

(13)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 110/90 199
T.A. NO: -----

DATE OF DECISION 10-3-1992

S.H.Srivastava and 16 ors. Petitioner

Mr.D.B.Walthare Advocate for the Petitioners

Versus
Union of India & 55 ors. Respondent


Mr.Ramesh Darda Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(U.C.SRIVASTAVA)

mbm*

MD

(14)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Circuit Sitting at Nagpur

O.A.110/90

S.H.Srivastava and
16 others.

.. Applicants

vs.

Union of India 55 ors.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.D.^B.Walthare
Advocate for the
Applicant.

2. Mr.R.^Darda
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 10-3-1992
{Per U.C.Srivastava,Vice-Chairman}

The applicants 17 in numbers have approached this Tribunal with a prayer that operation of the the/appointment ~~of~~ order of the 46 candidates who have been appointed may be stayed as the same affects to the applicants adversely as regards to their regularisation consequently makes them junior. They have also prayed for quashing of the letter dtd. 7-4-89 on the ground that it is arbitrary and unconstitutional and they have further prayed that the other provisions of the same may be struck down and the original position of the applicants may be restored. In substance they have prayed that the post in which they were working may be given to them or their division and not to any other division.

2. The applicants 17 in number are all permanent E.D.A. working under the administrative jurisdiction of Senior Superintendent of Post Offices, Nagpur City Division, Nagpur, since various dates. They were permitted to appear for the examination for promotion of departmental candidate (50% departmental quota) and E.D.A. (50% outsiders quota) to the cadre of Postman which was held on 24-9-1989. At that time the applicants were working as Postman on daily wages basis. The applicants were not given the appointment but as a matter of fact the appointments were given to the respondents on the basis of Annexure-II to the application which the applicants have challenged. According to the applicants the respondents were appointed for their concerned division but they have been wrongly allotted Nagpur City Division which deprived the applicants ^{of} further promotional chances and the applicants who have been appointed on daily wages basis as Group 'D' Postman for the last several years should have been regularised instead of giving appointment to the respondents. In this connection they have relied on a decision of the Supreme Court for regularisation.

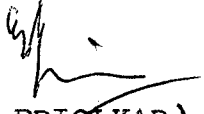
3. The respondents have opposed the application from which it appears that the applicants who offered themselves to appear in the examination could not qualify in the examination but the respondents who appeared in the same qualified the examination and that is why the appointments have been given.


Reliance have been placed by the applicants on the letter dtd. 7-4-1989 which have been issued by the Director General although in their application they have challenged it. Para 1 and 2 of the same provides 50% of vacancies in the cadre of Postmen/Village Postmen will be filled in by promotion of Gr.'D' officials, who qualify in the test and the remaining 50% of the vacancies which are for outsiders quota are filled in from amongst the Extra Departmental Agents, should be further divided into two halves. One half of the 50% of the vacancies will be filled in from amongst E.D. Agents who have put in three years regular service and are within the age limit on the basis of merit in the examination. The remaining half of the 50% of the vacancies will be filled in, on the basis of length of service, from EDA's who have put in three years of regular service and are within the age limit and who qualify in the examination. The number of EDA to be ~~permitted~~ permitted to take the examination under this quota will be five times of the vacancies announced under this quota. Para 8 of the said circular further provides that the unfilled vacancies of Departmental quota will be added to the quota for EDAs. In future the unfilled vacancies of Departmental quota will be added to the one half of the quota meant for ED candidates on merit only. Para 9 of the circular provides that: From among the 50% of the vacancies reserved for outsiders one half will be filled in from amongst EDAs on merit and another half will be filled in from amongst ED Agents on the basis of length of service. Therefore, one roster of

100 points will be maintained. The reserved points should also be divided equally between the quota of length of service, and that on merit. The added figure should be added to the quota for those based on length of service. If that vacancy is not filled in on the basis of length of service, the vacancy will go to the quota meant for those selected on merit.

4. The applicants who ~~were~~ have appeared from 50% quota have failed to qualify and that is why they were not appointed. On behalf of the applicants it was contended that if para 10 is taken into consideration then the applicants could have been considered against 25% posts as they have failed to qualify in the examination only length of service has to be seen. But in para 7 it is provided that unfilled vacancies of the quota for selection on the basis of length of service will be added to the merit quota. The circular as it is not happily worded and somewhat contradictory in nature. But if all the paragraphs are read together and reconciled the same may lead to the conclusion that so far as remaining vacancies are concerned length of service is the guiding factor, merit is not be excluded but is to be taken into account. So far as the merit of these persons are concerned merit is to be judged separately and not on the basis of the test in which they have failed to qualify. Accordingly so far as the

applicants case is concerned in case any vacancies
arises their merit is to be considered again and
in case they ~~have~~^{are} found ^{to be of} sufficient merit and have
completed three years of service they can be given
appointment against the unfilled vacancies. With
this observation this application is disposed of.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman

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