

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 407/2004

WEDNESDAY, THIS THE 11th DAY OF JANUARY, 2006.

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Jayakumari K.T.
GDS SPM, Kurumulloor, PO
Kottayam Division
Kottayam

.. Applicant

By Advocate Ms K Indu

Vs.

1 Unon of India represented by
 its Secretary
 Ministry of Communications
 New Delhi.

2 Post Master General
 Central Region
 Kochi

3 Senior Superintendent of Post Offices
 Kottayam Divisin
 Kottayam-606 001

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is working as Gramin Dak Sevak Sub Postmaster (GDS SPM) Kurumulloor Sub Post Office, has filed this Application aggrieved by the changes made in the Recruitment Rules for promotion to the post of Postal Assistant/Sorting Assistant from GDS, seeking the following reliefs:

(i)to declare that column 11(c) of the schedule attached to Annexure A6 Recruitment Rules, Department of Posts (Postal Assistants & Sorting Assistants) Recruitment Rules 2002 to the extent it reduces the age qualification from 35 to 31 for OBC's among EDA's/GDS for recruitment to the post of Postal Assistants/Sorting Assistants is illegal and arbitrary and hence the same is liable to be struck down;

(ii)to declare that column 11(b) schedule attached to Annexure A6 to the extent it takes away the benefit of 10% marks

weightage for EDA's for recruiting as Postal Assistants/Sporting Assistants is arbitrary, incorrect, and illegal and hence the same has to be declared null and void.

(iii) to quash Annexure A4 issued by the 3rd respondent to the extent it incorporates the condition limiting 31 years of age limit for OBC's for recruitment of Postal Assistant instead of 35 years prescribed as per Annexure A3.

(iv) to direct the respondents to consider Annexure A5 application of the applicants in the light of Annexure A3 instead of Annexure A6 and

(v) to issue such other reliefs as this Hon'ble Tribunal may deem fit and proper.

2 The contentions of the applicant briefly are that she is qualified and possesses a Degree with high first class and joined the Department as EDBPM, Choondasserry w.e.f. 30.9.2000 when the Recruitment Rules at Annexure A-3 promulgated in 1992 was in force. According to the above rules for all recruitment to the post of Postal Assistants and Sorting Assistants, the age requirement was 35 years for other categories and 40 years for SC/ST communities. There was also 10% marks relaxation available in comparison to the last open merit candidate considered in the last recruitment under the same category. However, the Recruitment Rules have been changed and the revised Recruitment Rules as at Annexure A6 dated 9.1.2002 came into force in the year 2002 according to which the age limit was fixed at 31 years for OBCs and the weightage of 10% marks to be awarded for EDAs had also been taken away. It is contended that the amended Recruitment Rules takes away the benefit which were provided under the earlier Rules and are therefore arbitrary, illegal and unjust. The applicant is now aged 34 years and hence has become over-aged as per Rules at Annexure A-6. Therefore her Application is liable to be rejected. Annexure A-4 notification inviting applications is also therefore arbitrary and discriminatory since the applicant who joined the service was governed by Annexure A-4 Recruitment Rules. It has also been contended that the vacancies which were proposed to be filled up were for the years 2000 and 2001 and therefore the Recruitment Rules 1990 which were in force at that time are to be followed.

3 The respondents have denied the averments of the applicant in the reply statement. It is admitted that the Recruitment Rules have been modified in 2002 amending some of

the provisions contained in the earlier rules. The revised Rules are applicable to all the GDS from the date from which the same was brought into effect. The changes have been made in the rules taking into account the capability and calibre expected of the persons selected and also the functional requirements of the incumbents recruited to the posts. This is a policy decision taken by the Department which cannot be termed arbitrary or discriminatory as alleged by the applicant. The Department has every right to fix the age limit for recruitment as well as in the examination. The minimum age of recruitment for GDS is 18 years and not 22 years as contended by the applicant. Those who were appointed as GDS within the age of 18 to 25 years can after completion of 3 years service compete for selection as Postal Assistant/Sorting Assistant. Therefore prescribing a lower age limit of 31 years amending the previous age limit of 35 years for OBC candidates is not unjust or illegal. The cut of mark of less than 10% secured by the last direct recruit candidate of the relevant category selected, as the case may be of the previous recruitment year was a concession given to EDAs and this was found to be adversely affecting the efficiency of the Postal operations. With a view to induct relatively young and competent candidates the age limit was lowered to 28 years and the concession of 10% mark less than that of the last selected candidate was done away with.

4 They have also filed a reply to the MA filed by the applicant producing the order Annexure R-2 communicating the decision that the applicant had not obtained the minimum marks required at the examination. It was also submitted that 13 GDS had appeared in the examination, two vacancies were reserved for OBC and the applicant who was at 7th position out of the 13 candidates could not secure the minimum marks awarded to the last candidate who was recruited under the OBC category. It has also been contended by the respondents that the test which was conducted in August, 2004 was for the vacancies of 2002 and that appointment to the post of Postal Assistant/Sorting Assistant from GDS is not to be considered as promotion and it is in the nature of appointment of outsiders subject to certain conditions.

5 We have heard learned counsel for both the parties who reiterated the contentions advanced in the pleadings. The learned counsel for the applicant relied on the judgment

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of the Hon'ble Supreme Court in State of Rajasthan Vs. R. Dayal and Others (1997 (10) SCC 419) and in Devi Ram Vs. Union of India and Others (1992 (20) ATC 482.). The crux of the argument was that the vacancies which existed prior to the amendment of the Rules should be governed by the original rules and not by the amended rules. The first judgment referred to evolved the same principle as enunciated in Y.V. Rangaiah V. J. Sreenivasa Rao (1983(3) SCC 284). The second judgment deals with the question whether fixation of age in respect of certain posts would have nexus with the nature of work.

6 We have gone through both the judgments and the facts of this case. The applicant has contended that the vacancies for which the A-4 notification was issued pertain to the years 2000 and 2001. No evidence has been produced by the applicant in support of this. On the other hand the notification specifically states that the vacancies pertain to unfilled vacancies of the year 2002. The respondents have also affirmed in para 12 of the reply statement as also in their reply to MA 65/05 that the vacancies are of the year 2002. The Recruitment Rules have been notified in January, 2002, the recruitment was being conducted in the year 2004. Under these circumstances we do not find any support for the contention of the applicant that the vacancies pertained to the years 2000 and 2001. Therefore we are not in a position to grant the benefit of the Hon'ble Supreme Court's decision in Y.V. Rangaiah's case to the applicant in this case. Besides in the judgment referred to by the learned counsel for the applicant the amendment in the Recruitment Rules was made changing the eligibility conditions after the selection process was completed by the DPC. In this case no such confusion was created by the amendment as the amendments were made in the year 2002 itself and the amended rules are to be applied to selections in the year 2004. The above judgment has also upheld the corollary that vacancies which arose subsequent to the amendment of the rules are required to be filled up on the basis of the law available as on the date the vacancy arose. And even the carry forward vacancies is to be considered according to the existing rules unless a suitable relaxation is made by the Government. As the vacancy is reported to be of the year 2002, the respondents cannot be faulted for applying the provisions of the amended Recruitment Rules which came into effect from January, 2002.

7 The second decision quoted by the applicant does not appear to be relevant to the facts of the case and cannot help the applicant. In fact the respondents have taken the same argument that the change which has been made in the age limit was done considering the nature of duties and functions of the post and the Department requires intelligent and energetic people to handle new services.

8 In the light of the above facts and the circumstances of the case we are of the view that the applicant has not made out a case. The OA is dismissed. No costs.

Dated 11th. January, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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