

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No.291/95

Tuesday the 18th day of April, 1995.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.K.Narayankutty,
Extra Departmental Branch Post Master,
Nagaripuram,
Veethully House,Nagaripuram P.O.
Mannar, Palghat-678 642.

.. Applicant

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Director General Posts,
New Delhi.
2. The Senior Superintendent of Post Offices,
Palakkad Division, Palakkad.
3. N.Velayudhan,
Nellikkadu House,
Nagaripuram P.O.
Via Mannur-678 642.
4. The Post Master General(North),
Kozhikode. ... Respondents

(By Advocate Mr.T.R.Ramachandran Nair,ACGSC(R1,2,& 4)
Advocate Mr.K.S.Bahuleyan(R3)

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

De hors details, the short question for consideration in this case is whether selection should be made in accordance with the rules in force at the time the vacancy arises, or whether it can be made in accordance with rules, that may be brought into force later.

2. Applicant was selected for appointment as Branch Post Master, Nagaripuram on 3.5.93 pursuant to an interview held on 11.1.93. The selection was challenged by third respondent in O.A.788/93. Third respondent contended that he who had passed the SSLC examination in the first instance should be preferred to applicant who passed only in a second or third attempt. Otherwise put, it is not the

marks but the number of attempts which determines preference, according to third respondent.

3. This Tribunal was impressed with that argument. It also drew support from the views of the Kerala High Court in Vijayamohan vs. Registrar, 1991(2) KLT S.N.case No.49, wherein the High Court observed:

"securing a little higher marks by taking the examination by different chances cannot be taken as a criterion of higher merit because opportunity for preparation in such cases may be higher."

4. Under the rules in force at the time of selection, higher marks entailed preference. This position was noticed in the order in O.A.1029/91(A9). However in O.A.788/93 the bench took a different view and observed.

"D.G's guidelines has not touched upon the question whether the maximum marks in the examination should have any reference to the marks secured in the first attempt itself or the marks secured in subsequent attempts...."

5. We notice that it is for rule making authority/Executive Govt. to decide what the criteria should be. (J.Rangaswamy vs. Govt. of A.P and others, AIR 1990 SC 535). It may not be for this Tribunal to ask the rule making authority to consider other aspects, or other matters.

6. Anyway pursuant to the directions, the Director General issued A2 clarification of 9.9.94 to the effect that it was the number of chances that matter and not the marks. The arguments centred round the correctness or otherwise of this view. In O.A. 788/93 this Tribunal also thought "the questions for consideration was (a) what should be the criterion for evaluating the marks

secured by the contesting candidates in the SSLC examination.....(b).....".

7. With great respect we feel that that is not a question which arose or can arise for consideration. It is entirely for the rule making authority to decide what the criteria ought to be. It is not for Tribunals or Courts to sit in judgment over the nature of qualifications prescribed, as pointed out by the Supreme Court in Dalpat Abasaheb Solunke etc.etc. vs. Dr.B.S.Mahajan etc.etc., AIR 1990 SC 434.

8. We are unable to agree with the views of the Kerala High Court when it observed:

"scoring a little higher marks by different chances cannot be taken as a criterion of higher merit...."

It may be that a brilliant student falls ill in the midst of an examination or that due to a domestic tragedy or like reason, he may not be in a position to take an examination. In that situation he will have to make a second attempt. Again the supposition that a person who takes a second chance prepares better, does not appear to be a universal rule. The quality of preparation would depend on a variety of circumstances like the inclination of the candidate, his surrounding circumstances and so on. As we have already stated the arguments centring round the qualification, what it should be or should not be, is alien to the context. What the Tribunal has to consider is whether selection should be governed by the rules in force when the selection was made. Admittedly and indisputably, the rule in force at the time the applicant was selected

reckoned merit on the basis of marks secured, and not by the number of chances taken to pass the examination.

9. We think that the selection made in January or May, 1993 must be governed by the rules then in force, namely the marks secured. We are fortified in our view by the decisions of the Supreme Court in Rangiah's case, AIR 1983 SC 852 and Kapur's case, AIR 1987 SC 415.

10. Learned counsel for respondents submitted that applicant cannot challenge the selection now, having subjected himself to the process of selection. He relied on the decision of the Supreme Court in State of Maharashtra vs. Harishchandra and others, (AIR 1986 SC 1192). That decision states that after subjecting oneself to the jurisdiction of a Tribunal no challenge can be made to its jurisdiction. The question of jurisdiction of a Tribunal or submission to jurisdiction does not arise here. For that matter, if a person keeps away from a process of selection he will have no locus standi to challenge it because he will be a rank outsider. Anyway in the case on hand, the candidature of applicant was considered pursuant to the direction of the Tribunal in O.A.788/93.

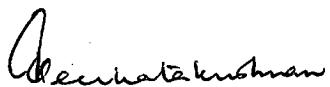
11. It was then argued by counsel for Union of India that applicant had suffered an adverse decision in O.A.788/93 and that he cannot challenge the decision now. We may point out that applicant had not suffered any decision adverse to him. The direction of the Tribunal to the Director General was to clarify certain matters. It is open to applicant to challenge that clarification as erroneous. The objections are not well-founded.

12. As already noticed the selection in question is governed by the rules in force in January, 1993. Going by it applicant is the person to be selected and hence she was rightly selected then. Even

after a reconsideration the position cannot change, as A2 can have no retrospective effect, taking away a right. We do not think that the Tribunal intended such consequences, for it cannot have intended a consequence contrary to the law laid down by the Supreme Court in Rangaiah's case and Kapur's case. However, we do not think it necessary to quash A2. Whether that is good for the future or not, is not a matter we are required to examine.

13. We quash A7 and A8 and allow the application. The selection originally made in favour of applicant will stand. No costs.

Dated the 18th April, 1995.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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