respondent on 26.12.90 stating that the break in service had already been condoned by the competent authority and requesting that his result might be announced. Finding no response to this representation and aggrieved by the Annexure VII memorandum alone by which 11 persons were selected towards the seniority quota, the applicant has filed this application. The applicant

has alleged that there is absolutely no justification for cancellation of the selection of Sl Nos. 12 to 19 and non-inclusion of his name in the select list and that this has been done arbitrarily and against the recruitment rules.

It has further been averred that as 266 EDAs have been allowed to participate in the examination in the seniority-half of outsider quota and as the number of vacancies in the different quota have not been announced by the 1st respondent before holding the examination, the 1st respondent is bound to select 1/5th of the total number of candidates.

It has been further averred that the non-inclusion of the applicant's name in the select list is malafide and deliberately done with a view to cause him irreparable injury.

3. The respondents in their reply statement have contended that the case of the applicant that the vacancies in the different quota were not announced before holding the examination is not correct, that the 1st respondent had by letter dated 12.10.90 announced the number of total vacancies as 44 with the break-up as shown in that order (Annexure R1), that the Annexure VI order selecting 20 persons in the seniority quota of outsiders were issued under a mistake, that in terms of the recruitment rules as the unfilled vacancies of the 50% quota for promotion of Group D officials are to be filled by EDAs on the basis of their merit only, the Annexure VI list had to be cancelled because in that list the unfilled vacancies were apportioned between EDAs

of the merit quota and seniority quota and that the impugned order was issued rectifying this mistake. It has further been contended that as only 11 vacancies were available in the seniority quota, the applicant though has qualified in the examination and was 20th in the series of the qualified seniority candidates, he could not be included in the select list. The respondents have also contended that the Sl Nos. 12 to 19 in the Annexure VI list have filed Original Application No. 1189/90 before this Bench of the Tribunal. They have contended that as the selection has been held in accordance with the recruitment rules and as the impugned order was issued only for the purpose of rectification of a mistake, the applicant does not have any legitimate grievance.

4. We have heard the counsel on either side and have also carefully gone through the pleadings and documents. Vacancies in the cadre of Postman/Village Postman and Mail Guard in the Department of Posts are to be filled in accordance with the recruitment rules which came into force on 5.8.89. According to clause 2 of the schedule to the recruitment rules, the recruitment has to be done as under:-

- (i) 50% of the vacancies are to be filled by promotion of Group D officials failing which by ED Agents on the basis of their merit in the departmental examination; and
- (ii) 50% of the vacancies by ED Agents in the following manner:

(a) 25% (i.e. half of the 50% reserved for EDAs) from among the EDAs on the basis of their seniority in service subject to their passing the departmental examination, and

(b) 25% from among the EDAs on the basis of their merit in the departmental examination.

The 50% vacancies to be earmarked to the EDAs is known as outsider quota. As is seen from the recruitment rules, the outsider quota is further divided into seniority quota and merit quota. The applicant claims appointment in the seniority quota. It is not in dispute that in the departmental examination which was held on 21.10.1990, the applicant had qualified obtaining 117 marks out of 150. But his chance of getting appointment in the seniority quota would depend on the number of vacancies earmarked in that quota. The applicant can also claim appointment in the merit quota provided on the merit in the departmental examination he has acquired a higher grading. As the last person appointed under the merit quota has got 126 marks as is stated in the reply statement which is not disputed by the applicant, the applicant can have no claim for appointment in the merit quota. Then, the question is whether he is entitled to be appointed in the seniority quota. The case of the applicant is that as the number of EDAs who were permitted to appear for the examination in this quota was 266, there should have 53 vacancies in this quota as according to the instructions of the DG, Posts, EDAs numbering 5 times the vacancy under

the quota alone should be permitted to appear for the examination and since the number of vacancies had not been announced before the examination was held. The contention of the applicant that the 1st respondent had not notified the vacancies under different quotas before the examination was held is found to be not correct. Annexure R1 dated 12.10.90 is the notification issued by the 1st respondent specifying the number of vacancies in different quotas. It is seen from this notification that altogether there were 44 vacancies, 22 being earmarked for Group D officials and 22 for outsiders which is divided into two half of 11 each for seniority quota and merit quota. It is evident that in the seniority quota there were only 11 vacancies. Even going by the averment in the application, the place of the applicant among those who qualified in the examination in the seniority quota was 20, while there were only 11 vacancies in the quota. The Annexure VI select list was published on 3.12.1990 containing the list of 19 persons in the seniority quota and indicating that the result of one of the candidates would be announced later. It is now admitted that the applicant was entitled to be placed at S1 No.20. This select list containing more than 11 names in the seniority quota happened to be issued because 20 unfilled vacancies in the departmental quota was divided in equal half between seniority quota and merit quota. This was done without adverting to the provision in the recruitment rules which stipulates that the unfilled vacancies in the departmental quota would be filled by EDAs on the

basis of their merit in the departmental examination. The division of the unfilled vacancies in the departmental quota between the seniority quota and the merit quota of EDAs was, therefore, against the provision in the recruitment rules. It was in these circumstances that the impugned order at Annexure VII happened to be issued partially modifying the select list dated 3.12.1990 at Annexure VI and showing only 11 persons in the seniority quota as selected. The cancellation of the Annexure VI order partially by the impugned order in this case was challenged by those who figured at Sl Nos. 12 to 19 in Annexure A6 in OA 1189/90. OA 1189/90 and two other applications, OA 1190/90 and 1229/90 filed by persons similarly situated were disposed of by this very Bench of the Tribunal by final order dated 20.3.1992. It was held that the cancellation of the earlier select list was justified as it was found to have been made by a mistaken interpretation of the recruitment rules. As observed earlier, the unfilled ^{since} vacancies in the departmental quota are to be filled by the EDAs on the basis of their merit in the departmental examination, no part of the unfilled vacancies should go to the seniority quota. Therefore, there were only 11 vacancies to be filled by EDAs who qualified in the departmental examination on the basis of their seniority. The applicant was No.20 among the EDAs who qualified in the examination. As there were only 11 vacancies, the applicant cannot claim

selection and appointment to a post in the seniority quota.

5. The learned counsel for the applicant argued that since 266 EDAs have been allowed to participate in the examination, if there were only 11 vacancies in the seniority quota, the action on the part of the 1st respondent to allow 266 persons to take the examination is irregular and that for that reason the entire selection should be quashed. We do not find any merit in this argument. The examination was held in common for EDAs both in the seniority quota and in the merit quota. The restriction regarding the number of EDAs will apply only in the case of the vacancies earmarked for the seniority quota and it does not apply to the merit quota because in the merit quota all EDAs who have 3 years' service and are within the age group are entitled to participate. That the restriction is applicable to the candidates in the seniority quota only cannot be disputed by the applicant in view of his averment in the application. At paragraph 9 of the application, the applicant has averred as follows:-

"As per Annexure III, the number of ED agents to be permitted to take the examination under the seniority/outside quota will be 5 times of the vacancies announced."

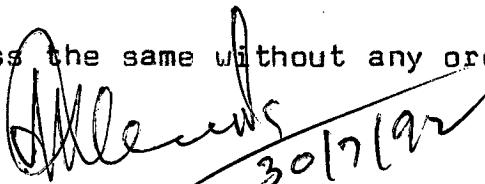
Further, in ground 'H', the applicant has stated as follows:-

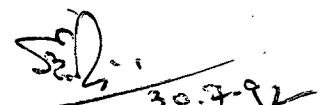
"Based on the number of candidates admitted in the examination the 1st respondent should have selected 53 candidates against seniority/outside quota in accordance with the Annexure III recruitment rules."

(h)

This averment in the application would make it clear that the applicant has understood that the restriction on number of candidates for appearing in the examination relates only to the vacancies in the seniority quota and that there is no such restriction in respect of EDAs who appear in the merit quota. As the examination was held in common, there was absolutely no irregularity in 266 EDAs being allowed to participate in the examination. Among the 11 persons who has been selected in the seniority quota, there is nobody who is junior to the applicant. Therefore, the contention of the applicant that the examination was held in violation of the DG, Posts' instructions regarding the number of candidates has no force.

6. In the conspectus of facts and circumstances of the case, we find no merit in this application and hence we dismiss the same without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

30.7.1992

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