(1966) 07 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 617 of 1964

K.R. Yegneswaran APPELLANT

Vs

Director General Posts and Telegraphs, New Delhi and Another RESPONDENT

Date of Decision : 12-07-1966

Acts Referred:
Posts and Telegraphs Manual — Rule 272, 272A, 272A (ii)

Citation : AIR 1967 Kar 235 : (1966) 2 MysLJ 347

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : S.K. Venkata Ranga Iyengar, for the Appellant; B.S. Keshava Iyengar, Central Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—The petitioner who was a clerk in the Department of posts and Telegraphs passed in the year 1964 an examination which was prescribed by Rule 272 of the Rules in Volume IV of the Posts and Telegraphs Manual. The purpose of that examination was to produce a competent class of accountants for post Offices and the railway mall service. By his success in that examination, the petitioner became eligible to be appointed as an accountant in a grade known as the lower selection grade,

2. Rule 272-A (ii) provided for recruitment to posts in the lower selection grade by two methods. It directed promotions to two-thirds of those posts and selection for the remaining one-third.

3. On November 14, 1959, the petitioner, after his Selection under that rule was appointed as an accountant in the lower selection grade. He assumed charge of that post on December 5, 1959, and, by an Order made by the Post-master General on July 17, 1961, he was confirmed in that post with effect from April 1, 1960.

4. But, by an Order made on July 16, 1963, the Post-master-General cancelled

the confirmation on the ground that it transgressed the directive issued by the Director General of Posts and Telegraphs on December 18, 1959.

5. We are asked to quash the Order by which the confirmation was cancelled and to Issue a mandamus to the respondents to maintain the earlier confirmation.

6. The argument for the petitioner surrounded many questions including one resting on Article 318 of the Constitution. But our Interpretation of the Director General''s directive dispenses with the discussion of the other submissions.

7. Before we allude to that directive on which the Postmaster-General depended, we shall refer to Rule 272-A(ii) of the Rules in Volume IV of the Posts and Telegraphs Manual which reads:

"272-A(1)

(ii) In Post Offices. Returned Letter Offices, Railway Mail Service, Foreign Post and the Telephone Monitors'' Cadre in Telephone Exchanges, promotions to 2/3rds of the lower Selection Grade Posts in the General Line are to be regulated on the same principle but the remaining l/3rd posts are to be filled on the basis of Selection The General line excludes Inspectors of Post Offices (including Investigating Inspectors) and Inspectors of Railway Mail Service and Head Clerks to Superintendents of Post Offices and Railway Mail service, the rules for promotion to whose grades are given in Rule 279/1 below.

NOTE:--In Post Offices Returned Letter Offices. Railway Mail Service. Foreign Post and Telephone Monitors Cadre vacancies to the extent of 1/8rd arising in each calendar year will be filled by selection till such time at 1/3rd of the total posts in the cadre come to be held by Officials taken on the basis of selection. For this purpose, a panel should be prepared each year on the basis of the following formula:--

(a) number of vacancies likely to occur in a calendar year including the ney posts to be sanctioned:

(b) 20 per cent of vacancies for unexpected casualties; and

(c) total of the above two items.

Great care should be exercised in calculating the number of vacancies. If any official already in the panel has not been absorbed during the year, he will be absorbed first in the vacancies of the next year and the vacancies for the next year will be correspondingly reduced by the number of approved officials brought forward. Persons to be appointed on the basis of seniority-cum-fitness will en bloc rank senior to those to be appointed by selection in one Calendar year.

After l/3rd of the total posts in the cadre are held by Officials taken on the basis of Selection, vacancies arising by retirement, promotion, etc of Officials originally appointed on the basis of seniority would be filled on the basis of seniority-cum-fitness and those arising by retirement, promotion, etc. of Official! taken by selection would be filled on the basis of selection. The position should be reviewed at the beginning of each year and anticipated vacancies calculated accordingly. Cases of Officials considered but overlooked should be reviewed when next selection is made."

8. It was under this rule that the petitioner was selected and thereafter appointed as an accountant The relevant part of the directive issued by the Director General of Posts and Telegraphs on December 18. 1959. reads:

"A reference is invited to Rule 276-A of the P. and T. Manual Vol. IV according to which appointments to the posts of time scale accountants & lower selection grade accountants are made from those officials who have passed the P. O & R. M. S Accountant''s examination In the order of their Seniority in the Clerical Grade. The question of revising the basis for appointment to these posts has been under consideration for sometime past and it has now been decided as follows:

(a) Time Scale Accountants **

(b) Lower Selection Grade Accountants.

This is a separate cadre and appointments to this cadre are made on the circle basis. Appointments to these posts will from the date of issue of these Orders be made according to the year of passing the post office/R. M. S. Accountants'' Examination. Those qualifying in the same year will be appointed in the Order of their seniority in the clerical cadre. These Orders will not affect the seniority of Officials who have already been confirmed as lower selection grade accountants. Officials who were appointed before the issue of these Orders against regular vacancies and are awaiting confirmation in their posts will continue to Officiate in their posts. They will however be confirmed in their turn in accordance with the revised Orders. For this purpose, the seniority of all Officials who have passed the Accountants'' Examination whether Officiating or not will be refixed in accordance with the present Orders."

9. The post Office-Railway Mail Service Accountants'' Examination to which this directive refers, is the examination prescribed by Rule 278 which the petitioner passed in the year 1954 along with two others., There were others in the clerical cadre to which the petitioner belonged who passed this qualifying examination between the years 1941 and 1951. But, it is undisputed that there is no one who passed this examination in the year 1964 in which the petitioner passed it, for whom the petitioner had to make way under the directive of the Director-General, Appointments had to be made to the post of an accountant in the lower selection grade on the circle basis, and, the petitioner was the seniormost amongst those who passed the qualifying examination In the year 1964.

10. But, the Postmaster-General thought feat the Director-General''s directive, created in a subsequent appointee who had passed the qualifying examination before the petitioner passed it a claim to seniority over him.

11. It was urged by Mr. Keshava Iyengar, the learned Central Government Pleader, that there are two provisions in the directive which support that interpretation. The first according to him, is the direction that appointments to the lower selection grade accountants'' posts should be made with reference to the year m which the qualifying examination was passed. The other, it was said, is the direction that the seniority of all accountants, who had not vet been confirmed, should be determined on the same principle.

12. The first provision upon which Mr. Government Pleader depends, reads:

"Appointments to these posts will from the date of issue of these Orders be made accord- ring to the year of passing the Post Office/ M S. Accountants'' Examination.

* * * *"

13. The other part of the directive which refers to accountants who were still awaiting confirmation reads''

"They will however be confirmed in their turn in accordance with the revised Orders, For this purpose, the seniority of all Official who have passed the Accountants'' Examination whether Officiating or not will be refixed in accordance with the present Orders."

14. We were asked to say that the clear meaning of these two provisions is that what Is material for the determination of seniority, is the date on which the qualifying examination was passed, and not the date of appointment. It was urged that a person who was Appointed as an accountant must make way for one who had passed the qualifying examination earlier, though he was subsequently appointed. That, according to Mr. Government Pleader, it the meaning of the direction that appointment! Should be made "according to the year of passing the post offices/R. M. S. Accountants'' Examination."

15. We do not think that the directive should be understood as suggested. The clear meaning of the injunction that appointment! should be made ''according to the year'' of success in the examination is that when the appointments are made at a given point of time, the appointees should be assigned ranks in the sequence in which the qualifying examination was passed. So, one whose success is the earliest secures the highest place in the relevant class of appointees, and the others the other corresponding positions. That is how the names of the promotees or those selected under Rule 272 have to be arranged on each occasion when the promotion or selection is made. Once the promotions are made or the names of those selected are entered in the panel In that Order, obedience to the directive becomes full and complete, and, the seniority determined in that way, is, what holds the field unaffected by promotions or selection of others on the next or subsequent occasion. Similarly, when appointments are again made on the next occasion, the assignment of positions should be made by the application of the same principle.

16. The directive does not mean that when persons appointed on more than one occasion in that way have not been confirmed in their posts, all those persons who have not been so confirmed, should be grouped together, and, that the seniority In regard to all of them should be determined with reference to the sequence in which the qualifying examination was passed. In the case of each group of appointees, the seniority has to be independently determined by the application of the principle enunciated by the Director-General and those who were appointed on the earliest occasion would en-block rank senior to all those other whose appointments were made on the next and other subsequent occasions. The mixing up of the several groups of appointees for common treatment in the determination of their seniority inter se, is, it is clear, not authorised by the Director-General''s memo.

17. If this be the principle which the first part of the directive incorporates, it is easy to understand the second principle, which only means that in the case of all those persons whose confirmations have vet to be made, the determination of seniority should be made in obedience to the first part of the directive. And so, what should be done, is to first confirm the earliest batch of appointees by the application of that principle, and to proceed to confirm in the same way the appointees in every other group in similar sequence The confirmation in the one case should be made independently of the confirmation in the other So, the earlier success in the qualifying examination of a per-son who was subsequently appointed does not displace the seniority or rank of the earlier appointed or his claim to earlier confirmation.

18. The acceptance of the other construction would produce the strange consequence that a person who was appointed as an accountant many years earlier, would become junior to one who was appointed many years later on the extremely slender foundation afforded by that junior''s earlier success in the qualifying examination. It shifts the importance of the selection or promotion to which the appointee owes his appointment under Rule 272-A(ii), to success in the qualifying examination. An interpretation which endows the success in the qualifying examination, which, by itself does not ensure an appointment to the post of an accountant, with an importance which is greater than that which should be attached to the selection or promotion which alone takes the appointee to that post, should not commend itself to us, unless the language of the memo of the Director-General is incapable of any other Interpretation. And, we do not think that such is its language.

19. We feel reluctant to accede to a construction which produces an unreasonable and alarming consequence, such as the acquisition of seniority by a person who is appointed to the post of an accountant long after someone else had been appointed to that post, on the basis of his earlier success in the qualifying examination The regulation of seniority in that way which of course regulates in its turn the right to confirmation, does not have the sufferage. of reason, and the constant fear in the mind of an unconfirmed accountant of being

overtaken by some one still in the clerical cadre would introduce an element of insecurity and precariousness so detrimental to the growth of an efficient and contended public service.

20. The other and more disturbing consequence which may emanate from the suggested construction is that if success in the qualifying examination is the criterion for the determination of seniority, a person with a higher rank in the clerical grade, on promotion to the post of an accountant, becomes junior in that post to a subsequent promote who was junior to him in the clerical grade but had passed the qualifying examination partier.

That would be the position although the senior who passed the qualifying examination later, was. when he was selected or promoted found fit for the higher post and so was preferred to the junior who had passed the qualifying examination earlier Similarly if one who was senior in the clerical grade and another who was junior to him in that grade were both aspirants for the post of an accountant, and, the junior was selected or promoted for the reason that he was more worthy of that post than his senior it would be incongruous to think that the Director General''s directive means that when and if the senior who was not found fit for the superior post becomes subsequently worthy of it, be should be placed above the earlier appointee whose superior proficiency had earned for him the earlier preference We should not accede to an interpretation which can produce such instability in public employment.

21. Mr Government Pleader did not dispute that our interpretation of the directive of the Director-General completely vindicates the confirmation of the petitioner which has on July 17, 1961, since there was no one who was selected along with the petitioner under Rule 272-A who could claim precedence in confirmation.

22. That being so, we set aside the Order made by the Post-Master-General on July 16, 1963 by which he cancelled the confirmation of the petitioner. And, the direction that we issue is that the petitioner shall be regarded as having been properly confirmed in the post of an accountant in the lower selection grade on July 17, 1961, with effect from April 1, 1960, and that that confirmation shall be maintained.

23. Order accordingly.

