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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 429/93.

Dt. of Decision : 27-08-96.

1. Y. Ankamma Rao
2. Ch. Prabhakara Rao

... Applicants.

Vs

1. The Chief Postmaster General,
Abids, Hyderabad-1.
2. The Postmaster General,
Eastern Region, Vijayawada-2.
3. The Sr. Supdt. of Post Offices,
Guntur Division, Guntur. ... Respondents.

Counsel for the Applicants : Bmt. N. Anasuya

Counsel for the Respondents : Mr. N. R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE B.C. SAKSENA : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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JUDGEMENT

Oral Order (Per Hon'ble Shri R. Rangarajan, Member (Admn.)

Heard Smt. A.Anasuya, learned counsel for the applicants and Mr.N.R.Devaraj, learned counsel for the respondents.

2. There are two applicants in this OA. They are working as EDDA and ED Packer in Etukuru Sub Office, Guntur under R-3. It is stated that they have completed more than 5 years of service as ED staff and became eligible for promotion to the post of Postman. They applied for that post in response to the notification No.B.III/3/92/E dated 18-12-1992 (Annexure-I). As can be seen from this notification that 50% of the post of Postman vacancies are earmarked for the ED Staff. Out of 50% allotment, 25% of the vacancies will be filled on the basis of the seniority-cum-suitability and the rest of 25% will be filled on merit basis. The Group-D staff are eligible for the rest of the 50% of the vacancies as per notification. For the Group-D officials the qualifying service is 3 years as on 31-12-92 whereas the qualifying service for ED staff is 5 years to be reckoned as on 1-1-93. For ED staff age limit of 50 years as on 1-7-93 is also prescribed with relaxation in the case of SC/ST candidates. The applicants appeared for the examination but they were not found successful in the examination and their names were not included in the final select list.

3. This OA is filed for setting aside the proceedings No. B.III/3/92/E dated 18-12-92 (Annexure-I) by holding it as arbitrary, illegal and violative of principle of natural justice and for a further declaration that all the subsequent proceedings issued in pursuance of the above said notification is illegal and contrary to the rules & and for a consequential direction to promote the applicants to the post of Postman.

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4. The main contentions of the applicants in praying as above is on three counts:-

1) That the date prescribed for completing qualifying service for Group-D officials and ED officials cannot be different. It should be one and the same. If it is different it is a case of discrimination. 2) The vacancies of the Postman for the year 1992 and 1993 were clubbed. Because of that clubbing the applicants have lost their second chance to appear for the post of Postman vacancies in the year 1993 if separate exam is held for 1993 vacancies. 3) Two Group-D staff, ^{who} were alleged to have not completed 3 years of service, were given Roll No.G.T.22 and G.T.48 for appearing for the examination. Had the above two candidates not included in the Group-D list those posts could have been transferred to the quota of ED staff. By allowing ineligible candidates the selection is vitiated.

5. The respondents have filed a reply. The main contention of the respondents in this OA is that the applicant having failed in the examination cannot claim for promotion to the post of Postman. There is no illegality in the issue of the notification dated 18-12-92, fixing different dates for reckoning the qualifying service for Group-D officials and ED Staff. As the Group-D staff are competing for vacancies in their own quota and the selection for the ED quota is being separate, there can be no irregularity if different dates are fixed for reckoning the service eligibility. The respondents further submit that on administrative grounds the examination for the post of Postman for the vacancies arising in the year 1992 and 1993 were clubbed and the applicants had not lost anything because of that clubbing as they failed to qualify in the examination.

6. The first contention of the applicants is that the service eligibility condition for reckoning the date of eligibility cannot be different for Group-D staff and ED staff. The quota

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prescribed for ED agent is 50% and the quota for Group-D is the rest of the 50%. Both the quotas are not interchangeable. Hence, fixing a different date in no way harms the interest of the applicants. Further the applicants have submitted themselves for the examination without challenging the above criteria. If the applicants had not appeared for the examination, or appeared protesting the above criteria then they ~~can~~ ^{have} a grievance. But having submitted without a murmur they cannot challenge the selection now. Hence, this contention cannot be up-held.

7. The third contention of the applicants is that the two candidates were permitted to appear for the examination against the vacancy earmarked for Group-D though they have not put in the requisite number of years of service in the Group-D category and hence the selection is vitiated.

8. It is to be reiterated once again that the quota for Group-D and ED staff are clearly earmarked. The applicants can have no grievance even if some ineligible candidates were permitted to appear for the examination in the other quota earmarked for Group-D. The applicants submit that, were these two applicants not permitted to appear for the selection against the Group-D quota, those two vacancies would have been given to ED staff, and thereby the number of vacancies earmarked for ED staff would have been increased. But there is no such mention in the notification. No such rule to that effect was also produced. The above contention is probably the perception of the applicants and has no valid basis for that perception. In view of the above, this contention also fails.

9. The second contention of the applicants is that the clubbing of the vacancies of 1992 and 1993 had gone against the interest of the applicants. In case the examination was conducted separately there is a possibility for the applicants to be selected even in the year 1992 ^{as} the field of eligibility would have shrunk.

In any case if the selection for 1993 is conducted separately they would have achieved some experience in writing the examination which would have helped them to write the 1993 examination in a better way.

19. The above contention was considered. As per the reply statement at Page-5 it is stated that there is only one vacancy against the ED Agents quota to be filled in 1992. The applicants having stood on the serial No.13 in the seniority list there may not be any possibility for them to get appointed against this lone post in the zone of consideration as this is a post to be filled by suitability and seniority. Having failed in the examination they cannot claim that they will pass the examination against the 25% selection quota also. But the respondents have not categorically submitted that the applicants are not eligible for consideration for posting as Postman in the year 1992. In view of this circumstances though the present contention appears to be imaginary, the same cannot be over ruled altogether.

11. As the vacancies for the year 1992-93 were combined, the applicants had lost their chance to write the Postman examination once again if two examinations were held, one for the vacancies for the year 1992 and the other for the vacancies in 1993. It is possible that the applicants could have come out successful if the examination for 1992 and 1993 held separately due to the experience gained by writing 1992 examination. But nothing can be said definitely. Hence in the facts and circumstances of the case, some relief need be given to the applicants in this case.

12. No employee can be promoted without adjudging the suitability for the employees if a departmental examination is prescribed. ~~as~~ In the present case, the applicants should pass the departmental examination for promotion to the post of Postman. They cannot be promoted without a positive act of selection. 21 ED Agents had already been empanelled for the vacancies that had arisen

for the vacancies in the year 1992 and 1993. Without giving opportunity to those 21 ED Agents already promoted as Postman, the selection under scrutiny cannot be set aside as it will cause damage to the already empanelled ED Agents and posted as Postman in pursuance of the notification dt. 18-12-92 (Annexure-I).

13. Hence an equitable solution has to be found so that the interest of both the applicants as well as the selected candidates being large, the names of the applicants if interpolated in the selection list which was issued in pursuance of the notification dated 18-12-92, if the applicants herein qualify in the next selection which was conducted after the selection held in pursuance of the notification dated 18-12-92, may not cause any hardship

that selection the applicants had come out successful, their names should be interpolated in the select list of the postman issued in pursuance of the notification dated 18-12-92 at the appropriate place as per their seniority. But the applicants having not discharged duties of Postmen cannot get monetary benefits from the deemed promotion date if they are promoted as above. Their pay has to be fixed notionally on the date of the notional promotion and their further pay is regulated on that basis when they were actually promoted as Postmen. It is made clear that they will be entitled for the deemed promotion only if they qualify in the next selection which was held in the meantime and their names find a place in the select list for regular promotion to the post of Postman.

14. In the result, the following direction is given:-

The names of the applicants should be interpolated in the empanelled select list of Postmen issued in pursuance of the notification dated 18-12-92 (Annexure-I) provided;

- 1) if they come out successful in the next postmen selection if any conducted after the selection in question conducted in terms of notification dated 18-12-92.
- ii) their name finds a place in the select list in the next selection for regular appointment for the post of Postmen.

If in pursuance of the above direction, their names are interpolated in accordance with their seniority position in ED Cadre; the deemed promotion shall entail them to get only notional fixation of pay in the post of Postman and their further pay fixation when they are regularly promoted shall be regulated on that basis.

15. The OA is ordered accordingly. No costs.



(R. Rangarajan)
Member(Admn.)



(B.C. Saksena)
Vice Chairman

Dated : The 27th August 1996.
(Dictated in Open Court)



D.Y. Registrant (3)

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8/19/93

DA-429/93

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

Hm Mr. Justice B.C. Sekharia, V.C.
THE HON'BLE SHRI R. RANGARAJAN: M.R.)

DATED: 27/8/93

ORDER/JUDGEMENT
O.A. NO./R.C./C.P. NO.

O.A. NO.

429/93

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

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II COURT

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केन्द्रीय प्रशासनिक अधिकारा
Central Administrative Tribunal -
DESPATCH
- 9 SEP 1993
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HYDERABAD BENCH