

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 252 1993.

DATE OF DECISION 8.4.93

K. Sobhana Applicant (s)

Mr. M. C. Nambiar Advocate for the Applicant (s)

Versus

The Chief Record Officer, Respondent (s)  
DSC, Army Head Quarters, New Delhi and others.

Mr. M. A. Mahnu, A.C.S.C Advocate for the Respondent (s) 1 to 3  
Mr. M. Ramesh Chander for R-4

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

The Hon'ble Mr. R. RANGARAJAN ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

## JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

Applicant is aggrieved by the selection and appointment of fourth respondent in the post of LDC after conducting the departmental examination.

2. According to the applicant, she submitted Annexure-II application for allowing her to sit for the test for Group-D personnel for promotion to LDC in pursuance of Annexure A-1 notification issued in this behalf. A test was conducted on 21.7.92. According to applicant she fared well in the examination and she expected pass and consequential appointment. But to her surprise she knew that the fourth respondent was

selected and appointed in the vacancy. Applicant submitted that fourth respondent is over aged and he was not qualified for appointment on the basis of the notification Annexure-I. He has crossed 40 years even at the time of notification Annexure-I. Under these circumstances she filed this original application with the following prayers:

- "a) to call for the records leading to the promotion of the fourth respondent to the cadre of Lower Division Clerk in the DSC(Records) and quash the same.
- b) to declare that the applicant is entitled for appointment in the cadre of LDC in the DSC(Records Kannur.
- c) to direct the respondents 1 to not to promote the fourth respondent to the cadre of LDC who is not at all qualified to take the test since he is overaged.
- d) to issue any other order or direction as this Hon'ble Court/Tribunal deems fit in this case.
- e) to award costs of this application."

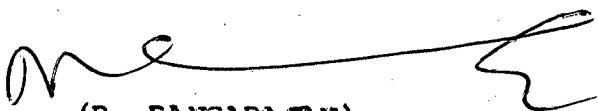
3. Respondents 1 to 3 and the fourth respondent filed separate reply and opposed the application.

4. The case of the applicant that the fourth respondent is over aged and he is not qualified for selection was denied by respondents. <sup>But</sup> it is admitted that fourth respondent has 40 years and 9 months on the date of application. But he had been granted the benefit of relaxation in view of the fact that he was allowed to sit for the second examination under the rules. The maximum age limit as per Article 26 of Civil Service Regulation for appearing for the test is 40 years (45 years for SC and ST). However, relaxation of upper age limit upto 45 years (50 years for SC & ST) has been <sup>allowed</sup> for the first two examination. As per para 8 of the Govt. decision

it has been decided that the upper age limit of 45 years ( 50 years for SC & ST) will be allowed for the first two examinations. Respondent No.4 who was allowed to sit for the second time is eligible for exemption under Article 26 of the Civil Service Regulations. Accordingly, Respondent No. 4 is fully qualified. They have also produced Annexure R-5 results of the examination held on 21.7.92 with the marks scored by the candidates including the applicant and fourth respondent. Applicant obtained only 32% marks for paper-II for which the minimum fixed is 40. Hence, applicant is a failed candidate. On the other hand, fourth respondent scored the highest mark of 52% and passed the examination.

5. Having heard the arguments, the only question to be examined in the light of the contentions is whether the fourth respondent is over aged at the time of the departmental examination. Since the Department has granted relaxation and he was permitted(fourth respondent) to sit in the examination under Rule 26 of the Civil Service Regulation, the fourth respondent is qualified for appearing in the examination. The fourth respondent having secured the highest mark, has been declared as passed and eligible to be appointed in the group-C post, as a person having fully qualified the examination, his appointment is unassailable. In the light of the facts stated by the respondents we are of the view that there is no merit in the application, it is only to dismissed. Accordingly, we dismiss it.

6. There will be no order as to costs.

  
(R. RANGARAJAN)  
ADMINISTRATIVE MEMBER

  
(N. DHARMADANI)  
JUDICIAL MEMBER

8.4.93

kmm