

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 163/91
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DATE OF DECISION 21-4-92

PK Radhan & others Applicant (s)

M/s K Karthikeya Panicker Advocate for the Applicant (s)

Versus

The Superintendent of Post Respondent (s)
Offices, Alapuzha Divn, Alapuzha
and others.

Mr K Prabhakaran Advocate for the Respondent (s) 1 & 2
Mr CM Suresh Babu Advocate for Respondents 3, 4,
6 to 12, 15, 18 to 21 & 23.

CORAM :

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

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

Sh NV Krishnan, A.M

The applicants are ED Agents holding different kinds of ED Posts in the Alapuzha Division of the Posts & Telegraphs Deptt. Their grievance relates to the examination conducted on 28.10.90 for promotion to the cadre of Postmen.

2 Recruitment to the post of Postman and Mail Guards is governed by the Department of Posts (Postman/Village Postman/Mail Guard) Recruitment Rules 1989, Rules for short. These rules have been published at pages 96 to 100 of Swamy's Compilation of Service Rules for ED Staff in the Postal Department (Fourth Edition).

recruitment and
3 Provisions for filling up the vacancies of
Postman are contained in the Schedule to the Rules
which are as follows:

" Co. 11- Method of recruitment-

- (1) 50% by promotion failing which by Extra-Departmental Agents on the basis of their merit in the Departmental Examinations.
- (2) 50% by Extra-Departmental Agents of the recruiting Division or unit in the following manner, namely :-
 - (i) 25% from among ED Agents on the basis of their seniority in service and subject to their passing the Departmental examination failing which by ED Agents on the basis of merit in the Departmental Examination.
 - (ii) 25% from amongst ED Agents on the basis of their merit in the Departmental examination
- (3) If the vacancies remain unfilled by EDAs of the recruiting Division, such vacancies may be filled by the EDAs of the Postal Division falling in the zone of Regional Directors.
- (4) If the vacancies unfilled by EDAs remain unfilled by the EDAs of the recruiting units, such vacancies may be filled by EDAs of the Postal Divisions located at the same station. Vacancies remaining unfilled will be thrown open to EDAs in the Region.
- (5) Any vacancy remaining unfilled may be filled up by direct recruitment through the nominees of the Employment Exchange."

4 The dispute raised in this application is whether
in the written examination the Department can examine
the applicants in Arithmetic of the Tenth Standard of
the Board of School Education. It has been raised in
the circumstances narrated below.

4.1 As is clear from para-3, the ED Agents have to
appear in a written examination.

4.2 The applicants have produced at Annexure A3,
a copy of the circular dated 29.6.90 issued by Respondent-1
(Postmaster General, Central Region, Kochi) relating to

/referred to in
Sl.No.2 in the
aforesaid
extract,

the examination for recruitment to the post of Postmen to be held on 30.9.90. That circular specifies the papers and subjects in which the examination will be held. It is indicated that one paper is of " arithmetic of 10th standard of the Board of School Education". It is contended that this is contrary to the Rules, according to which ED Agents are not be required to be Matriculates.

4.3 The examination was held on 28.10.90 and the applicants appeared alongwith other candidates. A copy of the arithmetic question paper which was given to the candidates has been produced as Annexure A4. The applicants state that though the examination related only to arithmetic, yet, the first question related to Algebra, which was outside the syllabus prescribed by Annexure A3. Hence, the representative union protested against this question paper. One such representation at Annexure A5 was sent on 29.10.90 i.e., immediately following the examination held on 28.10.90. Despite this protest, the authorities have issued two select lists of candidates based on the aforesaid examination as Annexure A6 dated 17.12.90 and Annexure A7 dated 10.1.91.

4.4 The applicants got to know that ~~the~~ 10th standard has been prescribed in the Annexure A3 circular for the purpose of this examination, in pursuance of the letter of the Director General dated 28.4.88

(Annexure A8).

4.5 In the circumstance, the applicants are aggrieved by the Annexure A3 circular relating to the examination, the Annexure A4 question paper on arithmetic, the Annexure A6 and A7 select lists and the Annexure A8 instructions of the Director General of Posts & Telegraphs prescribing arithmetic of 10th standard for the purpose of this examination. The applicants have, therefore, prayed for the following important reliefs:

- "(a) to call for the records leading to Annexure A3 A4, A6 and A7 and quash the same.
- (b) to direct the respondents to fill up the one half of the 50% vacancies of Postman coming under seniority basis quota based on the seniority.
- (c) to direct the respondents to initiate fresh selection to the cadre of Postman.
- (d) to direct the respondents to prescribe the subject to the examination Arithmetic of 8th standard; and
- (g) to call for the records leading to Annexure A8 and quash the same."

5 The respondents have filed a detailed reply. It is stated that the Director General had issued a circular on 28.4.88 (Annexure R1) prescribing the 10th standard for the purpose of the question paper in Arithmetic and Matriculation for English. The impugned Annexure A3 circular relating to the examination was issued in pursuance of Annexure R1 which has now been impugned as Annexure A8.

6 It is admitted that the impugned Annexure A4 question paper contained one question outside the syllabus relating to Algebra. Therefore, moderation was allowed

to all candidates including the applicants and hence, no one has been adversely affected on that score.

7 In regard to the prescription of the 10th standard for the arithmetic paper the reply of the respondents is as follows:

" The applicants' contention that any examination for further promotion should be in the level of the minimum qualification prescribed for the parent post is not tenable. It is submitted that it is open to the appointing authority to lay down any qualification for appointment of a particular post. In the instant case the very same authority who prescribed the minimum qualification for the ED posts has prescribed the minimum standard for the examination for promotion of ED Agents to the post of postman and that too taking into account the recommendations of the 4th Pay Commission and after detailed examination of all the aspects. It is submitted that the said decision is based on a policy and such decisions are not likely to be challenged before this Hon'ble Tribunal. Hence, there is no merit in the argument that the standard of examination should not be revised as the basic minimum qualification to the ED posts have not been revised. It is submitted that promotion is an incentive to those who have better standard, intelligence, initiative and enthusiasm."

8 We have perused the records of the case and heard the learned counsel of both the parties.

9 The learned counsel for the applicant submits that the 4th Pay Commission has not made any specific recommendation that the examination for the ED Agents should be of 10th standard ~~in~~ arithmetic. The ED Agents hold different ED posts. The highest minimum qualification prescribed for any of them (i.e., for ED Subpostmaster, ED Branch Postmaster and ED Delivery Agents) is only 8th standard. They cannot be expected to write any examination of a higher standard. He also relies on the Recruitment Rules for the same contention

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/(Col.8 & 9 of
the Schedule).

because while Matriculation educational qualification is prescribed for direct recruits, it is specifically stated that this will not apply to promotees/. The prescription of 10th standard for this purpose is therefore, illegal.

10 On the contrary, the learned counsel for the respondents submits that the applicants are failed candidates and for that reason alone their applications should be dismissed. It was reiterated that the Annexure R1 circular was not violative of the Recruitment Rules.

11 In regard to this central issue, we find considerable merit in the stand of the respondents. We notice that the applicants were not taken by surprise in regard to the standard of question papers to be set for the examination. The Annexure A3 circular was issued by the Postmaster General, Central Region, Kochi on 29.6.90 indicating that the paper in arithmetic will be of 10th standard and it will be of Matriculation standard for English and regional language. The Annexure A3 circular must have been published by Respondent-1 in Alapuzha Division well before 17.6.90, which was fixed as the last date for receipt of applications by the appointing authorities. The examination was held on 28.10.90 only though it was first notified to be held on 30.9.90. Therefore, if the applicants had any grouse

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in this regard, they had plenty of time to make representations to the Director General of Posts to obtain suitable orders or to approach this Tribunal to obtain suitable directions. As no such action was taken it is clear that the applicants did not have any grievance in this regard i.e., immediately before they appeared in the examination. This is a case of the failed candidates challenging the examination ex-post facto. It would appear that the applicants took a chance and appeared in the examination with the hope of passing the same.

Unfortunately, they failed. They cannot agitate the matter now as was held by the Supreme Court in AIR 1986 SC 1043 Om Prakash Vs. Akilesh Kumar.

12 We also notice that on 29.10.90 i.e., immediately after the examination a Saving Gram was sent to the Chief Postmaster General, Trivandrum and Postmaster General, Cochin protesting against the examination. That protest related only to the inclusion of Algebra in the question paper. There was no protest whatsoever against the arithmetic question paper being of the 10th standard. What is paradoxical and perplexing is that according to the Annexure A3 notice the dictation in English and the regional language is also to be of matriculation standard and yet, the applicants have no complaint in this regard. If the protest is against the high standard of the arithmetic paper, there should have been a similar protest in regard to the dictation in English and regional language. There is no such protest. Therefore, it is clear that

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that this application is only the outcome of the failure of the applicants in the examination because the original application was filed on 28.1.91 i.e., after Annexure A6 and A7 lists had been published.

/showing the results

13 Nevertheless, the questions can be considered on merit.

14 It is evident that the question on Algebra, though admittedly outside the syllabus, has not prejudiced anybody because moderation marks have been given to all candidates. No one was, therefore, placed at a disadvantageous position.

15 The results contained in Annexure A6 and A7 lists also disprove the contention of the applicants. Six ED candidates have passed the Departmental Examination for ED Agents to fill up the posts on the basis of seniority, of whom as many as 4 are SC. Further, 16 candidates have passed the examination for ED Agents for appointment as Postmen on the basis of merit of whom as many as 8 belong to SC. The point we like to stress is that if the arithmetic paper had been beyond the reach of normal ED Agents, so many candidates, particularly those belonging to SC, would not have passed the examination.

16 The other arguments of the applicants are based on the provisions of the Recruitment Rules. The Rules have been extracted in para 3 above. Direct recruitment to the post of Postman may be made only as a last resort i.e., if the post of Postman cannot be filled up either by promotion of Group D persons or by the appointment of ED Agents on the basis of seniority ^{or} otherwise. In such a case a candidate for direct recruitment should have

Matriculation as the minimum "educational qualification" or its equivalent, vide Col 8 of the Schedule to the Recruitment Rules. Col.9 of the same schedule states that educational qualifications prescribed for direct recruits will not apply in the case of promotions.

17 The question is whether the appointment of ED Agents as ~~pres~~ prescribed is by way of promotion. There are some special features which may suggest that the appointment is not by way of promotion but we do not find it necessary to decide this issue.

18 If, for argument's sake, it is considered to be a promotion as in the case of Group D staff, the rule only means that they need not have the "educational qualifications" of matriculation or its equivalent. The learned counsel for the applicant wants us to infer from this circumstance that promotees cannot be examined in any paper which is of the matriculation standard and that at best, they can be examined in question papers of the 8th standard which is the prescribed qualification for the highest ED post.

19 The learned counsel for the respondents submitted that as ED Agents are being promoted to a higher post, which is a stepping stone for further promotions in the department, it was felt that they should have proficiency in arithmetic, at least of the matriculation standard. He also contended that merely because of the fact that prior

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to the issue of the Exbt. R1 circular of the Director General prescribing 10th standard for this paper, the arithmetic paper used to be of a lesser standard, it does not necessarily mean that the same lower standard should continue for ever. When there is a need for increasing efficiency and when the pay scales were also revised from 1.1. 86, it was felt proper to prescribe matriculation standard for this paper.

20 We have given our anxious consideration to this question. What the rules say is that promotees need not have the educational qualification prescribed for direct recruitments i.e., Matriculation or equivalent. That does not mean that they need not acquire this proficiency otherwise, or that a question paper of 10th standard cannot be set for them. The ED Agents who are permitted to appear in this examination are required to have a minimum of 3 year's service. In actual practice, they have more experience than this. They could as well have acquired the knowledge of the required standard by experience. It can also be obtained by putting in extra effort privately. The rule cannot be construed to impose a bar on examining the ED Agents in question papers of the matric standard. We find force in the stand of the respondents.

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21 There is another important aspect. All ED Agents (which includes every category of ED Agent, from a ED Packer to a Branch Postmaster) are entitled to appear in the examination. The learned counsel for the applicants contend that the standard of examination should not be higher than VIII Standard which is the qualification proposed for a Branch Postmaster, the ^{highest} post. But the qualification ^{prescribed} ~~proposed~~ for a ED Packer is as follows:

"All other Categories of EDAs (This includes Packer, Mail Carrier etc.)

Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English."

/ if taken seriously,

Therefore, the argument of the learned counsel for the applicants, ^{mean,} would / that the standard of examination should not be more than what is stated above. Thus, we come to an absurd and unsustainable conclusion, if we take the learned counsel's arguments to their logical conclusion. Hence, our interpretation of the Rules is ^{though} that / the ED Agents need not have any qualifications, ~~but~~ the Department can examine them with tenth Standard question papers.

22 The learned counsel for the applicant has filed an argument note in which he has referred to a number of judicial authorities. Though they are inapplicable

to the facts of this, we examined two of them, which at first blush seem to have some relevance.

23 Reliance is placed on the decision in OAK 242/87 (1990-12 ATC 216) for his contention that the executive instructions prescribing standards of examination are contrary to the provisions of the Recruitment Rules.

We have seen this judgment. In that case, the statutory Recruitment Rules of 1971 provided that Instrument Repairers were in the feeder category for promotion to the post of Charge Electrician. However, by subsequent executive instructions, the structure of the cadre was revised introducing the skilled grade, highly skilled Gr.II and Highly Skilled Gr.I. On the basis of this new dispensation, promotion to the post of Charge Electrician was denied to the applicant on the ground that he is not ripe, not being in the skilled grade-II. The Bench held that the introduction of a 3 grade structure of reclassification of posts by an executive instruction cannot take away the statutory right of the applicant of being considered for promotion as Charge Electrician so long as the Recruitment Rules are not amended.

24 Similarly, a reference to the decision in 1987(3) ATC 369 BSK Cheema Vs. Director General of All India Radio has been made. The contention is that the examination held in the instant case is contrary to the rules and has to be quashed. For this proposition he seeks support

from the above judgment. That decision states that the general issue involved regarding filling up of the vacancies by Assistant Engineers in accordance with the Recruitment Rules of 1965 has already been disposed of in the judgment in PK Kholi Vs. Union of India 1987 (3) STC 336. However, as there was a prayer to strike down the examination conducted during the pendency of the petition it was observed that the said examination was held under the 1982 Rules as they stood then. A part of those rules were struck down by the Tribunal in TA 729/85. The Tribunal, therefore, held that the examination that was held cannot be said to be in conformity with the valid portion of the rules that were saved.

facts of this case.

25 But these judgments are inapplicable ~~to the~~ ^{to} The Director General's letter Annexure 8 prescribing the standard of the examination is not contrary to the Rules as has been shown above. The instruction is only supplementary to the Recruitment Rules and fills a gap.

26 The other judgments referred to in the argument note are 1986(1) ATC 67, AIR 1967 SC 1170, 1989(10) ATC-363, AIR 1985 SC 1019, 1989 (9) ATC 535. We find that these judgments are no relevance in regard to the present case. A reference to 1988(7) ATC 578 has also been made. We find that such a judgment of the New Bombay Bench does not exist.

27 We have already held that the notification
✓ regarding standard of examination is only to fill up

the gaps in the Recruitment Rules which is permissible
has to be
and followed.

28 In the circumstance, the impugned circular
Annexure 3 relating to the examination, the Annexure A4
Question paper on arithmetic, the Annexure 6 & 7
Select lists and the Annexure A8 instruction of the
Director General are all valid and are unassailable.
The prayer made for quashing these annexures are rejected.

29 The prayer in para 8(b) which is really for
a declaration that the promotion from ED Agents to
Postmasters should be on the basis of seniority alone
has to be rejected, for the Rules have provided
otherwise (para 3 supra) and they have not been
challenged.

30 Therefore, for the reasons stated above, this appli-
cation has no merit and it deserves to be dismissed.

31 During the pendency of this application the
Postmaster General, Central Region, issued notice
dated 25.7.91 ^e ~~for~~ (Annexure A9) indicating that the
next examination for Postman/Mail Guards will be held
on 20.10.91. The applicants therefore, filed MP 1053/91
drawing our attention to this circular and prayed for
a direction to stay the operation of this circular.

32 We then passed the following interim order.
" We have heard the parties. The interest of
justice would be met if we only direct the
respondents that the applicants may also be
allowed to appear in the examination if they
so choose, and such a direction will be without
prejudice to the legal contentions raised by
them in this application in regard to the
validity of such examination. The results of

the examination will be subject to the outcome of this application."

33 In the Annexure A9 notice the requirements regarding educational qualifications have been stated as follows:

"(i) For ED Agents who are in service before 25.9.87 there will be no minimum educational qualifications.

NB: This concession is allowable only upto 25.9.1992.

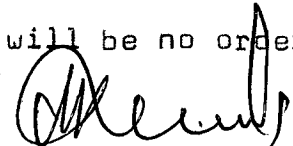
(ii) For ED Agents recruited on or after 25.9.87 a pass in the matriculation i.e., Class X of the Board of Examination conducted by either State Govt. or Central Govt. of Secondary Education is essential."

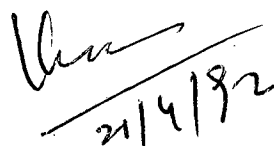
If the applicants had any grievance against the Annexure-9 notice dated 25.7.91, particularly on this ground, they should have impugned it separately on the ground that it violates the recruitment rules relating to Post man.

Hence, we vacate the interim order referred to in para 32 supra preserving the liberty of the applicants to agitate against the Annexure A9 notice, in accordance with law, if so advised.

34 In the result, this application is dismissed.

There will be no order as to costs.


(AV Haridasan)
Judicial Member


21/4/92
(NV Krishnan)
Administrative Member