

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.396/2003

Wednesday this the 11th day of February, 2004

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.R.Ramadas,
Cleaner,
Officiating as Driver,
Mail Motor Service,
Thrissur-4. - Applicant

By Advocate Mr OV Radhakrishnan

Vs

1. Senior Superintendent of Post Offices,
Thrissur Postal Division,
Thrissur.
2. Post Master General,
Central Region,
Kochi.
3. Departmental Promotion Committee
Constituted for Selection of
Departmental candidates for transfer
to the post of Driver, MMS,
Thrissur Division
represented by its Chairman,
Senior Superintendent of Post Offices,
Thrissur Division,
Thrissur.
4. Union of India
represented by its Secretary,
Ministry of Communications,
New Delhi. - Respondents

By Advocate Mr K Shri Hari Rao, ACGSC

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant is a Cleaner, Mail Motor Service(MMS) working as a Driver(Mazdoor) in MMS Thrissur Unit which is declared to be a separate Recruitment Unit maintaining

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separate gradation lists for those employees working in such Unit. This is the 2nd round of litigation centering round the applicant's right to be considered for appointment as Driver against the vacancy caused by the retirement of a person on medical grounds from the Thrissur MMS. Earlier, by O.A.1058/2000, the applicant agitated before this Tribunal against the appointment of one T.Sasindran from the Ernakulam MMS to Thrissur MMS in the vacancy caused by the retirement of one Shri A.C.Velayudhan, Group-I Driver on medical grounds. The applicant whose claim to be appointed against a Driver's vacancy at Thrissur was pending when such appointment took place, prayed for setting aside the order appointing Shri T.Sasindran, impleaded as 5th respondent in the said O.A. After going through the entire facts in detail and on a careful consideration of the rule position particularly with reference to the relevant Recruitment Rules and Rule 38 dealing with request transfers, the Tribunal came to the following finding as per para 14 of A-13 order dated 28.10.2002:

"14. We find from the Recruitment Rules reproduced above that recruitment by transfer could be effected only against departmental quota, and that too if departmental candidates are not available. When the Recruitment Rule specifically provide for recruitment by transfer we are of the view that the respondents could not consider departmental candidates against outsiders quota. Therefore, the action of the respondents in transferring the 5th respondent from Ernakulam MMS Unit to Trichur MMS Unit could not be held to be an action under the Recruitment Rules even if it is accepted that the vacancy was a direct recruit vacancy."

The Tribunal also held that the applicant was entitled to payment of officiating pay and allowances of Driver during the

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period when he rendered duty as Driver(Mazdoor). The operative part of A-13 order is reproduced hereunder:

"21. In the result this Original Application succeeds. We quash and set aside A-10, A-12 and A-14. We direct the respondents 1 & 2 to consider the applicant for promotion as Driver against the vacancy which occurred on 17.1.2000 on account of the invalid retirement of Shri A.C.Velayudhan Grade-I Driver w.e.f. that date with all consequential benefits including arrears of pay and allowances. We also direct the respondents to grant the applicant officiating pay for the period he performed duties of Driver."

In purported compliance with the Tribunal's order in O.A.1058/2000, the first respondent has issued A-14 order dated 7.4.2003 informing the applicant that -

"... the Departmental Promotion Committee met on 26.2.2003, to consider your case for promotion to the cadre of Driver, but found you unfit for promotion..."

The applicant would submit that the impugned A-14 memo dated 7.4.2003 is patently illegal, arbitrary and is violative of Articles 14 and 16 of the Constitution of India. He would submit that as per A-2 Recruitment rules, 50% of the posts in the cadre of Driver in the P&T Department were to be filled up by direct recruitment and the remaining 50% by transfer. The applicant has the qualifying length of service, educational qualification etc. As per the Recruitment Rules, the post of Driver is neither a selection post nor a non-selection post and fitness regarding competence to drive light and heavy vehicles alone needed to be considered. The applicant has not been informed on what ground or reason the DPC found him unfit

for promotion. In the circumstances, having regard to the findings of this Tribunal in O.A.1058/2000 the respondents ought to have issued a detailed order. Accordingly, the applicant prays for the following reliefs:

- i) to call for the records relating to A-14 and to quash the same;
- ii) to declare that the applicant is eligible and entitled to be appointed as Driver by transfer in the MMS, Thrissur Unit without regard to the recommendations of the 3rd respondent;
- iii) to issue appropriate direction or order directing the respondents to appoint the applicant to the post of Driver against the vacancy which fell vacant on and from 17.1.2000 on account of the invalid retirement of Shri AC Velayudhan, Group-I Driver with effect from that date with all consequential benefits including arrears of pay and allowances as directed by this Tribunal in A-13 order dated 28.10.2002."

2. The respondents have filed a reply statement opposing the O.A. While admitting that the applicant has got a valid driving licence, the respondents have stated that the applicant was approved for being engaged as a Driver on temporary officiating basis. Accordingly he was engaged as Driver(Mazdoor) for some time but such engagement was not against any sanctioned post. The respondents dispute the

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applicant's eligibility and qualification to be appointed as Driver. The applicant could not be made Driver by transfer as Drivers' post is a Group 'C' post and the post held by the applicant was Group 'D'. Therefore, the applicant could become Driver only by promotion. Since as per the Recruitment Rules, educational and other qualifications for direct recruitment and promotion are the same, the applicant was given simple tests in reading, writing and dictation in Malayalam and elementary arithmetical calculations. This was done in pursuance of this Tribunal's order dated 28.10.2002 in O.A.1058/2000. The applicant's performance was far below the minimum standard, as is evidenced by annexures R1(c), (c)(i), R1(d), (d)(i), R1(e), R1(f), R1(g) and R1(h). Respondents would maintain that the method adopted by them was fair, reasonable and transparent. There was no arbitrariness or irregularity involved in the method of selection. The DPC was within its powers and duty in the matter of holding the necessary test for determining the applicant's fitness for promotion, the respondents would maintain.

3. In his rejoinder, the applicant would claim that since he had a valid driving licence, the requisite driving skill and 3 years' regular service in the eligible cadre and since his pay scale was lower than the scale attached to the post of Driver, there was no necessity to hold any test by the DPC as holding such test is not its function. The recruitment rules do not prescribe any literacy test or arithmetic test. Therefore, the argument that the applicant did not qualify in the test was untenable. In the ^a post, no literacy test was

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conducted for promotion from the lower grade to the post of Driver. In the circumstances, the impugned A-4 order is ex-facie illegal and liable to be set aside. The applicant would also contend that the A-3 order of the Tribunal has since been confirmed by the Hon'ble High Court of Kerala.

4. We have heard Shri O.V.Radhakrishnan, learned counsel for the applicant and Shri K.Shri Hari Rao, learned ACGSC.

5. According to Shri OV Radhakrishnan, the applicant eligible to be appointed as Driver, that he had been continuously working as Driver since July 1999, that the applicant ought to have been regularised as Driver against the vacancy caused by the retirement of Shri AC Velayudhan on medical ground and that proficiency tests in language and arithmetic were not warranted by the recruitment rules and hence the respondents stand that the applicant did not qualify for the promotion was untenable. Learned counsel would state that the recruitment rules would make it clear that the post of Driver was not a selection or non-selection post and fitness regarding competency to drive light and heavy vehicle alone should be the criterion as there was no selection involved. According to him, the DPC had no role to play in holding any test either on account of proficiency in language or skill in arithmetic or even driving skill. That the applicant was a meritorious Driver was borne out by the fact that he was given a cash award for exemplary performance of duties on 15.3.1988 when there was a Bharath Bandh. Learned counsel would plead that respondents bear a grudge against the

applicant on account of his filing the O.A. against the appointment by transfer of Shri Sasindran from Ernakulam MMS Unit. Even in the reply statement filed in the present O.A., the respondents have referred to the appointment of Shri T Sasindran and tried to justify it while this Tribunal by A-13 order had already invalidated the appointment of the said Shri Sasindran and High Court by A-15 judgement also has held that the said transfer was not in conformity with the provisions of the statutory rules. The applicant's disqualification by subjecting him to a literacy test which was not authorised by the rules was calculated to deny him his legitimate right to be considered for promotion to the post of Driver against a clear existing vacancy, the learned counsel would urge.

6. Mr Shri Hari Rao, learned ACGSC has argued that the recruitment rules A-4 prescribe possession of a valid driving licence for light and heavy motor vehicles, minimum 4 years driving experience on light and heavy motor vehicles with one year obligatory experience in driving heavy vehicles and ability to read and write local language and to make simple arithmetic calculations as essential pre-requisites for recruitment to the post of Driver. A pass in the middle standard was only desirable. As far as the applicability of age and educational and other qualifications in the case of candidates for promotion to the post of Driver is concerned, the learned ACGSC submits that while age restriction was not applicable to candidates aspiring for promotion, educational and other qualifications prescribed for direct recruits were equally applicable to candidates seeking to promotion.

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Learned counsel would therefore maintain that the applicant, being a departmental candidate for promotion to the post of Driver, had to possess a valid driving licence with 4 years' driving experience and also should have ability to read and write local language and simple arithmetical calculations. To judge his ability to read and write local language, i.e. Malayalam, and to do simple arithmetic calculations, it was necessary to devise some test. As is evidenced by R1(c) to R1(g) the tests given were simple, but the performance of the applicant in all the test was far below the minimum standard. According to the learned counsel, it could not be said that the respondents acted with bias or malafides in holding the test. Further, there could be no allegation that the tests were not permitted by the statute. When ability to read and write local language and simple arithmetic calculations is an unavoidable condition for direct recruitment as well as promotion, it was necessary to devise appropriate method of measuring the ability of the candidates. In this process, the respondents displayed absolute integrity and transparency. The allegation that the respondents bear a grudge against the applicant because of his complaint against the transfer and posting of one Sasindran from Ernakulam which, of course, was negatived by the Tribunal and the Hon'ble High Court, is totally irrelevant in the context of the promotional tests to which the applicant was subjected to. the DPC was within its competence to go through the formalities necessary for considering the applicant's fitness with reference to the prescribed norms. The applicant having failed in this, the

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DPC consisting of 3 independent members judged that the applicant was unfit. The learned counsel would produce for our perusal a copy of the minutes of the DPC held on 26.2.2002 to support his contention.

7. We have gone through the records and have considered the arguments put forward by the counsel on either side. We find that the applicant possessed a valid driving licence and has got the required qualifying experience. The applicant therefore was eligible to be considered for promotion to the post of Driver. It cannot be disputed that each MMS is a separate recruitment unit and transfer could be effected only against departmental quota, when there are no departmental candidates available at a particular unit. Thus, the applicant who has been continuing in Thrissur MMS as Driver(Mazdoor) for a fairly long time had the right and the legitimate expectation to be considered for such promotion.

8. By A-13 order, this Tribunal held that filling up of the Driver's vacancy at MMS Thrissur Unit by transferring a person (i.e. the 5th respondent in the relevant O.A.) from MMS Ernakulam was unsustainable as it violated the recruitment rules and that the applicant was entitled to officiating pay and allowances of Driver for the period he performed such duties. The Tribunal also directed the respondents 1&2 to consider the applicant for promotion as Driver against the vacancy that arose on account of retirement of Shri AC Velayudhan on grounds of invalidation. The respondents were obliged to consider the applicant's case in accordance with

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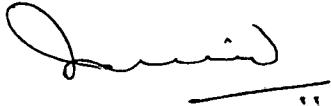
the rules, orders and instructions. The impugned A-14 order shows that on considering the applicant's case for promotion to the cadre of Driver, the DPC found the applicant unfit. Officiating salary for the period he worked as Driver was, however, sanctioned separately. The impugned A-14 order, it is noticed, does not elaborate on the selection process which the DPC had taken recourse to. But the respondents have filed photo copies of the questions and the applicant's answer sheets relating to the written test in local language, i.e. Malayalam and skill test in simple arithmetic vide R1(c) to R1(h). We notice that the applicant's performance in Malayalam written test and arithmetic calculation test was poor and fell far below the expected standards. The argument that the recruitment rules do not prescribe writing test is untenable. When recruitment rules lay down that education and other qualifications prescribed for direct recruits would apply in the case of promotees also it would mean that aspiring candidates for promotion to the post of Driver also should have the same educational and other qualifications and they too should know how to read and write the local language and to do simple arithmetical calculations. These conditions are prescribed with the purpose of ensuring minimum communication skill and calculation skill essential for the discharge of the functions of a Driver. It is wrong to assume that all that is necessary for a Driver is to know how to drive a light or heavy motor vehicles, as the case may be. Without the bare minimum communication and arithmetical skill, it would be impossible to carry out the work efficiently. In any case, the recruitment rules remain unchallenged. Holding

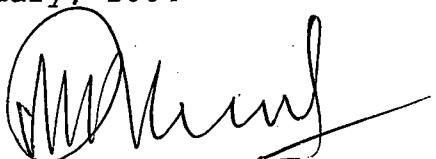
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some test to grudge the candidates' language and arithmetic skill does not violate the recruitment rules, in our considered opinion. That was the only way recruitment rules could be effectuated. There is no ostensible malafides, bias or any other vitiating factor that renders the test bad in law. We are not impressed by the argument that the respondents were carried away by the applicant's earlier protest or objection or grievance against the appointment by transfer of one Sasindran. In that case, law took its own course and such appointment was annulled. In the same manner, law should take its own course in the present case also. The applicant has to pass muster in order to achieve what he wants viz, promotion to the post of Driver. We are not persuaded to believe that by holding the elementary language and arithmetic test the respondents have acted in violation of this Tribunal's directions in A-3 order or the principle laid down by the Hon'ble High Court in A-15 judgement.

9. On the facts and in the circumstances of the case, we hold that none of the reliefs prayed for can be granted. The O.A., having no merit has to be dismissed. Accordingly we dismiss the O.A. There is no order as to costs.

Wednesday this the 11th day of February, 2004


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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