

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 222 OF 2007

Dated 18th December, 2007

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. KBS RAJAN, JUDICIAL MEMBER

Gisha Beegum GS,
TC 46/504 Pally Street,
Poonthura PO,
Thiruvananthapuram-26.

[By Advocate: Mr Santhosh Kumar]

.. Applicants

-Versus-

1. Union of India, represented by the Secretary to Govt. Ministry of Telecommunications, Sanchar Bhavan, New Delhi.
2. The Director General of Post Offices, New Delhi.
3. The Chief Post Master General, Kerala Circle, Thiruvananthapuram.
4. The Director of Postal Services, Thiruvananthapuram.

.. Respondents

[By Advocates: Mr Shaji VA for Mr. TPMI Khan, SCGSC)

This application having been heard on 6th December, 2007 the Tribunal delivered the following -

ORDER

(Smt. Sathi Nair, Vice Chairman):

The applicant is the younger daughter of late Shoukath Beevi, who died on 29.7.2004 while working as Postal Assistant at General Post Office, Thiruvananthapuram. The father of the

applicant had also died earlier and the elder daughter had got married. The applicant states that she is fully qualified for employment and had submitted application along with required testimonials as well as the consent letters from her elder sister. As there was no positive response from the Respondents, applicant submitted several representations directly and through local Member of Parliament. It is averred that as the Respondents are protracting to take a decision in the matter she has filed this OA for issue of positive directions to the respondents to provide an employment to the applicant as admissible under the Rules. Following are the reliefs prayed in the application.

- a) To issue an order directing the respondents or such of them to appoint the applicant as a Postal Assistant forthwith under the dying in Harness Scheme.
- b) To grant such other reliefs which this Hon'ble Tribunal deem necessary to meet the ends of justice.
- c) To award the cost of the application.
- d) To declare that the Annexure-A/II Rule which excludes the vocation stream is highly arbitrary and illegal and to set aside the same."

According to the applicant the Department is taking an arbitrary stand that a pass in the Vocational Higher Secondary Examination, which is possessed by the applicant, is not equivalent to Pre-Degree or Plus Two and such a stand cannot be justified in any manner as the Ministry of Human Resources Development, Union of India as well as the Association of Indian Universities have approved Vocational Higher Secondary

Examination as equivalent to Pre Degree/Plus Two. The Recruitment Rules at Annexure-A/2 has also been challenged by the applicant as illegal and unreasonable so far as it excludes the vocational stream from the qualification prescribed for appointment as Postal Assistant.

2] Respondents have filed reply statement denying the averments of the applicant. The factual details of the mother's death and submission of application for compassionate appointment have been admitted by the respondents. As per Recruitment Rules, "a candidate for the post of PA/SA should possess 10+2 or 12th Class pass of a recognized University or Board of Secondary Education with English as a compulsory subject excluding vocational stream". The applicant has completed Higher Secondary Examination in the Vocational Stream and as such she is not eligible for being considered to the post of Postal Assistant /Sorting Assistant. No relaxation of educational qualification is allowed in the case of appointment, except in the posts of Group-D or LDC, that too, in exceptional circumstances, according to the scheme of compassionate appointment enclosed at Annexure-R/1. However, the respondents have submitted that the case of the applicant is kept pending for examination in the Circle Relaxation Committee (for short CRC) scheduled to be held shortly for considering her request for appointment to the cadre of Postman/Group-D as she cannot be considered for the post of PA/SA. Hence, according to

the respondents, the OA is premature as the case of the applicant is not yet examined by CRC.

3] Respondents have also averred that the question whether her qualification can be considered in accordance with Recruitment Rules was referred to Directorate by the respondents themselves but it was intimated by Annexure-R/3 letter dated 19.2.2007 that as the Recruitment Rules are statutory in nature the provisions contained therein cannot be deviated from. The fact that an order was issued by the Government of Kerala to the effect that Vocational Higher Secondary Course is equivalent to the Higher Secondary Course (Plus two) conducted by the Kerala Board of Higher Secondary Education was also pointed out by the Respondents and the Directorate has informed that the State Government Orders/Rules are not binding on the Central Government. It is also pointed that the applicant has no legal claim to be appointed to any post under the scheme of compassionate appointment and she has only a right to be considered for appointment which would be done shortly in the CRC. They also placed reliance on the judgment of the Hon'ble Supreme Court in State Bank of India -v- Somvir Singh to bring home that the hardship of the applicant does not entitle her to compassionate appointment.

4] Applicant has filed a rejoinder stating that the Association of Indian Universities has given equivalence to vocational courses with the Senior Secondary Examination / Pre University of an Indian Board, which is clear from Annexure-A/6 letter written

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by the Hon'ble Minister of Human Resources to the local Member of Parliament.

5] We have heard Mr Santhosh Kumar, learned counsel for the applicant and Mr Saji VA for the respondents.

Learned counsel for the applicant forcefully argued that the stand of the respondents is highly unreasonable and arbitrary as the applicant possesses the higher Degree of Bachelor of Commerce and the Ministry of Human Resources itself having recognized the Vocational course as equivalent to plus two/ Pre University of the Indian Board. The counsel relied on the judgment in *State of Haryana -v- Abdul Gaffar Khan*, reported in (1006) 11 SCC 153, where the matter regarding possession of higher qualification than the essential qualification required was settled by the Hon'ble Supreme Court in the following words:

"7. We have perused the order passed by the High Court. As rightly pointed out by the High Court and as per the Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997, they do not expressly exclude the degree in Unani Medicine and Surgery for the post of Unani Dispenser. Admittedly, the respective contesting respondents in these appeals possess the required qualifications from a recognized University/Institution or Board and are thus, in our opinion, eligible for appointment to the post of Unani Dispenser. A close scrutiny of the advertisement issued does not anywhere stipulate the diploma as the required qualification. We, therefore, affirm the order passed by the High Court and direct the appellant State of Haryana to appoint the respective respondents to the posts of Unani Dispenser within a period of one month from the date of receipt of the order from this Court or on production of the same by the respective respondents herein, whichever is earlier. The appeals are accordingly dismissed..."

It was argued that the ratio of this judgment by which it was held that possession of the Degree was not expressly

excluded from the required qualification in the Rules and hence holder of a Degree should also be considered eligible and would be applicable in the instant case also. Learned counsel for the respondents, however, submitted that the action of the respondents was strictly in accordance with the Recruitment Rules as confirmed by the 1st respondents, viz. the Government of India.

6] We have carefully gone through the record and the judgments referred to by both the parties. First of all, the contentions of the respondents that the present OA is highly premature has to be rejected as being without any merit as the respondents themselves stated that the request of the applicant for the post of PA/SA cannot be considered as it is not in accordance with the Rules and only the proposal sought to be under consideration before CRC is the compassionate appointment in Group-D cadre. The applicant's prayer in the OA for directing the respondents to appoint her in the post of PA/SA and therefore this objection advanced by the respondents does not hold good.

The limited issue which now falls for our consideration is whether the educational qualification of the applicant comes within the purview of the Recruitment Rules prescribed for appointment for PA/SA.

7] According to the Recruitment Rules, Annexure-R/2, as submitted by the respondents - "the minimum educational qualification for direct recruits for the post is 10+2 standard of 12th class pass of a recognized University or Board of School



Education or Board of Secondary Education with English as a compulsory subject (excluding vocational streams)". The applicant has passed 10+2 Examination in Vocational School Stream, which has specifically been excluded under the Recruitment Rules, extracted above. Thus prima facie the applicant is not eligible to be considered for the post.

8] The applicant's further contention is that on the basis of the vocational qualification she has been admitted to the degree course of the Kerala University and she has passed B.Com. Examination of the Kerala University in 2005. Therefore, being in possession of higher qualification than the 10+2 she is fully qualified to be appointed as PA/SA. The contention of the respondents is that holding of higher qualification does not mean that the applicant is in possession of the basic qualification prescribed by the Recruitment Rules; and that the approval of the Government of Kerala that the Vocational Higher Secondary Course is equivalent to the Higher Secondary Course (plus two) conducted by the Kerala Board of Higher Secondary Education was brought to the notice of Directorate, however, it was informed by Annexure-R/4 that the Department has its own rules for recruitment and State Governments order/Rules are not binding on the Central Government.

9] As regards determination of equivalence of qualification, the applicant has relied ^{on} _^ the Annexures-A/6 and A/7, which is the correspondence between the Hon'ble Minister of the HRD and Hon'ble Member of Parliament. In his reply, the Hon'ble Minister stated that the Association of Indian

Universities (AIU) has already given equivalence to the +2 level Vocational Courses of Vocational stream with Senior Secondary Examination / Pre-University of an Indian Board. As seen from the letter, which is extracted below got further clarifies that such equivalence certificate can only be issued by the Association of Indian Universities and not by the Ministry and it is considered for admission to their affiliated Colleges. The Annexure A/6 letter dated 4th December, 2006 of Hon'ble Minister of Human Resource Development, reads as follows:

"Dear Shri Rajendranji,

Kindly refer to your letter dated 16.10.2006 regarding recognizing the Vocational Higher Secondary Course Examination conducted by the Kerala Government as equivalent to the Higher Secondary Courses.

2. As you are aware, Association of Indian Universities (AIU) has already given equivalence to the +2 level Vocational Courses of Vocational stream with Senior Secondary Examination / Pre University of an Indian Board. This is to inform you that such equivalence certificate is issued only by AIU and not by the Ministry. The Universities in India that are members of AIU recognize the equivalence issued by AIU while considering admission to their affiliated Colleges.

With regards.

Yours sincerely,
Sd/- Arjun Singh"

10] Since Kerala University had admitted her into degree course it can very well be presumed that Kerala University had recognized the vocational course for the purpose of admission to its Degree Course. The only fact evident from this correspondence is that the Association of Indian Universities including Kerala University have recognized plus two level Vocational Courses of Vocational stream as equivalent to the

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Senior Secondary Examination /Pre University in their Colleges. The Respondents have not disputed this position. However, this position would not implicitly mean that the qualification also gets automatically recognized so far as employment is concerned. For the purpose of employment, recruitment under the Government is determined by the Recruitment Rules of the post in question. In the instant case, the Recruitment Rules issued in 2002 have for some reasons not exactly discernible from the pleadings, excluded the vocational stream and has specifically insisted upon passing 10+2 in the regular scheme. It is well settled law that the Executive has the power to make Recruitment Rules and prescribe method of recruitment, qualification etc. required for various categories of posts and this power should not be interfered with by the Courts as has been laid down in several judgments by the Hon'ble Supreme Court. For whatever reasons such an exclusion of the vocational stream exists in the Recruitment Rules and the underlying purpose is not made known, but it cannot be held to be irregular/ illegal and this Court issue a direction that the Vocational Higher Secondary Course should be treated for the purpose of employment as equivalent to the regular Plus two Course of Board of Secondary Education or Pre University Course. This is a decision to be taken by the competent authority for framing of the Recruitment Rules.

11] The Apex Court in a recent judgment in *Bihar Public Service Commission & Ors -v- Kamini and Ors, reported in (2007) 5 SCC 519* has laid down that "in the field of education, Court of

law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualification should better be left to educational institutions. This is particularly so when it is supported by an Expert Committee. Such a decision, in our judgment, cannot be termed arbitrary or otherwise objectionable". The same view was taken by the Apex Court in the case of *University of Mysore -v- CD Govinda Rao (AIR 1965 SC 491)*. These decisions of the Apex Court clearly point to recognition of the fact of primacy of the Recruitment Rules in the matter of employment. We can express the hope that the authorities concerned will take note of the position as brought out at Annexure-A/6 letter of the Hon'ble Union Minister of HRD, which is also the decision taken by the Association of Indian Universities, and consider its impact on the Recruitment Rules and the prospects of the candidates appearing for such selections and take an appropriate decision whether any amendment is required to be carried out in the Recruitment Rules. But as the Recruitment Rules stand at present, we cannot find fault with the stand of the Respondents that the applicant does not possess the qualification required for the post of PA/SA as illegal and unreasonable. The case relied on by the learned counsel for the respondents also does not help the applicant as the issue under consideration in that case was whether the Respondents possessing qualification of Bachelor of Unani Medicine and Surgery from Kanpur University apart from Matric with Hindi and 10+2 with Science, who were denied

appointment on the ground of not possessing diploma in Unani Dispenser or Up-Vaidya, as the Bachelor of Unani Medicine and Surgery could be considered as possessing the essential qualification prescribed under the Recruitment Rules. The Apex Court held that neither diploma was stipulated as required qualification nor degree was expressly excluded from the required qualification in the advertisement or the Rules and, therefore, the respondents should be treated as possessing the required qualifications and directed to appoint them in the post within one month. The stand of the respondents in the instant case is that the applicant has completed Higher Secondary Examination in the Vocational Stream, which is specifically excluded from the purview of the essential qualification, as per the Recruitment Rules, and hence both the cases are not comparable.

12] So far as giving compassionate appointment to the applicant is concerned, the respondents have not ruled that the applicant is not entitled to get appointment on compassionate ground and only stated that she is not eligible for appointment in the post of PA/SA as she does not possess the essential qualification as mentioned in the Recruitment Rules. Her request is being considered for the post of Group-D or LDC and it is pending for examination in the Circle Relaxation Committee (CRC) scheduled to be held shortly. We expect and hope that the CRC

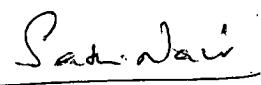
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would take a final decision soon and if the applicant is found eligible she could be appointed in the post of Group-D or Postman.

13] In the light to the legal position as discussed above, prayer of the applicant to direct the respondents to appoint her in the post of PA/SA or to quash the Annexure-R/2 Recruitment Rules cannot be granted. However, we would like to observe that dismissal of the OA should not result in permanently excluding the applicant for consideration to the higher post in case she is found eligible to be granted compassionate appointment if and when the respondents amend the Recruitment Rules for inclusion of the Vocational Stream in future. The applicant may be given opportunity to move higher in the cadre in conformity with the higher qualification possessed by her. Such provision also exists in the scheme of compassionate appointment in para 16(b) therein.

14] With the above observations, the application is disposed of. No costs.


 (Dr. KBS Rajan)
 JUDICIAL MEMBER


 (Sathi Nair)
 VICE CHAIRMAN