

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 254/92 199

DATE OF DECISION 28.4.93

T.P.Prasad

Applicant (s)

Mr. K.Ramakumar

Advocate for the Applicant (s)

Versus

U.O.I., Director General Respondent (s)
of Posts, New Delhi & 2 others.

Mr. K.L.Joseph, ACGSC

Advocate for the Respondent (s)

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? *ys*
2. To be referred to the Reporter or not? *m*
3. Whether their Lordships wish to see the fair copy of the Judgement? *m*
4. To be circulated to all Benches of the Tribunal? *m*

JUDGEMENT

R.Rangarajan, AM

/ against ex-servicemen quota.

The applicant, Shri T.P.Prasad, an ex-serviceman, applied for the post of Postal Assistant in Thiruvalla Division in August 1991. According to the applicant he was selected and his selection was communicated to him by the order of the 2nd respondent dated 15.1.92 vide Annexure-B. The applicant, as per his averment, was deputed for training on 20.1.92. While the applicant was getting ready to go to Mysore for training, he had received a telegram (Annexure-C) informing him that the selection against the ex-servicemen quota is under review and therefore his deputation for training is cancelled. The applicant submits that he is fully eligible

to be selected for the post of Postal Assistant pursuant to the circular at Annexure-A on the basis of the marks obtained by him in the S.S.L.C. Examination against ex-servicemen quota. In his opinion, there is no reason to review or cancel the appointment of the applicant especially in view of the fact that the applicant has been selected and directed to proceed for training at Mysore. He further submits that if he is not sent for training his fundamental rights for appointment on the basis of the selection will be affected. He further avers that the stand of the Superintendent of the Post Office as communicated to him, that, the marks obtained by him in Pre-Degree examination will be taken into consideration for appointment against ex-servicemen quota is contrary to the circular at Annexure-A and is not sustainable. Under the above circumstances he has filed this application under section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- " i) To direct the respondents to immediately appoint the applicant as Postal Assistant in the Thiruvalla Division pursuant to the selection and the communication at Annexure-B.
- ii) To call for all the records leading to the review of the selection and to declare that the proposal to review the selection of the applicant is illegal and void.
- iii) To issue such other writ orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. As per the order of this Tribunal dated 28.2.92 the respondents were directed to send him for the training course immediately subject to the question of his appointment abiding by the outcome of this application.

3. An M.P. No. 582/92 was moved by the respondents for vacation of this interim order which was rejected as the learned counsel for the respondents who appeared on 25.2.92 when the interim order was passed did not have

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any objection to the applicant being sent for training course without any claim for subsequent appointment.

4. The respondents have filed the reply statement wherein they have stated that the selection of the candidate for appointment against the lone post of Postal Assistant reserved for ex-servicemen in Thiruvalla Postal Division was not in accordance with relevant rules. The recruitment rules for postal Assistant and rules governing selection of ex-servicemen for the post reserved for them stipulate the following:

- "i) The minimum educational qualification is 10+2 or 12th class pass.
- ii) Relaxation of educational qualification is permissible in respect of ex-servicemen subject to certain conditions.
- iii) Under Rule 6(A) of Ex-servicemen (Re-employment in Civil Services and Posts) Rules 1979 as amended on 12.2.1986 if sufficient number of ex-servicemen candidates is not available on the basis of general standard to fill up all the vacancies reserved for them, the deficiency may be made up by selecting candidates under the relaxed standards.
- iv) DG(Posts) in letter No. 60-127/85-SPB-I dated 27.5.1991 (Annexure-A) decided that the relaxation allowed under the above rules may be allowed for recruitment to the cadre of Postal Assistants also.
- v) Accordingly the relaxed standard has been prescribed as matriculation or higher secondary as the base qualification with bonus marks for the military qualification equivalent to graduation."

5. The relevant Recruitment Rules which prescribe the educational qualification for Postal Assistant are produced as Annexure R-2(B) and the special provision (para 6) regarding relaxation of educational qualification for ex-servicemen ~~xxxxxx~~ is at para 6 of Annexure-R-2(C).

Amendment to Para 6 of Annexure-R2(C) by inserting Rule 6A has been

produced as Annexure R2(D) which reads as below:

"6A. Lower standard for selection: In the case of direct recruitment, if sufficient number of candidates belonging to the ex-servicemen are not available on the basis of general standards to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the conditions that such relaxation will not affect the level of performance by such candidates."

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6. In the impugned selection there were 68 ex-service candidates, many of them had the requisite basic qualification of 10+2 or 12th class pass, ~~xxxxxxxxxxxx~~ but the District Selection Committee which is the competent body to make the selection by mistake made the selection on the basis of the SSLC marks. Even in this selection the District Selection Committee ^(D.S.C. for short) has selected one Shri M. Jayachandran but the 3rd respondent on his own accord cancelled the selection made by the duly constituted D.S.C. and decided to send the applicant for training. When this irregular selection was noticed by the 2nd respondent, he ordered the constitution of a Review D.S.C. to review the entire selection and prepare a fresh list of candidates based on merit in accordance with recruitment rules. The review D.S.C. met on 6.4.92 and drew a fresh list in accordance with the rules and declared that one Shri Vijaya Mohanan Nair, an ex-serviceman as having been selected as he has got 64.6% marks, having obtained 54.6% marks in P.D.C. and 10 bonus marks for graduation/Certificate. The applicant was also considered in the review D.S.C. along with others but he got only 56.7% marks; as he scored only 46.7% marks in P.D.C. plus the 10 bonus marks for graduation, ~~xxxxxxx only 56.7%~~ The respondents submit that there need be no relaxation in educational qualification for ex-servicemen as enough ex-servicemen with qualification as prescribed in the recruitment rules were available. The relaxation as envisaged is only in case sufficient number of ex-servicemen are not available on the basis of general standards to fill all the vacancies reserved for them. They further aver that the applicant was brought in the select list by mistake and respondents are duty bound to correct the mistake when detected and

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there is no irregularity if such mistakes are corrected.

In view of what is stated above, the respondents pray for the dismissal of the O.A.

7. In the rejoinder, the applicant has brought out that one Subramanian Potti, who has been selected in Palghat Division against the ex-servicemen quota solely on the basis of marks obtained in SSLC, ~~xxxxx~~ was appointed and now he is working as a Postal Assistant at Nenmara P.O. In view of this, the applicant submits that the basic qualification in the relaxed standard is the criterion for selection.

8. As this new point of selection at Palghat Division was brought out by the applicant in the rejoinder, the respondents were asked to clarify the position in regard to this selection at Palghat especially the selection of Shri Subramanian Potti. The respondents were also asked to calrify the qualification of other ex-servicemen who competed with Shri Subramanian Potti.

9. In the additional reply statement filed by the respondents, they have admitted the mistake of having selected Shri Subramanian Potti under relaxed standard of qualification. However, Shri Subramanian Potti had resigned from the post with effect from 25.7.92 and steps are being taken by the concerned to rectify the mistake in the selection held in Palghat Division. To a query why this mistake was not corrected so far, the learned counsel for the respondents submitted that they had come to know of this mistake only when they received the rejoinder of the applicant and Palghat Division being under a different PMG, the delay is caused. However, the learned counsel stated that this mistake will be set right shortly.

10. We have heard the learned counsel for both parties. No doubt the recruitment rules, especially Para 6A under Para 6 of Annexure-R2(C) (introduced much earlier to the present



selection) reproduced above, clearly states that the relaxed standard in educational qualification is permissible only if there are not enough candidates with general standard available for selection against this ex-servicemen quota. As stated by the respondents there were 68 ex-servicemen amongst whom many possessed educational qualifications suitable to be selected without relaxation. Hence leaving out candidates with higher qualification and selecting a candidate with relaxed qualification is not envisaged in the recruitment rules. Such selections will be disadvantageous to a better qualified candidate. Hence we see no irregularity if such mistakes are corrected by the competent authority. In this case the respondent No.2 who is higher in rank to that of respondent No.3 has correctly pointed out the mistake and ordered for review and correction. But such correction has to be done following certain norms in the sense that the affected candidate has to be notified for obtaining his version before setting aside the selection. In this case no such procedure was adopted. Simply the 2nd respondent has ordered the review D.S.C. without giving any opportunity to the applicant who had been declared selected in terms of Annexure-B and without cancelling the earlier selection. In our opinion, this mistake has to be set right. This is to be done only if the Annexure C telegram is kept in abeyance ^{the meantime} and ~~in~~ respondents give notice to the applicant explaining the circumstances under which a need has arisen to cancel his selection and consequent deputation for training. After hearing ~~from~~ the applicant, the respondents can ~~only~~ ^{of} ~~xxxxxx~~ take a decision regarding cancellation/ the earlier selection held on 14.10.91. The review D.S.C. also can be ordered only after the cancellation of the earlier selection in

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accordance with law and not prefactorily by ordering the review D.S.C. without safeguarding the interests of the applicant who was declared selected earlier.

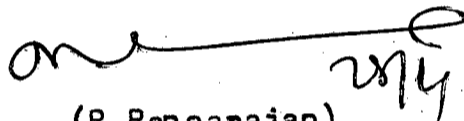
11. As per the additional reply statement filed by the respondents it has been stated that the irregular selection made at Palghat Division is also being set right. We feel that the respondents will fulfil the above statement shortly, thereby avoiding the complaints of irregular selection. It is noted from the above instances that the selections are done without scrupulously following the rules and regulations for conducting the selection. We hope such irregularities will be avoided in future by taking due care while conducting selections to avoid complaints. To a query why a notice was not given to the applicant who has been selected and advised to be ready to attend the training course before informing him not to proceed to the training course and ordering the review D.S.C. when such course of action was not restrained by this Tribunal, the learned counsel for the respondents submitted that the respondents did not think it fit to resort to such course during the pendency of this O.A. This reply is not satisfactory. In our opinion the respondents failed to apply their mind to the facts of the case and take action in accordance with law. The action is violative of the principles of natural justice.

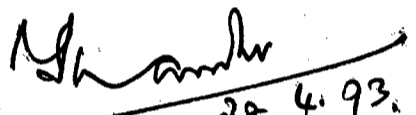
12. The learned counsel for the applicant has cited the case A.I.R. 1991 SC 2248 [Sardana Singh Vs. State of Punjab] to emphasise that the procedure adopted even if irregular does not vitiate the selection of candidates ultimately made by the Committee. In this decision the irregular procedure is in regard to ~~the~~ inviting the application; ~~and~~ ~~but~~ there is no irregularity in following recruitment rules as in this case. This case is distinguishable on facts and it does not support the contention of the applicant.

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13. In the facts and circumstances of the case we conclude that the ends of justice will be met if a direction is given to the respondents to give notice to the applicant and obtain his remarks before taking a decision either to cancel or revive the selection already completed. Accordingly we direct the respondents to keep in abeyance the telegram issued to the applicant at Annexure-C and ~~take~~ all further steps for review D.S.C. till such time when the selection held on 14.10.91 is cancelled in accordance with law as indicated in this judgement. The respondents are at liberty to proceed further with a fresh selection, if the selection held on 14.10.91 is duly cancelled after complying with the extant instructions and in accordance with law.

There will be no order as to costs.


(R. Rangarajan)
Administrative Member


(N. Dharmadan)
Judicial Member

28.4.93.