

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 544/97

Date of Order : 4.1.99

BETWEEN :

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|--------------------|------------------------------|
| 1. M.A.Mohiddin | 6. D.Satyanarayana |
| 2. M.Bhaskara Rao | 7. K.Krupa Rao |
| 3. Sk.Khadar Basha | 8. T.Mohana Rao |
| 4. P.Venkata Kumar | 9. <u>J.Venkateswara Rao</u> |
| 5. I.Douglas | .. Applicants. |

AND

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| 1. The Head Record Officer,
R&S 'Y' Division,
Vijayawada. | |
| 2. The Sr.Superintendent, RMS,
'Y' Division, Vijayawada. | |
| 3. The Postmaster General,
Vijayawada. | |
| 4. The Chief Postmaster General,
AP Circle, Hyderabad. | |
| 5. The Director General, Posts,
(reptg. Union of India),
New Delhi. | .. Respondents. |

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Counsel for the Applicants .. Mr.C.Suryanarayana

Counsel for the Respondents .. Mr.B.N.Sharma

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CORAM :

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

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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X As per Hon'ble Shri B.S.Jai Parameshwar, (Member (Judl.)) X

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Heard Mr.C.Suryanarayana, learned counsel for the applicant and Mr.B.N.Shamma, learned standing counsel for the respondents.

2. There are 9 applicants in this OA. It is stated that by the order No.SRO/ED/Rectt, dated 1.2.80 applicants 1 to 6 were appointed as ED Porters w.e.f. 1.2.80 along with 34 other candidates vide Annexure-1. The applicant No.7 was appointed by the order dated 24.7.86 (A-2) and the applicant No.8 was appointed by the order dated 10.12.80 (A-3). The applicant No.9 was similarly appointed vide order dated 1.2.80 Sl.No.32 of Annexure-1.

3. They submit that they were among the 21 candidates who qualified in the test for appointment as regular full time Mailmen in Group-D cadre under R-2. Their names were shown against the Sl.Nos. 14, 15, 16, 19 and 20 respectively. In annexure-4 dated 17.8.90 out of 21 candidates selected only 10 candidates were appointed to the cadre of Mailmen as per the order of R-2 dated 14.9.90. Theremaining candidates were not appointed as yet. They submit that there were additional vacancies of Mailmen.

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4. Because of the non-filling of that remaining posts from the select panel, the applicants have filed this OA to call for the records relating to the impugned order at Annexure-8 issued by R-2 notice dated 30.9.96, and to quash the same with consequent direction to the respondent authorities to appoint them as Mailmen besides directing their regularisation w.e.f. the dates from which they have been continuing to work as fulltime substitutes in vacancies of Mailmen.

5. The respondents have filed the reply stating that the instructions were issued discontinuing the procedure for conducting Group-D examinations and introducing selection of EDAs for Group-D on the basis of the length of service by seniority by letter dated 28.8.90. The said procedure for selecting EDAs to the Group-D posts on seniority cum length of service was effective from 1.1.91. The Group-D examination for RMS 'Y' Division, Vijayawada was conducted on 12.8.90 i.e. before the receipt of DG (P) order. It is stated that RMS 'Y' Division wrongly calculated the Group-D vacancies for the said examination as 21, while the correct number of vacancies for the examination held on 12.8.90 was 10. However, the learned counsel for the applicant submitted that it is 12.

6. Out of select panel of 21 candidates 12 candidates were absorbed and the remaining were kept in panel. As selection on the basis of seniority of EDAs was introduced w.e.f. 1.1.91 discontinuing the existing procedure of conducting Group-D examination the waiting list of 11 Group-D candidates became

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invalid. Further they submit that no further vacancies arose in Group-D cadre in RMS 'Y' Division all these years due to reduction of Group-D posts from the time to time since 1991 on account of abolition of Sections. During the year 1996 there were 5 vacancies anticipated due to retirements, promotions, etc. RMS Y Division addressed a letter to PMG, Vijayawada seeking clarification whether to absorb the candidates in the waiting in the select panel or to follow the revised recruitment rules. The PMG after discussing the matter ordered to issue show cause notices to all the candidates individually proposing to set aside the waiting list in view of new recruitment rules having come into force w.e.f. 1.1.91 and also the vacancies calculated were excess and erroneous. The PMG, A.P.Circle, Hyderabad vide his letter dated 2.8.96 directed the PMG, Vijayawada to give show cause notices to the affected candidates after obtaining reply to the said show cause notices, the case was referred to Circle Office. After getting replies they referred the matter to the CPMG, AP Circle, Hyderabad as directed in the letter dated 24.9.96. It is at this stage the applicants have filed this OA.

The learned counsel for the applicant contends as follows:-

(a) There were vacancies earlier to 1.1.91 also due to death, voluntary retirement, promotion etc. For this the applicant relies on the vacancy position enclosed at page-23 (A-10) to the OA, It is seen from the above annexure that

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earlier to 1.1.91 there were 14 vacancies reported to have arisen due to death, voluntary retirement, retirement, promotion etc. The applicants contention is these 14 vacancies also should be filled by empanelled list which was issued by order dated 17.8.90 (A-4). The 10 posts which were filled is the vacancies that were available over and above that 14. Hence it cannot be said that there were no posts available earlier to 1.1.91 to accomodate the applicants herein. The vacancies that had arisen earlier to 1.1.91 should be filled as per the ^{then} rule existing and not after 1.1.91.

(b) The applicants also contend that in view of notification at Annexure-7 issued by DOP&T "once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies the appointing authority has the responsibility to appoint him even if name has been included in the list of selected candidates".

(c) The applicant, relying on the DGP&T letter dated 18.1.79 which gives the general recruitment rules submits that once the vacancies are announced ^{these vacancies} which cannot be changed ^{any} with the approval of the P&T Board.

8. We have considered the above contentions of the applicant. Whether the 14 vacancies which were reported to have occurred earlier to 1.1.91 over and above the 10 vacancies is a point for consideration. The learned counsel for the respondents submits that the 14 vacancies included those appointed against

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the vacancies. The main submission of the respondents is that there were 10 vacancies and not 21 vacancies as stated by the applicants. This is a factual verification. The respondents should show the records to the applicant or ^{their} ~~his~~ agent in this connection fixing a suitable date for the meeting. After the meeting a recorded minutes of the meeting should be prepared and signed by all the parties concerned. That will clear the doubt that had arisen. If more than 10 vacancies had occurred earlier to 1.1.91 then those vacancies should be filled in accordance with the then existing rules issued on 17.8.90.

9. The second contention of the applicants is that in view of the DOP circular once the candidate is empanelled even if the vacancies undergo change after the name of the candidate has been included in the selection he should be appointed. We do not feel that it is a proper submission. The Hon'ble Supreme Court had often said that the applicant empanelled for a post has no right to be appointed. Even he cannot demand as of right to appoint him against the post. However the respondents should be fair enough to fill up the posts with the required strength rather than considering whether such ^{recruitment} ~~retirement~~ was provided for or necessary at the time of filling up.

10. The applicants relying on the instructions given under the recruitment rules of the P&T vide letter dated 18.1.79 submit that change of vacancies should get approval from the P&T Board. Such rule existed even as on the date of issue of the panel dated 17.8.90. Hence the reduction in the number of candidate kept in panel should get approval from the P&T Board in accordance with the letter dated 18.1.79. We do not see any other points need consideration in this OA.

11. The OA is disposed as above. No costs.

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