

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 181
XXAKXMK

1991

DATE OF DECISION 5.9.1991

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Applicant (s)

Mr. O.V.Radhakrishnan

Advocate for the Applicant (s)

Versus

Superintendent,
Postal Stores Depot, Respondent (s)
Trichur & 2 others.

Mr. V.V.Sidharthan, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. N.Dharmadan, 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

N.V.Krishnan, AM

The applicant is presently working as Part-time Contingent Sweeper in the Postal Stores Depot, Trichur. When two vacancies of Group D arose in this establishment, a literacy test was conducted on 12.8.87 but the applicant was not admitted as she was over-aged. She filed an application before this Tribunal, OAK 297/87, which was dismissed by the order dated 20.9.89 (Exhibit-A4) on the ground that age relaxation was available only to persons who had been engaged before 21.3.79 and that the benefit of the standing instruction dated 1.11.85 regarding age relaxation will not apply to her, as she was first engaged only on 1.1.82.

2. A literacy test was next announced to be held on 7.11.90 to fill up 3 Group D vacancies. The applicant then submitted a representation to the second respondent which is at Exbt. A8, wherein she had pointed out that the Schedule to the relevant rules for recruitment to Group D posts has since been amended and does not prescribe any upper age limit. Though the applicant was admitted to the test provisionally, her case was not considered and this representation was rejected by the second respondent.

3. Thereafter, one more vacancy of Group D arose in this establishment and a literacy test was proposed to be held for this purpose. In the meanwhile, the applicant, who had sent one more representation on 12.12.90 (Exbt.A10) to the second respondent, was informed by the impugned Exbt. A11 from the second respondent that her request for selection to Group D cadre cannot be considered as she is over aged and no relaxation of age limit is permissible under the rules. It is at this stage that the applicant has filed this application before us seeking the following reliefs:

- "(i) To call for the records relating to Exbt.A11 and to set aside the same;
- (ii) to declare that the applicant is fully eligible to be appointed as Group 'D' in terms of Exbt. A7 Amendment Rules;
- (iii) to direct the respondents to appoint the applicant as Group 'D' against one of the vacancies arose on and from the date of Exbt. A7 (Amendment) Recruitment Rules came into force according to her seniority among the Casual Labourers with all consequential reliefs."

4. When the application was admitted, we directed as an interim measure, that one Group D post should not be

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filled up and accordingly, it is submitted by the respondents that one Group D post has been kept vacant.

5. The respondents have filed a reply stating that even after the amendment of the Rules relating to Recruitment by Annexure-R1 notification dated 24.2.89 there is a restriction regarding age. It is contended that the recruitment will be made on the basis of a literacy test and the age condition of 18 to 25 years as on first of July is also applicable. Therefore, the respondents submit that the application deserves to be dismissed.

6. We have heard the counsel on both sides and perused the records. The main contention of the learned counsel of the applicant is that the Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules, 1970 (Exbt. A6) provided that the posts of Peons in the subordinate offices will be filled by promotion, failing which it will be filled by direct recruitment for which the age limit was 18 to 25 years. These Rules were amended by the Indian Posts & Telegraphs (Group D Posts) Recruitment (Amendment) Rules 1989 (Amending Rules, for short) notified on 24.2.89 (Exbt. A7). The full text of these amending rules have been produced by the respondents at Exbt. R1A. Admittedly, the Postal Stores Department is a subordinate office and the post of Peon is listed in Category-I in Column 1 of the Schedule to the Amending Rules. There was no entry under Column 9 before the Amending Rules came into force. By Rule 2 of the Amending Rules, the following entry has been inserted under column 9:

"By name of a test, as prescribed by the Director General, Department of Posts, New Delhi, from time to time, from amongst the categories specified and in the order indicated below. Recruitment

from the next category is to be made only when no qualified persons is available in the higher category.

- (i) Non-test category officials mentioned at item II.
- (ii) Extra Department agents of the recruiting division or unit, in which vacancies are announced.
- (iii) Casual labourers (Full Time and Part Time) of the Recruiting division or unit.
- (iv) Extra Departmental agents of neighbouring division or unit.

Explanation:- for postal division, the neighbouring division will be the Railway Mail Service Sub Division and vice-versa.

- (v) Nominees of the Employment Exchange."

Further, by Rule 3 of the Amending Rules the existing entry in column 10 (viz. "Promotion: Boy Peons failing which by direct recruitment and transfer of officials mentioned at II below through a test") has been deleted.

7. The respondents contend that even so, entries under column 5 relating to age limit for direct recruitment have not been deleted. It is submitted that even after the Amending Rules have come into force, the amended method of recruitment is a direct recruitment to which the age limit in column 5 applies.

8. We have carefully considered this statement. Direct Recruitment is generally intended for recruiting persons from the open market. In case persons in service are also eligible to participate in the selection for direct recruitment that would be indicated separately. In the present case, the recruitment is confined to existing departmental officials. In other words, this recruitment is by absorption and not by direct recruitment. Otherwise, column 9 should have specifically stated that the posts will be filled up by direct recruitment from the categories now mentioned in column 9. The expression 'direct recruitment' has deliberately been avoided as the method adopted is not direct recruitment as commonly understood. It is a method of absorption of regularisation of existing employees. Therefore, age limit in column 5 which applies to direct recruitment

only will not apply to the new method of recruitment brought into force by the insertion of the aforesaid entry in column 9 of the Schedule. The upper age limit for Group D post for the feeder category mentioned in column 9 is 58 years, the normal age of superannuation.

9. We, therefore, find that with the amendments made by the Amending Rules, the age restriction in column 5 of the Schedule does not apply in respect of recruitment to the category of posts mentioned at item I under "subordinate offices" of the Schedule. Therefore, the applicant is eligible to be considered for selection in accordance with the Amended Rules.

10. The learned counsel for the applicant submitted that, even otherwise, there is now a fresh circular from the Department of Personnel dated 8.4.91 (Exbt.A14) which directs as follows:

".....it has been decided, as a one time measure in consultation with the Director General, Employment & Training, Ministry of Labour that casual workers recruited before 7-6-88 and who are in service on the date of issue of these instructions, may be considered for regular appointment to Group 'D' posts, in terms of the general instructions, even if they were recruited otherwise than through Employment Exchange and had crossed the upper age limit prescribed for the post, provided they are otherwise eligible for regular appointment in all other respects."

What is clear from this instruction is that the benefit of relaxation of age has also been given to persons recruited prior to 7.6.88. In other words, the shortcoming which was pointed out in the Annexure-4 judgement has now been removed.

11. We are of the view that the Rules themselves do not provide for any age limit other than the age of

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superannuation for the applicant in respect of the posts for which she has to be considered.

12 In the circumstances, we hold that the applicant is eligible for appointment to Group D post and we direct the respondents to consider the applicant for the Group D post under the 1st respondent in accordance with the Amended Rules notwithstanding Annexure A-11. The application is allowed with the above direction. There will be no order as to costs.


5.9.91

(N Dharmadan)
Judicial Member


5.9.91

(NV Krishnan)
Administrative Member

5-9-1991