

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 311/2008

this the 15 th day of July, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

Jayakumar R. S/o Sri R. Narayanan Nair
residing at Ramanthara House
Anandapuram PO, Iringalakkuda Postal
Division, Thrissur District-680 323

..Applicant

Vs

By Advocates Mr. O.V. Radhakrishnan Senior, Mrs. K. Radhamani Amma,
Mr. Antony Mukhath, Mr. K.V. Joy and Mr. Nikhil S. Kumar.

- 1 The Director General
 Department of Posts
 Dak Bhavan
 New Delhi.
- 2 Chief Postmaster General
 Kerala Circle, Thiruvananthapuram.
- 3 Superintendent of Post Offices,
 Irinjalakkuda Postal Division,
 Irinjalakkuda -680 1212
- 4 Union of India represented by the
 Secretary to Govt. Of India
 Ministry of Communications
 Department of Posts,
 New Delhi.

..Respondents

By Advocate Mr. George Joseph, ACGSC for R 1, ~~to~~ 4

The Application having been heard on 22.6.2009 the Tribunal delivered
the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant mainly challenges Annexure A-7 notification revising the recruitment procedure for Postal Assistants/Sorting Assistants.

2 The applicant states that the 2nd respondent invited applications in the prescribed format for direct recruitment of Postal/Sorting Assistants in the Kerala Circle as per Annexure A-2 notification. As per Annexure A-3 they announced **nine** vacancies out of which **one** vacancy was reserved for ex-servicemen. Applicant an ex-serviceman appeared in the test and the respondents by memo dated 12.7.2007 declared that one Mr. Deepak K.V. was selected. Later Shri Deepak withdrew his name from the Select List. The next below person Sri Biju P.A. who was provisionally selected also withdrew his name. According to the applicant he being the next candidate on the basis of the marks obtained in the selection should have been appointed. He is challenging the action of the respondents in not appointing him on the grounds of non publication of the waiting list, restriction of waiting list equal to the number of vacancies, the respondents are duty bound to fill up the quota earmarked for ex-servicemen, the vacancy cannot be carried forward to the next year, the operation of waiting list strictly against drop outs from the Select List. Hence he filed this O.A. for quashing Annexure A-7 notification, to declare that the respondents are legally obliged to fill up the vacancy remaining unfilled due to non-joining of selected/provisionally selected candidate.

3 Per contra, the respondents in their reply statement submitted that based on the marks obtained in Pre-Degree/Plus 2 marks, Aptitude

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Test and Typing test, the candidates were selected including one post earmarked for Ex-servicemen quota. As per the Recruitment Rules equal number of candidates as the number of vacancies can only be kept in the waiting list. As the selected and the waitlisted candidates declined the offer, there was no further scope for appointing the applicant who was neither selected nor included in the waiting list. They also admitted that the waiting list is not published. The validity of the waiting list is six months from the date of announcement of the result. The recruitment process for the year 2005 and having the waitlist exhausted the applicant could not be considered for appointment.

4 We have heard learned counsel for the parties and have gone through the pleadings.

5 The applicant is challenging the revised Recruitment procedure at Annexure A-7 wherein with reference to waiting list it is specifically stated as follows:

(14) Waiting list: A waiting list shall be prepared only to the extent of vacancies announced in the relevant category. The candidates of the waiting list may be considered only in case the selected candidates do not respond or refuse to accept the offer. The names of candidates in the waiting list will not be announced. This list will be current for six months only from the date of declaration of result and will be strictly operated against drop outs from select list and not against any other vacancy or in any other contingency."

The learned counsel for the applicant relied on the following judgments in support of applicant's case:

- (i) People's union for civil liberties and another Vs. Union of India and Others (2004 (2) SCC 476)

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- (ii) State of Punja Vs. Raghbir Chand Sharma and another (2002 (1) SCC 113)
- (iii) J.P. Bansla Vs. State of Rajasthan and another (2003 (5)SCC 134)
- iv) Gujarat State Dy Executive Engineers' Association Vs. State of Gujarat and Other (1994 Suppl.II SCC 591)
- (v) Union of India and another Vs. Haralal Das (1999 SCC (L&S) 792)

6 The learned counsel for the respondents brought to our notice the judgment of the Apex Court in the following cases in support of respondents:

- (i) Union of India and another Vs. Harlal Das (1999 SCC (L&S) 792)
- (ii) State of Punjab Vs. Raghbir Chand Sharma and another (2002 SCC L&S 104)

7 In J.P. Bansla Vs. State of Rajasthan and another the Apex Court held that the power of High Court to direct the appointment of candidates included in the select list is limited unless the Govt. had acted arbitrarily the High Court could not direct the Government to appoint the candidates from the waiting list to the vacancies of the relevant year or to future vacancies.

In Union of India and another Vs. Haralal Das the Hon'ble Apex Court held as follows;

"3 A petition was filed on behalf of the respondents before the Tribunal alleging that he had appeared for an interview in the year 1984 and a panel had been prepared in the year 1985 in which his name was placed against Sl.No.46. The Tribunal by the impugned order dated 1.12.1994 directed the appellant to appoint the said respondent notionally from the date of; on which any other candidate from the said panel was appointed.

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The learned counsel appearing for the Union of India rightly pointed out that no direction should have been given by the Tribunal for appointment from a panel which had been prepared as early as in the year 1985. He also pointed out that it is not known as to how many persons above the said respondents were on the panel who have not yet been appointed. According to us there is substance in the contention raised on behalf of the appellant. The Tribunal should not have passed an order in December 1994 to appoint the respondent whose name appeared in the provisional selection merit list prepared in the year 1985. It is well known that any selection list has a limited life."

In this case the applicant who was in the select list when denied appointment, approached the Tribunal for appointment which was allowed by the Tribunal. The Union of India challenged the order of the Tribunal before the Hon'ble Apex Court which set aside the judgment of the Tribunal on the ground of long time gap in claiming/granting appointment.

In State of Punjab Vs. Raghubir Chand Sharma and another, the Apex Court held as follows:

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

This case is not identical to the case on hand. In this case the first candidate in the panel was appointed and the panel ceased to exist. Later, on the resignation of the appointed candidate, when the petitioner in that case sought appointment the Hon'ble Supreme Court held that no one else in the panel can claim appointment.

In Gujarat State Dy Executive Engineers' Association Vs. State of Gujarat and Others (1994 Suppl.II SCC 591) the Hon'ble Apex Court

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while discussing the maintenance of waiting list opined as follows:

"....A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selection of 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held except where it is for single post, it is normally held by taking into accounts not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent indicated above or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

The learned counsel for the applicant strenuously argued that from the judgment supra it emerges that the Hon'ble Supreme Court stated that there is an exception in the recruitment of single vacancy. Therefore, the counsel argued that in the case of single post there is a favourable decision.

8 What emerges from the above judgments of the Hon'ble Supreme Court is that there is no legal right for a waitlisted candidate to seek appointment in the event of the selected candidate joining and resigning

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later. No claim can be asserted and countenanced for appointment after the expiry of six months. There is no rhyme or reason for such a claim to be enforced before courts, leave alone there being any legally protected right to get appointed. Therefore, there is no doubt that when the post is filled with the selected candidate, there is no legal right for the candidates in the waiting list and when the candidates in the waiting list is also exhausted there is no legal right for a candidate who participated in the selection but is not in the waiting list, to claim appointment even if there are vacancies.

9 However, in the case on hand there is a distinction. In this case the selected and waitlisted candidates did not accept the offer of appointment. There is not much difference in merit between the applicant and the waitlisted candidate, while the waitlisted person scored 66.15% marks the applicant scored 66.00% marks in the selection. The question that comes up for consideration in this O.A. is when the selected and the waitlisted candidates decline the offer of appointment, can a candidate who is not in the select list or waiting list in accordance with the extant rules, ^{be} is legally entitled to seek appointment. The argument of the learned counsel in the case of a single vacancy relying on the judgment of the Apex Court in the case of Gujarat State Deputy Executive Engineers supra is worth consideration in the facts and circumstances of this case.

10 Reservation of posts in Government service to ex-serviceman has been introduced by the Government as a welfare measure to lakhs of discharged defence personnel for the service rendered by them in defending the Motherland and keeping in view the early retirement. The



action of the respondents defeats the intention of the Government. It affects the ex-serviceman and his family adversely. In our view the Department should have ensured a provision in the recruitment rules in the case of filling up of single post that, in the event of the selected and waitlisted persons not joining, the post is not filled up because of the restriction on the waiting list. When the single candidate is pushed up to the select list, the next meritorious candidate can be waitlisted, to ensure that the recruitment process remains unhindered.

11 There is another attack on the non-publication of the waiting list. In view of the decision we are taking in this O.A. we do not express our view in the challenge against non-publication of the waiting list, a practice followed in the Postal Department for a long time.

12 In this view of the matter we are of the opinion that the O.A. can be allowed to the extent of directing the respondents to take steps to complete Annexure A-2 process of recruitment to the post of Postal Assistant reserved for ex-servicemen with the applicant who admittedly stood third in the selection. We order accordingly. The O.A. is allowed as above. There shall be no order as to costs.

Dated 15th July, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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