

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.308/91, 1237/91 and 1479/91

DATE OF DECISION : 4-11-1992.

O.A.308/91

M. Balakrishnan ... Applicant
Mr. P.V.Surendranath ... Advocate for the applicant

Versus

Superintendent, Railway Mail
Service, Calicut Division,
Calicut & 3 others. ... Respondents
Mr.Mathews J.Nedumpara ... Advocate for R.1 to 3
Mr.O.V.Radhakrishnan ... Advocate for R.4

O.A.1237/91

K.P.Ramakrishnan ... Applicant
Mr.M.Girijavallabhan ... Advocate for the applicant

Versus

Post Master General, North
Zone, Calicut & 3 others ... Respondents
Mr. George Joseph, ACGSC ... Advocate for R.1 to 3
Mr. O.V.Radhakrishnan ... Advocate for R. 4

O.A. 1479/91

P.K.Sathyanathan & 3 others ... Applicants
Mr. M.Girijavallabhan ... Advocate for the applicants

Versus

Post Master General, North
Zone, Calicut & 3 others ... Respondents
Mr. T.P.M.Ibrahim Khan, ACGSC ... Advocate for R.1 to 3
Mr. O.V.Radhakrishnan, ... Advocate for R. 4

CORAM:

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N.Dharmadan, Judicial Member

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

JUDGMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

All the three applications are heard together on consent of parties and disposed of by this common judgment because the facts and the question of law involved in these cases are (the same.) The facts in OA 1479/91 are dealt with for the disposal of the cases. The facts in the other cases are not stated separately.

2. The applicants are Extra Departmental Mailman working in the Postal Department. When the Department conducted a test for the recruitment and promotion to the post of Group 'D' Mailman as per Annexure-A1 letter dated 27.12.89, declaring the vacancies as per Annexure-A2 letter dated 22.1.90, the applicants appeared for the same and were successful. Applicants are included in the select list, Annexure-A3. Applicants 1, 2 and 3 are at serial No.9, 12 and 13 and the 4th applicant being a Scheduled Caste is included at serial No.18. Without considering the claim of appointment of the applicants respondents have filled up eight vacancies by promoting candidates from general category and initiated steps to fill up the remaining vacancies by promoting and taking persons from outside the select list (Annexure-A3) on the ground that Annexure-A4 instruction issued by the D.G.P. dated 28.8.90 provides for making promotion on the basis of seniority alone subject to satisfactory service. According to the applicants the respondents ought to have filled up the 24 vacancies which arose in 1989/90 before the selection held as per Annexure-A1 letter by appointing the applicants and similarly situated persons who are successful in the examination for promotion and were included in the select list. Since the respondents failed to appoint the applicants and promoted the persons

from the category outside the select list relying on Annexure-A4, the applicants have filed this application under Section 19 of the Administrative Tribunals Act for quashing Annexure-A4 and for a direction to the respondents 1 to 3 to appoint the candidates including the applicants to Group 'D' Mailmen from select list at Annexure-A3 until the list is completely exhausted.

3. 4th respondent, an ED Mailman, has been impleaded as per order in M.P.1425/91 on 12.11.1991 since he is interested in the issue involved in this case.

4. Reply statements have been filed by respondents 1 to 3 and additional 4th respondent. They have admitted the basic facts but submitted that 58 candidates including six candidates under the direction of this Tribunal and the applicants herein had appeared for the examination conducted on 28.1.1990 for promotion to the cadre of Group 'D' for the year 1989. In the said examination 18 Extra Departmental Mailmen including the applicants herein came out successful. At the time of the examination following 24 vacancies were assessed and intimated to the Chief Post Master General, Kerala Circle, as per letter dated 1.5.1989:

"Existing vacancies as on date : 7

Vacancies likely to occur till
the end of the year, 1990:

(a) Retirement : 4

(b) Promotion : 10

(c) Unforeseen : 3

Total : 24
===== "

But 23 vacancies were announced vide Chief PMG's letter No.Rectt/13-2/89 dated 10.1.1990. They have further submitted that even though there were 10 anticipated vacancies under promotion, only 3 Mailmen came out successful in the examination for promotion held on 5.8.1990 to the

cadre of Sorting Assistant. Thus the vacancies under promotion became 3 and no further vacancies occurred under the category 'unforeseen'. Thus the total number of vacancies for filling up the post of Group 'D' reduced to 14. Out of the 14 vacancies, 8 were filled up by candidates i.e. 6 O.C. candidates and 2 S.C. candidates who were qualified in the Group 'D' examination conducted on 28.1.1990. Out of the remaining 6 vacancies, 3 were reserved for S.T. candidates and the same were filled up taking ED Mailmen from Postal side as there were no ST candidates available in the said Division. The remaining 3 vacancies were occurred consequent on the promotion of Mailmen to the cadre of Sorting Assistants as stated above. It is also stated in the reply that though the examination for filling of the vacancies for the year 1990 was conducted on 28.1.1990, the vacancies became physically available on 8.2.1991. Hence a doubt arose as to whether these vacancies can be filled up with the candidates from the waiting list as literacy test for absorption of ED Agents to Group 'D' cadre was removed with effect from 1.1.1991 and seniority is to be taken as the basis for promotion to Group 'D'. Annexure-A4 is the letter issued from the directorate by way of clarification. Annexure-R3(A) dated 3.9.1991 was also issued by the Post Master General, Northern Region, clarifying that since the vacancies have actually arisen only after 1.1.1991 the same have to be appropriately filled up as per the new procedure. This has been issued on the basis of the opinion obtained from the Senior Central Government Counsel.

5. The additional 4th respondent in the reply stated that the the vacancies occurred subsequent to 28.8.1990 are necessarily to be filled up according to the new procedure and that the 4th respondent is entitled to be absorbed as Group 'D' Mailman on the basis of his seniority. But he has not been appointed in view of the stay granted by this Tribunal. The applicants who were placed at serial Nos.9,

12 and 13 in Annexure-A3 cannot be appointed for want of vacancies and they have no right to be appointed to the Group 'D' post by virtue of their pass in the examination and inclusion in Annexure-A3.

6. The applicants filed a rejoinder. In the rejoinder they have stated that 3 vacancies occurred by reason of promotion of Mailmen as Sosting Assistants from the date they were sent for training i.e. 12.11.1990 and therefore those vacancies had occurred on 12.11.90 and the applicants can be accommodated. In fact some of the applicants have been promoted provisionally and they can be allowed to continue in the promoted post in view of the fact that there were existing vacancies in 1990 itself.

7. We have heard the counsel on both sides and perused the records. The argument of the learned counsel for the applicant is that Annexure-A4 cannot alter the recruitment rules which provide literacy test for EDAs for selection to Group 'D' posts. The persons already selected and included in Annexure-A3 list are eligible to be appointed in the cadre of Mailmen according to seniority in the said list till the list is exhausted. The recruitment rules for selection to Group 'D' posts had been produced by respondents as Annexure-R3(E). Rule 2 provides for the selection after conducting a test. It reads as follows:-

"2. In the schedule annexed to the Indian Posts and Telegraphs (Group D posts) Recruitment rules 1970 under the heading 'Subordinate offices' in item 1, the following entries shall be inserted in column 9 namely:-

'By means of a test, as prescribed by the Director General Department of Posts, New Delhi, from time to time, from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be made only when no qualified persons is available in the higher category:

- i) Non-test category officials mentioned at item 11.

- ii) Extra department agents of the recruiting division or unit, in which vacancies are announced.
- iii) Casual labourers (full time and part time) or the recruiting division or unit.
- iv) Extra departmental agents of neighbouring division or unit.

xxxx

xxxx

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4. In the schedule annexed to the Indian Posts and Telegraphs (Group D posts) Recruitment rules 1970, under the heading "subordinate offices" in item II, in column 9, the existing entries "100% direct recruitment" shall be substituted by the following:-

"By means of an interview from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be made only when no qualified persons is available in the higher category:

- i) Extra Departmental agents of the Recruiting Division or unit in which vacancies are announced.
- ii) Casual labourers (Full time & Part Time) of the Recruiting Division or unit.
- iii) Extra Departmental agents of neighbouring division or unit

Explanation : for postal division, the neighbouring division will be the Railway Mail Service division and vice-versa.

- iv) Nominees of the Employment Exchange.

xxxxx

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xxxx

Note:

1. The syllabus of the test and minimum pass marks for recruitment to posts at 1 in subordinate offices shall be as laid down by the DGPT from time to time, before commencement of the examination.
2. Extra Departmental staff may be considered against the vacancies for direct recruitment in subordinate offices subject to such conditions and in such manner as may be decided by the DGP&T from time to time.
3. Casual labourers and part time casual labourers may be considered against the vacancies of direct recruitment subject to the conditions laid down by the DG P&T from time to time."

8. The respondents in the reply statement submitted that Annexure-A4 has been issued by way of clarification. When a doubt arose as to whether the vacancies can be filled up by candidates from the waiting list as the literacy test for absorption of EDAs to Group 'D' post was abolished. It is

. . . . 7/-

seen from para 1.1 of Annexure-A4 that "the literacy test prescribed for EDAs for selection to Group 'D' posts is hereby abolished". The last sentence in the said para reads as follows:-

"This recruitment procedure will be effective for vacancies occurring on or after 1.1.1991."

Para 2.9 and 3 of the said letter read as follows:-

"2.9 The new procedure now being laid down will apply to recruitment for vacancies occurring on or after 1.1.1991.

3. Further action may be taken accordingly. The required amendments to the Recruitment Rules are being notified separately."

This being a clarification it is only to be understood that Annexure-A4 does not substantially modify the existing recruitment procedure for selection to the post of Group 'D' prescribed under the existing recruitment rules particularly when there is an indication in Annexure A4 itself that the required amendments of the recruitment rules are being notified separately. No such amendment was brought to our notice. Even though there is a statement in the reply statement that Annexure-A4 was issued by way of clarification the respondents have submitted in the course of arguments that note in the recruitment rules gives freedom to the DG P&T to prescribe syllabus to the test and minimum pass mark for recruitment to the post and hence the DG P&T has the power to issue letters like Annexure-A4 and it is to be upheld because it has been issued with due authority.

9. The applicants are persons who are successful in the examination which was held by the Department on 28.1.90 after making a declaration in Annexure-A2 that there are 24 vacancies as noted below:-

"	<u>OC</u>	<u>SC</u>	<u>ST</u>	<u>Ex-Man</u>	<u>OPH</u>	<u>DEAF & DUMB</u>	<u>Total</u>
	15	4	2	1	1	1	24 "

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... 8/-

Annexure-A2 was issued on 22.1.1990 and thereafter the examination was conducted and the respondents prepared Annexure-A3 list in which the applicants are also included as persons having eligibility to be promoted considering their seniority in the successful candidates/^{who}sat in the examination conducted by the Department. Annexure-A4 clarification was issued only on 28.8.90 ~~by which the~~ respondents have abolished the literacy test prescribed before the selection of EDAs to Group 'D' posts. But the last but one clause in the letter makes it very clear that the new procedure will apply to "recruitment for vacancies occurring on or after 1.1.1991". It also indicates that "the required amendments to the Recruitment Rules are being notified separately". Since no such amendment was issued so far we have to go by the original recruitment rules, Annexure-R3(e) which prescribes a test. The applicants are persons who have been declared successful in the test and included in the select list. So long as the existing vacancies which are notified as per Annexure-A2 remain, the applicants have a right to be posted in the post of Mailmen in Group 'D' category. By virtue to clause 2.9 of Annexure-A4 the new recruitment procedure contemplated in Annexure-A4 will apply to the recruitment for vacancies occurring on or after 1.1.1991. The respondents have no case that they have conducted a fresh recruitment for the vacancies/^{which}occurred on or after 1.1.91. In their reply statement what they have stated ~~xxxx~~ is that 24 vacancies were assessed and intimated to the Chief Post Master General, Kerala Circle, as per letter dated 1.5.1989. But the vacancies became physically available on 8.2.1991. Hence a doubt arose as to whether the vacancies can be filled up by the candidates from the waiting list Annexure-A3 for absorption of Extra Departmental Agents to Group 'D' cadre. Accordingly, to clarify this doubt Ann.A4 was issued by the Director General. . . .9/-

10. By a mere clarification the right of the persons who have already been selected after the examination under the existing recruitment rules cannot be nullified. Moreover the clarification itself makes it clear that the new procedure ~~mentioned~~ in the clarification will apply to the "recruitment for vacancies occurring on or after 1.1.91". Since no such recruitment was made for the vacancies which physically became available after 1.1.91, the persons included in the list have a right to be absorbed in Group 'D' posts until further recruitment in accordance with the new procedure. ~~Ann. 4~~ is to be taken as a clarification to the existing recruitment rules. In that view it is unnecessary for us to quash Ann. A4.


11. The respondents have further submitted that even though 24 vacancies were expected as indicated in Annexure-A2 the total number of vacancies actually became available for absorption in Group 'D' posts after the examination held on 28.1.90 were only 14 against the assessment already made by the Department and that vacancies were already filled up with persons from Annexure-A3 list. The respondents have also taken the stand that any vacancy which arises after filling up the aforesaid 14 vacancies can be filled up with persons from general category outside the select list Annexure-A3. In the light of the available material and the existing recruitment rules we are of the view that this stand of the respondents is not correct particularly when the respondents have not conducted any fresh recruitment as per the new procedure for filling up vacancies arising on or after 1.1.91, as clearly stated in Ann. A4.

12. It is also to be noted that persons from Annexure-A3 list were appointed in Group 'D' posts after 28.8.90, the date on which Annexure-A4 was issued. Some

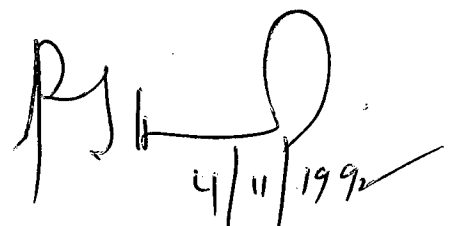
persons from Annexure-A3 ~~were~~ appointed as Group 'D' in spite of the fact that Annexure-A4 states that literacy test for the selection to Group 'D' posts is abolished and the recruitment procedure will be effective for vacancies occurring on or after 1.1.91. If the respondents can appoint few persons from Annexure-A3 after Annexure-A4 clarification ~~to~~ vacancies which became available on 8.2.91 ~~applying the~~ same analogy persons who are included in Annexure-A3 can also be appointed till the list is exhausted or a fresh recruitment as contemplated in Annexure-A4 is conducted following the new procedure for filling up the vacancies occurring on or after 1.1.91. Since the respondents have not conducted any further recruitment we are of the view that the applicants are entitled to be absorbed in the existing vacancies till a new recruitment is made for the vacancies arising after 1.1.1991.

13. In this view of the matter, having considered the claim of the applicants in detail, we direct the respondents 1 to 3 to appoint the applicants in Group 'D' post of ^{or other vacancies which may arise} Mailmen in the existing vacancies ⁷until they conduct a fresh recruitment in accordance with the new procedure.

14. All the applications are allowed ^{with 4} in the aforesaid direction. There will be no order as to costs.


4. 11. 92.

(N.DHARMADAN)
JUDICIAL MEMBER


4/11/1992

(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

R.A. No. 12/93

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by supdt. g RLS

(Applicant/Respondents in

OA /TA No. 308/91) seeking a review of the order dated 4.11.92 passed by this Tribunal in the above noted case.

2. Unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either reject petition or direct notice to be issued to the opposite party.

3. A Review petition is, therefore, submitted for orders of the Bench consisting of Hon'ble Shri P.S. Habeeb Mohamed (M-A)
Hon'ble Shri N. Dharmadan (M-J)

which pronounced the Order sought to be reviewed.

In this connection it may be mentioned that sub-para 4 of C.A.Y. P.B's. Notification No.13/19/91-JA dated 18.2.'92 is applicable.

Accordingly, since the Hon'ble Shri P.S. Habeeb Mohamed (M-A) ~~has ceased to be~~ has ceased to be a Member of the Tribunal and the other Member Hon'ble Shri N. Dharmadan (M-J) is available in the Bench Hon'ble V.C. may kindly constitute the Bench so that the R.A. can be posted for preliminary hearing.

P.S. to Hon'ble V.C.

Hon'ble V.C.

Let the Bench consist of Hon'ble Shri Dharmadan and Hon'ble Shri Ranganarajan.

DR (S)

Post before the Bench on 10.2.93 with notice to both the parties.

MW. V. ROU 1/2/93
MW. NRP 2/2/93
notice issued.
4/2/93
so (S/L) A
MKRM

Rednotelecom
2/2/93

Mmm
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SE
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4/2/93

- (36) Mr GCP Tharakan, SCGSC for Petitioner/Respondents.
Mr PV Surendranath for Original applicant
Mr DV Radhakrishnan for R-4

Post this case alongwith RA 9 and 10/93 on 5.3.93.
MP 210/93 for condonation of delay heard, allowed.

RR

ND

10.2.93

ND JNR

SC case by Cmg.
Mr Surendranath-

At the request of respondent
post on 25.3.93

(RR)
22/3

(ND)
22/3

ND JNR

SC case by Cmg.
Mr DV Radhakrishnan by Cmg.

At the request of learned counsel
for respondent in the RA post on 7.4.93

(RR)
25/3

(ND)
25/3

*Admitted by notice to
22/3 for want of
appropriate Bench
RA 9 & 10/93 also have
been admitted to
next date*

29

(16)

ND MR

SECRET by PMS
on P V Sundanath

Heard

Print index formed

separately.

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15/12/4