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OA 384/93

Date of Decision : 24-09-1993

DINESH KUMAR KHANDELWAL ... APPLICANT.

V/s.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON. MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.
HON. MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI R.P. PAREEK.

For the Respondents ... SHRI U.D. SHARMA.

PER HON. MR. O.P. SHARMA, MEMBER (A).

The applicant has filed this OA praying that the circular dated 2.4.93 (Annexure A-4) by which minimum qualification of 10th pass has been prescribed for appearing in the departmental examination for promotion to the post of Postman (Group-D) may be quashed and that the operation of the impugned order dated 24.6.93 (Annexure A-1) by which the applicant's name has been excluded from the list of candidates eligible appear in the said examination may be stayed.

2. The applicant is working as EDMC, Adarsh Nagar, Jaipur. He was allowed to appear in the departmental examination for the post of Postman in the years 1990, 1991 and 1992. However, he has not been allowed to appear in the examination scheduled to be held on 4.7.1993. The reason given by the respondents for exclusion of the applicant's name is that by Annexure A-4 dated 2.4.93

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a minimum qualification of 10th pass has been prescribed for Extra Departmental Agents intending to appear in the written test for promotion to the post of Postman. The applicant's case is that the recruitment rules of 1989 do not prescribe any minimum educational qualification to be possessed by Extra Departmental Agents for appearing in the examination for Postman. The learned counsel for the applicant has also filed before us a copy of the order dated 15.1.93 passed by this Bench of the Tribunal in the case of Ram Phool Meena Vs. UOI & Ors. in OA 257/92, wherein on an identical point it was held by this Bench of the Tribunal that no such minimum educational qualification has been prescribed for Extra Departmental Agents intending to appear in the examination for Postman.

3. The respondents in their reply have stated that a minimum educational qualification of 10th pass has been prescribed for Extra Departmental Agents intending to appear in the examination for Postman. According to them, while no educational qualifications have been prescribed for departmental candidates for appearing in the said examination, the Extra Departmental Agents are treated as outsiders for the purpose of the said examination and as such they are treated as direct recruits for whom the minimum educational qualification ^{is} 10th pass.


4. We have heard the learned counsel for the parties, have perused the records and also copy of the order dated 15.1.93 passed by this Bench of the Tribunal. We have also carefully perused the Department of Posts (Postman/Village Postman and Mail Guards) Recruitment Rules, 1989. Recruitment to the post of Postman under these rules can be by way of direct recruitment or by way of the promotion, ~~both~~.


The Extra Departmental Agents can compete in the said examination either as direct recruits, as suggested in Column- 7 of the Schedule to the Rules or by way of promotion as departmental candidate, as suggested in Column-12 of the said Schedule. It is not that the Extra Departmental Agents can be treated only as outsiders and can compete only as direct recruits. For direct recruits the minimum qualification prescribed is Matriculation or equivalent, whereas for appointment by way of promotion, no minimum educational qualifications have been prescribed. This position becomes clear on a reading of Columns 8 and 9 of the Schedule. The learned counsel for the respondents stated during the arguments that the position has been clarified by certain subsequent instructions issued by the Government stating that the minimum qualification prescribed for Extra Departmental Agents for appearing in the said examination is Matriculation or equivalent. However, the 1989 Rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution, and these have the force of statutory rules. These cannot be amended by the mere issue of a circular by the Department. The order of this Bench of the Tribunal dated 15.1.93 is also applicable to the facts of this case. Therefore, the order Annexure A-4 is quashed. The respondents have already ~~been~~ provisionally permitted the applicant to appear in the said examination by order of this Bench dated 2.7.93. Now the applicant shall be deemed to have appeared in the said examination held on 4.7.93 in his own right and the respondents shall declare result of the said examination including that of the applicant in the normal way and treat the matter thereafter according to their prescribed rules and procedure

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5. The OA stands disposed of accordingly, with no order as to costs.


(O.P. SHARMA)
MEMBER (A)


(D.L. MEHTA)
VICE CHAIRMAN