

(2015) 02 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 30975 of 2014 and M.P. No. 1 of 2014

Union of India and Others

APPELLANT

Vs

M. Muthukrishnan and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0049

Hon'ble Judges : P.R. Shivakumar, J.;V. Ramasubramanian, J.

Bench : Division Bench

Advocate : A.S. Chakravarthy, CGSC, for the Appellant; R. Malaichamy, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—This writ petition is filed by the Union of India, represented by the Director General of Posts, challenging an order of the Central Administrative Tribunal, allowing the claim of the respondents herein to appear for the Limited Departmental Competitive Examination for promotion to the cadre of Postal Services Group-B.

2. We have heard Mr.A.S. Chakravarathy, learned Central Government Standing Counsel for the petitioners and Mr.R.Malaichamy, learned counsel for the respondents.

3. The respondents 1 to 7 herein were originally appointed as Postal Assistants on various dates, during the period from 1982 to 1991. All of them were promoted to Lower Selection Grade, after coming out successful in competitive examination, in May, June, July and November 2004. The respondents 1 to 5 were subsequently promoted to the post of Higher Selection Grade II (HSG-II) in the years 2008 or 2009 or 2010.

4. On 22.11.2010, the Department of Posts issued a communication, introducing separate cadre of Postmasters comprising four different grades namely: (1) Senior Postmaster (2) Postmaster Grade-III (3) Postmaster Grade-II and (4)

Postmaster Grade-I. These posts were carved out of the posts from the existing General Line of posts.

5. As per paragraph 6 of the communication dated 22.11.2010, the Postal Circles were directed to call for options/applications from the willing officials holding the posts in the equivalent grades for appointment as Postmaster Grade-I, II and III respectively.

6. The respondents 1 to 7 herein exercised their option to go as Postmasters Grade-I, II and III. On the basis of the option so exercised, the respondents 1 to 7 were selected and appointed as Postmasters. While the respondents 6 and 7 joined as Postmaster Grade-I on 4.5.2011, the respondents 1 to 5 joined as Postmaster Grade-II on 18.4.2011 or 20.4.2011.

7. After the respondents joined duty as Postmasters, an examination was scheduled to be held for selection to Postal Services Group-B posts. The examination was scheduled to be held on 29.5.2011 and the respondents applied on 20.4.2011 and 22.4.2011. But they were not granted permission to appear for Group-B examination. Therefore, the respondents 1 to 7 joined together and filed an application in O.A. No.676 of 2011, on the file of the Central Administrative Tribunal, seeking a direction to the department to permit them to appear for the Limited Departmental Competitive Examination for promotion to Postal Services Group-B to be held on 29.5.2011. The said application was allowed by the Central Administrative Tribunal, by an order dated 9.4.2014. Aggrieved by the said order, the department has come up with the above writ petition.

8. The main contention of the department is that once a person has opted to take the Postmaster cadre, he is not eligible for switching over to Postal Services Group-B. The post of Postmaster Grade-I or Grade-II is not a feeder category for Postal Services Group-B posts. It has its own channel and hence the department feels aggrieved by the order of the Tribunal.

9. But the contention of the respondents is that as per the Postal Services Group-B Recruitment (Amendment) Rules, 1993, 19% of the posts are to be filled up on the basis of the Departmental Competitive Examination from among Inspectors of Post Offices and Inspectors of Railway Mail Services with five years of regular service and 6% of the total posts of Group-B shall be filled up on the basis of Departmental Competitive Examination from amongst the clerical line officials working in the Post Offices/Divisional Offices with five years of regular service in the Lower Selection Grade. According to the respondents, the clerical line included the post of Postal Assistants, Lower Selection Grade and Higher Selection Grade, before the creation of a separate cadre of Postmaster. Therefore, it is claimed by the respondents that on the date of the Notification for the Limited Departmental Competitive Examination 2011 namely 8.4.2011, all the respondents were in the Higher Selection Grade and that therefore, they were entitled to write exams. It is also contended by the respondents that the General Line and Postmaster line are not different and that the post of

Postmaster Grade-I, II and III are carved out only from General Line posts. Hence it is claimed by the respondents that the order of the Tribunal was perfectly in order.

10. We have carefully considered the rival submissions.

11. The short question that arises for consideration is as to whether after the creation of a separate cadre of Postmasters Grade-I, II and III and after the exercise of an option by the respondents to take up that cadre, it was open to the respondents to switch over to the General Line seeking promotion to Group-B posts or not?

12. The answer to the above question lies in the communication of the Department of Posts dated 22.11.2010. In paragraphs 1 and 2 of the said communication, it is stated that the Department of Posts operates through 25,500 Departmental Post Offices and that the services offered by them have grown over the years. Due to the entry of private players offering several services including money transfers, the Department of Posts not only faced tremendous competition, but also had to be managed professionally. Therefore, it is stated in para 2 of the said communication that the old practice of posting the Postal Assistants, LSGs and HSGs as Postmasters, was not adequate to meet the challenges and that therefore, in order to ensure that professionally qualified, trained and meritorious officials head the key Post Offices, it was decided to introduce a separate cadre of Postmasters.

13. What is important to note is that the communication dated 22.11.2010 was not a mere executive order. As seen from para 3, the Recruitment Rules were also framed and notified. The Recruitment Rules were called Department of Posts, Senior Postmaster (Group-B Gazetted), Postmaster (Grade -III and II-Group-B Non-Gazetted) and Postmaster (Grade-I-Group-C Non-Gazetted) Recruitment Rules, 2010.

14. In paragraph 6 of the communication dated 22.11.2010, it was indicated that options could be called for and that once options were exercised, further Career Progression had to be in the hierarchy of Postmaster cadre only. Paragraph 6 of the communication dated 22.11.2010 reads as follows:-

"6. To begin with the Postal Circles, as per the provisions of the Recruitment Rules, may call for the options/applications with their bio-data from the willing officials holding the posts in the equivalent grades for appointment as Postmaster grade I, II and III respectively. While inviting for the applications it may be categorically stated that:

i. Once an official submits his application he will not be allowed to withdraw the same.

ii. Officials who are still left with at least two years of service to retire may only apply in order to avoid their dislocation at the fag end of their service.

iii. In the event of their appointment as Postmaster their further career progression will be in the hierarchy in the Postmaster cadre only as per the provisions in the relevant Recruitment Rules and not in the General Line."

15. In paragraph 9 of the communication dated 22.11.2010, a time line was prescribed for filling up the posts of Postmaster, as per the new system. The time line was stipulated as follows:-

16. Admittedly, the respondents 1 to 7 exercised their option on or before 15.1.2011 and the scrutiny of their applications etc., were over. Thereafter the respondents 1 to 7 were issued with promotion orders and they joined duty on 18.4.2011 or 20.4.2011 or 4.5.2011.

17. It was only after the respondents exercised their option and also got appointment orders that a Notification for the conduct of Limited Competitive Examination 2011 was issued on 8.4.2011. By the time this Notification for Examination for Postal Services Group-B were issued, the train that the respondents 1 to 7 chose to board, had already left the station. Therefore, there was no question of the respondents retracting and getting their options reopened either to go to Postal Services Group-B or to continue in the Postmaster cadre.

18. The only contention raised by the respondents before the Tribunal was that they had fulfilled the eligibility criteria of completion of five years of service in the LSG cadre as on 1.1.2010 for appearing for the Limited Departmental Competitive Examination. The Tribunal agreed with the said contention and went on to hold that there was no bar for persons moving over to the Postmaster cadre to appear for the examination.

19. But the above conclusion of the Central Administrative Tribunal cannot stand in the wake of paragraph 6(iii) of the communication dated 22.11.2010 which makes it clear that persons who opted to become Postmaster would have further Career Progression only in the hierarchy of Postmaster cadre and not in the General Line. It is well settled that once a person had exercised an option to take a particular line for Career Progression, it is not open to him to turn around and seek promotion in another line. The interpretation given by the Tribunal, is actually violative of the prescription contained in the Recruitment Rules and the communication dated 22.11.2010.

20. As a matter of fact, the Bangalore Bench of the Central Administrative Tribunal appears to have upheld the stand taken by the department, in a batch of applications in O.A. Nos.198, 222 and 223 of 2012. The same was also confirmed by a Division Bench of the Karnataka High Court, in W.P. No.35449 and 35450 of 2012 dated 10.6.2013. In fact, the petitioners before the Karnataka High Court had a much better case. They had taken examinations both for the post of Postmaster Grade-I and for the post of Inspector of Posts. But, they were denied the benefit of the examination that was held later, on the ground that they had exercised an option to go in the Postmaster cadre line. Still the Karnataka High Court put against those petitioners, the option exercised by them. Therefore, the

respondents 1 to 7 herein cannot have a better case. The view taken by the Karnataka High Court, appears to reflect the correct position in law. We are in respectful agreement with the same.

21. Therefore, we find that the order of the Central Administrative Tribunal cannot be sustained. The respondents 1 to 7 are bound by the option exercised by them and hence their claim for taking up the Limited Competitive Examination for Group-B posts ought to have been rejected by the Tribunal.

22. In view of the above, the writ petition is allowed and the order of the Tribunal is set aside. The Original Application filed by the respondents 1 to 7 herein before the Administrative Tribunal in Original Application No. 676 of 2011 shall stand dismissed. There will be no order as to costs.