

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated 2-7-87

Application Nos. 253 to 257, 321 & 322, 342,
398 & 399, 439 to 442 & 457

Applicant

Shri Malleshaiah & 14 Ors

V/s The PMG, Karnataka & 2 Ors.

To

1. Shri Malleshaiah

2. Shri R. Prabhakar

3. Shri B. Shankar

4. Shri Chikkamariyappa

5. Shri N. Nanjaiah

(Sl Nos. 1 to 5 - Mazdoers,
Office of the Head Record Officer,
RMS Sorting Division, Bangalore)

6. Shri S. Hari

7. Shri S. Nanjaiah

8. Shri T. Venkatesh

(Sl. Nos. 6 to 8 - Mazdoers,
Office of the Head Record Officer,
RMS Sorting Division, Bangalore)

9. Shri M.N. Aswathanarayana Rao
E.D.M.G.
Neerengantippally
A/W Bagepally
Kolar District

Respondents

10. Shri K. Narasimhaiah
EDDA - Paragodu B.O.
A/W Bagepally
Kolar District

11. Shri T.K. Narayanaappa
328, III Cross
Vijayanandanagar
Yeshwanthapuram
Bangalore - 560 022

12. Shri R. Siddalingappa
No. 213-A, 6th Cross
III Phase, I Main
Manjunathanagar
Rajajinagar
Bangalore - 560 010

13. Shri N.K. Lakshminarayana Rao
ED DA, Nandi
Chikaballapur
Kolar District

14. Shri N. Subramanyam
31, Arabikothanur
Kolar District

15. Shri M. Udayakumar
No. 17, New Corporation Quarters
9th Square, Murphy Town
Ulsoor, Bangalore - 560 008

16. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
17. The Post Master General
in Karnataka
Palace Road
Bangalore - 560 001
18. The Senior Superintendent Of Post Offices
RMS Bangalore Sorting Division
Bangalore - 560 020
19. The Head Record Officer
RMS Sorting Division
Bangalore - 560 026
20. Shri M.S. Padmarajaiah
Senior Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of the Order passed by this Tribunal
in the above said applications on 12-6-87

Hase
SECTION OFFICER
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 11/12TH DAY OF JUNE, 1987

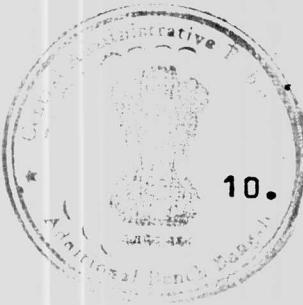
Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NOS: 253-257, 321, 322, 342,
398, 399, 439-442 & 457

1. Malleshaiah, S/o. Veerabhadraiah	.... Applicant in A. No.253/87
2. R. Prabhakar, S/o. Rangaiah	.... Applicant in A. No.254/87
3. B. Shankar, S/o. Basappa	.... Applicant in A. No.255/87.
4. Chikkamariyappa, S/o. Chikkaboraiah	.... Applicant in A. No.256/87.
5. N. Nanjaiah, S/o. Natakada Daddaiah.	.... Applicant in A. No.257/87.

(Applicants 1to5 are working
as Mazdoors in the O/o the
Head Record Officer, RMS
Sorting Division, Bangalore)

6. Sri. S. Hari	.... Applicant in A. No. 321/87
7. Sri S. Nanjaiah	.... Applicant in A. No.322/87
8. Sri T. Venkatesh, S/o. Y. Thimmaiah	.... Applicant in A. No.342/87
9. Sri M.N. Aswathnarayananappa, S/o. Narasimhappa, E.O.M.G. Neereganthippally, A/W. Bageppally, Kolar District.	.... Applicant in A. No.398/87
10. K. Narasimhaiah, S/o. Krishnaiah, EDDA-Paragodu B.O. A/W. Bageppali, Kolar District.	.... Applicant in A. No.399/87.



11. T.K. Narayanappa,
S/o. Kodappa,
328, III cross,
VijayaRanandanagar,
Yeshwanthapuram,
Bangalore-22. Applicant in
A. No.439/87.

12. R. Siddalingappa,
S/o. V. Ramaiah,
No.213-A, 6th Cross,
III Phase I Main,
Manjunathanagar,
R'nagar, B'llore-10. Applicant in
A. No.440/87.

13. N.K. Lakshminarayana Rao,
S/o. N. Krishnamurthy,
ED DA, Nandi,
Chikballapur
Kolar-Dist. Applicant in
A. No.441/87.

14. N. Subramanyam,
S/o. Venkatarayappa,
31, Arabikothanur,
Kolar District. Applicant in
A. No.442/87.

15. M. Udayakumar,
S/o. Muthumari,
No.17, New Corporation
Quarters, 9th Square,
Murphy Town, Ulsoor,
Bangalore-50. Applicant in
A. No.457/87.

(Shri M.R. Achar, Advocate)

v.

1. The Postmaster General
in Karnataka,
Bangalore-1.

2. Senior Superintendent of
Post Offices, R.M.S. B'llore
Sorting Division, Bangalore-20.

3. Head Record Officer,
RMS. Sorting Division,
Bangalore-26. Respondents common
in all the applica-
tions.

(Shri M.S. Padmarajaiah, CGSSC)

This application having come up for hearing to-day, Vice-Chairman made the following.

O R D E R

As the questions that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. Applicants in Applications Nos. 398,399,439 to 442 of 1987, who are working as "Extra Departmental Agents" ('EDAs') of Kolar Division, are governed by the Post and Telegraphs Extra Departmental Agents Conduct Rules ('EDA Rules'). All other applicants are working as Casual Labourers (mazdoors), in one or the other office of Bangalore Sorting Division of the Postal Department.

3. In his Notification No. BIII/1/86-87, dated 11.3.1987, (Annexure-H), the Senior Superintendent, Sorting Division, Bangalore ('Superintendent') called for applications from eligible EDAs, of his Division, to appear for a literary test to be held on 21.6.1987, for recruitment to Group-D posts of that Division only. As this notification, does not permit the applicants to appear for the test to be held on 21.6.1987 and the consequent recruitment to Group-D posts of the Division, the applicants in separate but identical applications made under Section 19 of the Administrative Tribunals Act, 1985 ('Act'), have sought for a declaration to appear for the test and the consequent recruitment to Group-D posts of the Division.

4. The applicants have urged, that under the Indian Posts and Telegraphs (Class IV posts) Recruitment Rules, 1970 ('Rules') they have a right to appear for the test and for recruitment to Group-D posts and the same had been illegally denied by the Superintendent.

5. The respondents have resisted the applications. In their separate but identical replies, the respondents have asserted, that the notification issued by the Superintendent, restricting the opportunity ~~only~~ to the EDAs of his Division only, was in conformity with the Rules, orders and directions made by the Director General of Posts and Telegraphs ('DG, P&T') from time to time and was valid.

6. Shri M. Raghavendraachar, learned Advocate, has appeared for the applicants. Shri M.S. Padmarajaiah, learned Senior Standing Counsel for Central Government, has appeared for the respondents.

7. Shri Achar contends, that the Superintendent in ^{to} restricting the competition only/the EDAs of his Division denying the same to all others eligible by the Rules had acted unauthorisedly and illegally.

8. Shri Padmarajaiah contends, that the restrictions placed by the Superintendent on EDAs of his Division, only was in conformity with the Rules, orders and directions made by the DG P&T, in exercise of the powers conferred on him by the Rules were legal and valid.

9. The notification dated 11.3.1987 (Annexure-H) issued by the Superintendent, which has given rise to these proceedings before us, reads thus:

Memo No. BIII/1/86-87 dtd @ Bangalore-26, the 11.3.1987

It has been decided to conduct a literacy test for recruitment to the cadre of Group 'D' posts from eligible ED Agents on 21.6.1987.

All ED Agents who have completed three years' of service as on 16.4.1987 and who are below the age of 35 years (40 years in case of SC/ST candidates) on that date are eligible to appear for the test.

Applications from eligible candidates are called for. The last date for the receipt of applications is 16.4.87. The format of the application is attached herewith.

The receipt of this letter may please be acknowledged by HROr, and Supervisors HRO (det), Bangalore City RMS/ Bangalore Sorting Office.

Sd:
/B. SADASHIVA RAO/
Sr. Superintendent RMS. "

....

In this notification, the Superintendent had permitted the EDAs of his Division only, to appear for the test to be held on 21.6.1987. When a person is not permitted to appear for the test, then his case for recruitment to Group-D posts of the Division cannot and will not be considered, is not in dispute. In other words, this notification restricts the opportunity for recruitment to the EDAs of the Division only and denies that opportunity to the applicants who are not working in that Division, which is the common case of both sides, and is the factual and legal position that emanates from the notification issued by the Superintendent.

10. The respondents claim, that the restrictions placed by the Superintendent were in conformity with the orders and circulars issued by the DG P&T published on 28.11.1970, as "Administrative Instructions" (AIs) and AIs 1, 7 and 9 which are material for our purpose, read thus:

" Administrative Instructions

1. Scope of Service: The candidates for Class IV posts are recruited for service within a particular unit i.e., a subdivision or L.S.G. Office or H.O. in case of Postal Division. They are ordinarily liable to transfer within the unit for which they are recruited, but in the interests of service they may be transferred at any time elsewhere.

SECTION 1. SUBORDINATE UNITS

7. Test Category Posts: Vacancies in category posts in each year in all branches (Postal, RMS Telegraphs and Engineering) of the Indian Posts and Telegraphs Department will be filled from among the boy peons available in the recruiting unit at the time of selection. If however, certain vacancies of a year are left unfilled after providing all Boy Peons, the same may be filled up from among categories specified and in the order indicated below. Recruitment from among the next category is to be made only when there is no qualified person available in any of the higher category or categories.

- (i) Non test category Class IV staff
- (ii) Extra Departmental Agents
- (iii) Casual Labourers
- (iv) Part-time casual labourers
- (v) Nominees of the Employment Exchanges.

The manner of selection from each category is mentioned below:-

(a) Boy peons: Age at the time of appointment should not be less than 18 years. A boy peon will be eligible for appointment within the same branch in which he is engaged to any class IV post in the test category in any one recruiting unit within the same divisional area in which he is serving. Boy peons of the same unit shall have preference over those of other units qualified in the same year. Boy peons will himself apply through the officer under whom he is serving to the appointing officer of the recruiting unit of his choice for appointment to any of the Class IV posts in the test category the officer under whom.

(iii) They are entitled to the benefit of having the service rendered as part time casual labour deducted from their age at the time of absorption in a regular post as outside candidate for arriving at the maximum age limit of 25. All broken periods of service rendered as casual labour will also be taken into account for this purpose provided at least one spell of service among the broken periods is more than six months.

(f) Nominees of Employment Exchange:- They will be appointed upto the number of vacancies in the order of merit in which they pass the literacy test.

9. Non test category posts:- The recruitment will be by means of an interview by the Divisional Officer concerned. The posts will be filled from among category specified in the order indicated below. The recruitment for the next category is to be made only when there is no person available from any of the higher category.

(1) Extra-Departmental Agents possessing sufficient knowledge of the post concerned provided they satisfy the same age/ service limits as specified for test category posts.

(2) Casual labourers provided they satisfy the same conditions for absorption as specified for test category posts.

(3) Part time casual labourers provided they satisfy the same conditions for absorption as specified for test category posts.

(4) Nominees of the Employment Exchange.

A.I. No.1 which defines the scope of the service restricts the area of selection to a Unit or Division only. While AI No.7 regulates test category posts AI No.9 regulates non-test category posts.

11. The 'boy peons' category referred to in A.I.No.7 as a fact, does not any more exist in Karnataka Circle and therefore, the provision made for them cannot be operated or had become obsolete as pleaded by the respondents which fact, is not disputed by the applicant. We, therefore, accept this plea of the respondents as correct. With this, it also follows that the question of preferring 'boy peons' for test category, will not arise.

12. When the category of boy peons is excluded, then the other clauses of AI No.7 provides for preference in the order indicated therein. The preference to one category necessarily excludes the other category. On the language of these instructions, it is obvious that one category necessarily excludes the other category. The latter or other category could be preferred, only if the former were not available. If there are boy peons, they have to be preferred to the exclusion of all other categories. This is how the cycle should run or move.

13. What is true of AI No.7 is also true of AI No.9, reproduced earlier.

14. The respondents claim that the AIs and AI Nos.1, 7 and 9 have been issued by the DG P&T under Notes 1 to 3 of the Schedule to the Rules and are intra vires of the Rules. Whether this is so or not, is the short and interesting question that calls for examination.

15. Before ascertaining the true scope and ambit of the Rules and some of their provisions on which reliance is placed by the respondents to support their case, it is well to remember the observations of BHAGWATI, J. (as His Lordship then was) in K.P. VARGHESE vs. ITO, ERNAKULAM (AIR 1981 S.C. 1922) explaining the progressive rule of construction of statutes. Therein the learned Judge explained the same in these inimitable words:

"..... The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said: "..... it is true that the words used, even in

their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning". We must not adopt a strictly literal interpretation of Section 52 sub section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 sub section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language: "..... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create"....."



Bearing these and other well-settled rules of construction of statutes, we now proceed to ascertain the scope of the Rules and the particular provisions of the Rules.

16. Rules 1, 2 and 3 of the Rules, which deal with short title and commencement, application, classification and scale of pay, are not material and therefore a detailed analysis of them is not necessary.

17. Rule 4 of the Rules, which regulates the method of recruitment, age limit and other qualifications and the three Notes appended to the Schedule which are material, read thus:

"

4. Method of recruitment, age limit and other qualifications: The method of recruitment to the said posts, age limit, qualifications and other matters relating thereto shall be as specified in columns 4 to 12 of the schedule aforesaid.

Provided that the upper age limit prescribed for direct recruitment may be relaxed in the case of persons belonging to Scheduled Castes, Scheduled Tribes and other special categories in accordance with the orders issued by the Central Government from time to time. "

S C H E D U L E

X X X X

Note:-1. The syllabus of the test and the minimum pass marks for recruitment to posts at 1 in subordinate offices shall be as laid down by the DG P&T from time to time, before commencement of the examination.

2. Extra Departmental Staff may be considered against the vacancies for direct recruitment in subordinate offices subject to such conditions and in such manner as may be decided by the DG P&T from time to time.

3. Casual Labourers and part-time casual labourers may be considered against the vacancies for direct recruitment subject to the such conditions laid down by the DG P&T from time to time.

The method of recruitment to the Group-D posts is really found in this Schedule.



18. The three Notes added to the Schedule have to be read as part of the Rules.

19. Note-1 of the Schedule empowers DG P&T, to prescribe the syllabus of the test and the minimum pass marks for recruitment from time to time. The true scope and ambit of this Note does not bear on the question.

20. Notes 2 and 3 of the Schedule deal with Extra-Departmental Staff, casual labourers and part-time casual labourers respectively. Both these clauses empower the DG P&T to make provisions to consider the Extra Departmental Staff and casual labourers and part-time casual labourers for recruitment to Group-D posts, in subordinate offices and other offices, subject to such conditions and in such manner, as may be decided by him from time to time. These provisions confer powers on the DG P&T to make the Extra Departmental Staff and casual labourers and part-time casual labourers eligible for recruitment to Group-D posts, subject to such conditions and in such manner as may be decided by him. The conditions subject to which these two categories can be made eligible and the manner in which they can be made eligible, can all be regulated by the DG P&T. Thus the power conferred by Notes 2 and 3 on the DG P&T is not an absolute and unrestricted power but is a limited and restrictive power.



21. The conditions subject to which and the manner in which the Extra Departmental Staff and the casual labourers and part-time casual labourers can be made eligible, must all be settled by the DG P&T well before the tests are held for recruitment to Group-D posts. Without the DG P&T settling them well before the commencement of the tests, it will be impossible for the prospective applicants to ascertain them and appear for the tests or for the authorities to regulate their recruitment. With this broad analysis, it now remains to ascertain the true meaning of the terms "subject to such conditions and the manner in which" occurring in Notes 2 and 3 of the Schedule which we now proceed to do.

22. The Shorter Oxford English Dictionary on Historical Principles, Vol.1, defines the terms "condition and manner" as hereunder:

"condition"

1. Something demanded or required as a prerequisite to the granting or performance of something else; a provision, a stipulation.
2. Law. In a legal instrument, a provision on which its legal force or effect is made to depend.
3. Covenant, contract, treaty
4. Something that must exist or be present if something else is to be or take place; a prerequisite ME.

5. A restriction or qualification

6. A clause expressing a condition in sense 4; called in logic the antecedent, in Grammar the protasis, of a conditional proposition.

Manner:

"The way in which something is done or takes place; mode of action or procedure."

We are of the view that these meanings to these two terms, are apposite in the context and therefore be preferred to all other meanings in the same and other Law Lexicons.

23. On the meanings noticed by us, the DG P&T is only empowered to stipulate conditions and the manner in which the Extra Departmental Staff and casual labourers can be made eligible for competing for Group-D posts. In other words, the DG P&T is only empowered to stipulate the conditions for eligibility of the two categories and their manner. Except for these, he is not empowered to regulate all other facets of recruitment, preferences and exclusions.

24. The conditions and the manner in which the two categories can be made eligible, cannot be exhaustively enumerated or catalogued also.



25. We have earlier reproduced Administrative Instructions Nos. 7 and 9 in extenso and analysed their legal effect also. When they are closely examined vis-a-vis, the power conferred by Notes 2 and 3 of the Schedule to the Rules, it is crystal clear, that they are wholly unauthorised and are clearly beyond the power conferred on the DG P&T. They are not also consistent with the requirements of the Rules and run counter to them.

26. Any Administrative Instruction issued by the DG P&T that runs counter to an Act of Parliament or the Rules made by the President under the proviso to Article 309 of the Constitution, as pointed out by us in a similar situation, in Applications Nos. 77, 130 to 133, 225 to 236 and 241 to 249 of 1987(F) decided on 11th April, 1987 (National Union of EDAs, Karnataka-Circle Branch, Kolar Division -vs.- The Post Master General in Karnataka) (Unions Case) is required to be ignored by all and recruitment regulated only in conformity with the Rules. On this view, the objection on the absence of the DG P&T as a formal party respondent and a formal prayer to strike them down urged by Sri Padmarajaiah is without any merit and we overrule the same.

27. Shri Achar, next contends that on the terms of Note-2 of the Schedule to the Rules, all Extra Departmental Staff working in all offices were eligible to appear for the test and the same cannot be restricted to, only to those working in a particular Division.

28. Shri Padmarajaiah contends that on a true construction of Note-2 of the Schedule, only the Extra Departmental Staff working in that particular Division were eligible to appear for the test and the provision made was legal.

29. We have earlier reproduced Rule 4 of the Rules, the Schedule and Note-2 thereof, in their entirety. Note-2 of the Schedule to the Rules, refers to subordinate offices. The term "subordinate offices" occurring in the Note, cannot be construed as referable to anyone particular subordinate office. The term "subordinate offices" means all subordinate offices of the Department. In this context, the same cannot be restricted to any particular subordinate office or any particular Division or area, as construed by the DG P&T and the respondents. Even otherwise, a construction which favours greater competition by all eligible candidates should normally be preferred to a construction which unduly restricts the same. From this, it follows that every member of the departmental staff working in any of the subordinate offices, by whatever name they are called like administrative offices, is eligible to apply, subject to such terms and conditions and the manner to be regulated by the DG P&T.

30. We need hardly say that Extra Departmental Staff job according to their requirements, duties and responsibilities shouldered by them are far superior to the

category of casual labourers. But, unfortunately, the rules do not provide any special preference to them though such a provision, was in public interest. As in Union's case, we find that there are many gaps and deficiencies in the Rules and the Circular Instructions, which though made with a laudable object, unfortunately run counter to the Rules. We do hope and trust that appropriate steps will be taken to remedy the situation.

31. In the light of our above discussions, we make the following orders and directions:

- (1) We declare that Administrative Instructions 7 and 9 issued by the DG P&T contrary to the Rules, cannot be enforced by the respondents.
- (2) We quash Notification No.B III/1/86-87 dated 11.3.1987 (Annexure-H) in Application Nos.253 to 257 of 1987 issued by the Superintendent. But, it is open to the Superintendent and other appropriate authorities to issue a fresh notification and call for applications from all eligible candidates and make recruitment to Group-D posts, in accordance with law and the observations made in this order.

32. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Hoss
SECTION OFFICER 2
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

sd —

Vice-Chairman
16/87

sd —

Member (A)

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