

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 182/ 1990
~~XXXX~~

DATE OF DECISION 11.12.1990

K.Sreedharan & 3 others Applicant (s)

M/s. M.C Cherian, Advocate for the Applicant (s)

Saramma Cherian & T.A Rajan

Superintendent, R.M.S Respondent (s)

Calicut Division , Calicut & 15 others

1.Mr TPM Ibrahim Khan - R.182 Advocate for the Respondent (s)

2.Mr PV Surendranath - R.12

CORAM: 3.Mr MR Rajendran Nair - R.7,8,10,11 and 16

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

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The Hon'ble Mr. A. V HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

(Hon'ble Shri S.P Mukerji, Vice-Chairman)

In this application dated 7th March 1990 filed by four Extra Departmental Mail Men (EDMM) of Calicut Division under Section 19 of the Administrative Tribunals Act, the impugned order dated 20.2.1990 in so far as it pertains to the appointment of respondents 3 to 16 has been challenged and the applicants have prayed that respondents 1 and 2 be directed to appoint the applicants in Group D service as regular Mail Men in Calicut Division on the basis of their Divisional seniority. Their grievance is that even though they have been working as EDMM from 1982 onwards continuously and they have studied upto though failed in the SSLC examination and even though respondents 3 to 16 are junior to 1st and 2nd applicants and respondents 5 to 16

are junior to 3rd and 4th applicants, the applicants have not been appointed regularly as Mail Men and their junior respondents 3 to 16 have been appointed. It is admitted by both the parties that regular appointment to Group D post of Mail Man is done from amongst EDMMs on the basis of seniority through a literacy test. This has actually been done in other two Divisions of Ernakulam and Trivandrum. The seniority of the applicants over the respondents as indicated above is also admitted by the respondents. But the applicants' grievance is that in the impugned select list at Annexure-II while the names of juniors figure, the applicants' ^{names} are not included. Their argument is that by virtue of their having studied upto SSLC they are all literate and their suspicion is that their exclusion through failure in the literacy test is due to either some mal-practice or mistake. In the counter affidavit the respondents have accepted the [&] factual position as indicated above. But they have stated that the 1st, 2nd and 4th applicant who are not Scheduled Castes, did not get 50% qualifying marks in the two papers and the marks obtained by the 3rd applicant who belongs to the Scheduled Caste did not come up to the qualifying percentage of 33 1/3% in both the papers. They have indicated that the literacy test in accordance with the D.G, P&T's letter dated 20.3.1979

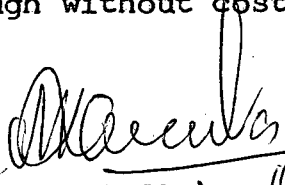
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at Annexure R-1(E) was conducted in two papers. The qualifying marks prescribed in each of the papers was 50% for non-Scheduled Caste^{Tribes} and 33 1/3% for Scheduled Caste and Scheduled Tribe candidates. It was also laid down in D.G., P&T's letter that the qualifying marks were to be obtained in each paper. They have also indicated that mere seniority irrespective of securing qualifying marks was never the criterion for regular promotion of EDMM to the post of Mail Man. Since the applicants did not obtain the qualifying marks of 50% or 33 1/3% ^{as the case may be} they could not be included in the select list even though applicants No.1, 2 and 4 are senior to some non-Scheduled Caste candidates included in the select list and applicant No.3 is senior to some Scheduled Caste candidates so included.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Since the D.G., P&T had prescribed literacy test and qualifying marks to be obtained in each paper in that test, the applicants cannot claim a right of regular appointment as Mail Man merely on the ground of their having studied upto SSLC. They had to qualify in each of the two papers which they did not. The applicants have not challenged the D.G., P&T's letter of 20.3.1979 at Annexure R-1(E) where qualifying marks ^{prescribed by} to be obtained in each paper has been prescribed as

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50% for non SC/ST and 33 1/3% for SC/ST candidates. In the Director General, Telecommunication and another vs. T.N Peethambaram , A.T.R 1987 (1) S.C 399, the Supreme Court upheld a similar rule prescribed for Telegraph Engineering Service (Group B) Limited Departmental Qualifying Examination whereunder minimum pass marks of 50% for general candidates and 45% for SC/ST candidates had been prescribed. Overruling the decision of the Tribunal the Supreme Court held that the "minimum passing standard must be the yardstick to apply to each of the subjects or items" and not the aggregate. Failure of the applicants before us, therefore, to obtain the qualifying marks of 50% (for applicants 1, 2 and 4) and 33 1/3% (for applicant 3) ^{each} in ~~any~~ of the two papers would disqualify them for appointment as regular Mail Man irrespective of their educational qualifications. Since the learned counsel for the applicants did not seriously press any point of malafide we need not go into examining the marksheets of the various candidates. In the facts and circumstances we see no merit in the application which is dismissed though without costs.


(A.V HARIDASAN)
JUDICIAL MEMBER

11/12/90


(S.P MUKERJI)
VICE CHAIRMAN

11.11.90