

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTY FIRST DAY OF, MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(JM)

Hon'ble Shri L.H.A.Rege Member(AM)

APPLICATION NO.1391/86(T)

H.Umanath Prabhu,  
R/a Leewal P.O., Mangalore,  
Dakshina Kannada District.

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APPLICANT

( Shri M.S.Anandaramu

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Advocate )

Vs.

1. The Union of India, represented  
by the Secretary to the Govt.  
of India, Ministry of Tele-  
communications, New Delhi.

2. ← The Director General of Posts  
and Telegraphs, New Delhi.

3. The Post Master General,  
Karnataka Circle, Bangalore.

4. The Senior Superintendent of  
Post Offices, Mangalore Divi-  
sion, Mangalore, Dakshina  
Kannada District.

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RESPONDENTS

( Shri M.S.Padmarajaiah

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Advocate )

This application has come up before the court today.

Hon'ble Shri L.H.A.Rege, Member(AM) made the following :

ORDER

In this transferred application, the applicant prays  
mainly, that the rule or direction prohibiting the Extra  
Departmental Candidates (EDCs), from appearing for the exami-  
nation for selection to Class IV service, be held as illegal,  
as it amounts to hostile discrimination; that the impugned  
order dated 8.12.1983 (Annexure-C), passed by the fourth respon-  
dent, in so far as it prohibits the applicant from appearing  
for the Test, for selection to Class IV service, be quashed &

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being illegal; and that the respondents be directed, to permit the applicant, to appear for the said Test, regardless of the age-limit and to select him for the Class IV Service.

2. The applicant entered service in the Postal Department in 1962, as an Extra Departmental Packer, at Leewell Post Office, Mangalore and was serving in this capacity continuously, till he filed the present application. His status was considered as that of an Extra Departmental Employee or Agent(EDA). According to Rules, an EDA is required to pass the prescribed examination, to qualify himself, to be appointed as a regular Class IV employee, in the Postal Department. In order to be eligible for this examination, he should have put in more than 3 years of extra departmental service, in the Postal Department and should not be above 42 years in age. In fact, the age-limit of 40 years stipulated earlier, was relaxed to 42 years, under Letter dated 7.4.1980, from the Director General of Posts and Telegraphs, New Delhi, the second respondent.

3. The applicant submitted a representation on 20.5.1981 (Annexure-B) to the second respondent, stating that he had served in the Postal Department, for more than 20 years and that he had appeared a number of times for the Test, to qualify for promotion to the cadre of postal attendants and postmen, but could not get through the same. He could not appear for this Test subsequently, as he had crossed the stipulated maximum limit of 40 years and even when this age-limit was extended to 42 years, under the letter dated 7.4.1980, of the second respondent. His date of birth is 17.5.1938. The applicant states, that he had requested the third and the fourth respondents, to give him a chance to appear for this Test. The third respondent negatived his request on 28.11.1980. The applicant states, that he submitted

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several representations in this regard, but except for his representation dated 20.5.1981, he is not able to lay hand on others. The fourth respondent, by his letter dated 8.12.1983 (Annexure-C), did not include the name of the applicant, among the candidates permitted to appear for the Test, scheduled to held on 8.1.1976, in Mangalore Division. Aggrieved, the applicant filed a writ petition in the High Court of Judicature, Karnataka, which has been transferred to this Bench, under Section 29 of the Administrative Tribunals Act, and is the subject matter of the application before us.

4. The learned Counsel for the applicant contends mainly, that no age-limit is prescribed for passing a similar Test, in respect of the regular departmental candidates, in the Postal Department, unlike in the case of EDAs, which is violative of the equality clause under the Constitution, there being no intelligible differentia; that consequently, the rule stipulating the maximum age-limit of 42 years, in the case of the EDAs, is not sustainable, being arbitrary and capricious; that the applicant had worked continuously, as extra-departmental packer, at Leswell Post Office, Mangalore, for nearly 21 years, which fact should have been taken into account, to permit him to appear for the said Test, regardless of the age-limit; and that he had worked as Class IV servant, in the Postal Department, for nearly one year, from 17.1.1983 to 3.1.1984, which should have also been taken into consideration, to allow the applicant, to appear for the qualifying Test, for promotion to Class IV.

5. Learned Counsel for the applicant, relied on the Supreme Court decision in D.S. NAKARA & ORS v. UOI & ORS reported in AIR LJ 1980, 131, to support the contention, that the

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second respondent had arbitrarily relaxed the age-limit for the above Test, in 1980. He referred particularly to the part of the judgement extracted below, as relevant to the case before us :

"... If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected, having no rationale for selecting it and having an undesirable effect on dividing a homogeneous class and of introducing discrimination, the same can be easily severed and set aside."

6. Learned Counsel for the respondents refuted each of the above contentions. He submitted that the applicant was 24 years of age, when he entered service in the Postal Department in 1962 and had ample time, to acquit himself in the Test, prescribed for promotion to Class IV service, even when the maximum age-limit, was initially stipulated as 40 years. The applicant had well over a decade, to appear for this Test and get through, if he had the will and determination. The applicant states, that he appeared for the Test but failed, but has not revealed, as to how many times he appeared for this Test. We are informed by the Counsel for the respondents, that this Test is being held almost every year. It is thus apparent, that the applicant did not make an earnest effort, to appear for the Test, within more than adequate period, that was available to him and to get through the same.

7. We have examined carefully the rival contentions and the material placed before us. The ratio of the decision in the Supreme Court case, relied upon by the counsel for the applicant, - vide para 5 above - has little relevance to the instant case, the nature <sup>and the</sup> circumstance of appointment to the post of EDA <sup>is</sup> being wholly different, as compared to a regular employee in the Postal Department. The EDA is governed by a separate set of Conduct and Service Rules, known as the Posts and Telegraphs Extra Depart-

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mental Agents (Conduct and Service) Rules, 1964. An EDA holds a post outside the regular service, though this post is under the administrative control of the State. As compared to the regular employees of the Postal Department, who are governed by a separate set of Conduct and Service Rules, the EDAs render part-time service to the Postal Department, in attending to Post Office work in a village, without dissociating themselves from their main avocation. One of the criteria therefore, for selection of an EDA, is that he must have adequate means of livelihood, so that the allowances paid to him for his work, as EDA are just supplementary to his income. The EDAs as compared to the regular employees of the Postal Department, are a class apart, by the very nature of their appointment, duty and responsibility and therefore, do not form a homogeneous class with the regular employees. The dicta of the Supreme Court case referred to in para-5 above, does not therefore apply to them.

8. The applicant had more than ample opportunity to appear for the Test, to qualifying himself, for regular appointment as a Class IV employee in the Postal Department, which he lost by his own default. It needs to be remembered, that justice comes to the <sup>aid</sup> ~~aid~~ of the vigilant and the diligent, but not of the <sup>the</sup> indolent.

9. In the result, we find that the application is devoid of merit and therefore, we dismiss the same. No order as to costs.

*C. R. M. Choudhary*  
MEMBER (J) 31.3.87

*G. S. D. Singh*  
MEMBER (AM) 31.3.87

AN.