

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 320/91
~~XXXXXX~~ ~~XXXX~~

DATE OF DECISION 20-1-92

M. Vijayan _____ Applicant (s)

Mr. M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the Secretary, Ministry of Communications,
New Delhi and another

Shri K.A. Cherian, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
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

N. Dharmadan, M(J)

The applicant is aggrieved by the non-inclusion of his name in the list of candidates selected for the post of Postman published after the departmental examination held on 21-10-90. He has also challenged Annexure-V 'Rules for Recruitment to Postman and Mail Guards'.

2. The applicant is an Extra Departmental Agent (EDA for short). He appeared for the examination held by the department on 21-10-90 for selecting persons to

be posted as Postman. Annexure-I is the list of candidates who were successful in the examination. The applicant's name was not included in Annexure-I list, but his name was included in Annexure-II seniority list dated 28-9-90. This is a list of candidates who were admitted for the examination to be held on 21-10-90 based on their seniority. The applicant is shown at Sl.No.13 in the list. The applicant claims that he is eligible to be selected as Postman on the basis of his higher seniority in Annexure-II list and prays for the following reliefs:

"... (i) to declare that the applicant was entitled to be included in the select list for appointment/promotion as Postman on the basis of his seniority in Annexure-II and his qualification in the departmental examination held on 21-10-90 and to direct the respondents grant appointment/promotion to the applicant as postman in his due turn with all consequential benefits.

(i)(a) to declare that the provisions under Col. 11 of the Annexure-V rules in so far as it denies promotion to E.D. Agents on the basis of seniority cum fitness is null and void.

(ii) Grant such other relief....."

3. The application as originally filed on 26-2-91 contained only a challenge against Annexure-I list of selected candidates for being appointed as Postman pursuant to the departmental examination held on 21-10-90.

...../

When the respondents filed reply affidavit on 1-4-91 giving the details that by order dated 4-10-90, the Postmaster General has approved 13 vacancies for selection of candidates of which 7 in the departmental quota and 6 in the outside quota and that the selection of candidates was made strictly in conformity with the instructions in force, the respondent found that the applicant's contentions are unsustainable. It is clear from the statements in the reply that though the applicant was included in Annexure-II seniority list as Sl.No.13 and he was allowed to sit for the examination, he could not be included in Annexure-I list of candidates selected as Postmen because he ^{was senior enough to be} ~~could not~~ be included either in the category of seniority quota based on seniority or in the merit quota based on marks for he was not having higher position in the seniority list nor did he secured higher marks than the last person who were included in the merit quota. They have further stated that there was no candidate from departmental quota. Hence vacancies earmarked for departmental quota was added to ^{by} ~~the extra departmental quota was added to~~ the extra departmental agents(outsiders) coming under the merit which was prescribed as 50% of the outside quota. The

first three candidates appearing in the seniority list were selected as outsiders by seniority, from the outside quota. Eight candidates were also selected on merit and one candidate in the SC quota. The result of one was withheld in the merit quota. There were only 3 vacancies in the outside seniority quota. The three seniors at the top of the seniority list were appointed in these vacancies. All of them are seniors to the applicant. Eight persons selected in the outside merit quota are having higher marks than the applicant. The applicant secured only 89 marks whereas the last person selected from outside merit quota got 121 marks. So the applicant has no case on merits.

4. From the statement in the reply filed by the respondents it appears that the applicant was satisfied that he has no case. ^{However} ² Hence he filed an application for amendment of OA incorporating the prayer challenging the Recruitment Rules. The main challenge against the Recruitment Rules is that by allocation of seats to extra-departmental agents and departmental candidates, the chance of promotion for the EDA would be reduced. According to the applicant the method of recruitment under Annexure-V Rules is arbitrary and illegal in so far as the ED agents are treated on a different footing with group-D employees for the purpose of promotion.

5. We have heard the arguments and perused the documents carefully. As indicated above, we see no substance in the contention that the applicant is entitled to be considered for being included in the Postman category, considering the seniority or merit. We have given the reasons. In fact in the reply, the respondents have stated that the applicant's position in the seniority list is 13 but there were only 3 vacancies. In filling up of these 3 vacancies, the applicant cannot be considered because of his low seniority. Similarly, in the merit quota also the applicant cannot be included because he got only 89 marks while the last person selected, secured 121 marks.

6. The applicants next contention that the chances of promotion of EDA based on the allocation in Column 11 would be reduced equally is unsustainable. The Supreme Court in Union of India and others V. L. Dutta and another, AIR 1991 SC 363 ^(Indicated by) observed that reduction in chance of promotion is not a condition of service. The Court held as follows:

"...As has been laid down more than once by this Court, the Court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force quo the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same.....

".....These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reason of their training and experience... The question is, therefore, whether this change can be said to be arbitrary or malafide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing....."

7. The provisions of allocation of seats as contained in Columnan 11 of the Rules for Recruitment to Postmen and Mail Guards read as follows:

"....Column 11 Method recruitment

(1) 50% by promotion failing which by Extra Departmental Agents on the basis of their merit in the Departmental Examination.

(2) 50% by Extra-Departmental Agents of the Recruiting Division or unit in the following manner namely:-

(i) 25% from among ED Agents on the basis of their seniority in service and subject to their passing the Departmental examination failing which by ED Agents on the basis of merit in the Departmental examination.

(ii) 25% from amongst ED Agents on the basis of their merit in the Departmental examination

(3) If the vacancies remained unfilled by EDAs of the recruiting Division, such vacancies may be filled by the EDAs of the Postal Division failing in the zone of the Regional Directors.

(4) xxxx xxxx xxxx

(5) xxxx xxxx xxxx...."

7. Under these rules 50% of seats are earmarked

for promotion of Group-D officials who have put in 3

years of regular service. Rest of the 50% is set apart

for the EDAs dividing them equally into two categories

This allocation appears to be fair. By
viz. seniority and merit. *The E.D. Agents cannot be equated*

with Group-D employees. The Rule making authority has

given an equitable distribution and the allocation contained in the method of recruitment cannot be struck down for reasons mentioned in the application. There is no force in the contention of the applicant. The application is liable to be rejected.

8. In the result, the Original Application is dismissed.

9. There shall be no order as to costs.


(N. Dharmadan)

Judicial Member

20.1.92


(N. V. Krishnan)

Administrative Member