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High Court Of Kerala

Case No: O.P. (CAT) Nos. 23, 24, 33, 34, 36, 46, 48 and 65 of 2015 (Against the Order in OA 649 of 2013 of Central Administrative Tribunal, Ernakulam Bench dated 01.01.2015)

S. Rajasekharan Pillai — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision: Aug. 22, 2016

Citation: (2016) 4 KLT 71

Hon'ble Judges: Mr. P.R. Ramachandra Menon and Mr. Anil K. Narendran, JJ.

Bench: Division Bench

Advocate: Sri. Sajith Kumar V., Sri. P.K. Antony and Smt.C.R.Smitha, Advocates, for the Petitioner; Smt. Sreekala K.L., CGC, for the Respondent; Sri. N. Nagaresh, Assistant Solicitor General, for the Respondent Nos. 1 to 3

Final Decision: Dismissed

Judgement

Mr. P.R. Ramachandra Menon, J. - All these original petitions have been filed by the applicants in the concerned O.As, who lost their battle in the first round. The challenge is against the interference declined by the Central Administrative Tribunal as to the correctness and sustainability of the relevant Recruitment Rules as amended in the years 2010 and 2012 [Department of Posts (Postman & Mail Guard) Recruitment Rules, 2010 and Department of Posts (Postman & Mail Guard) Recruitment (Amendment) Rules, 2012 respectively], whereby the method of recruitment to the posts of MTS (Multi Tasking Staff) and Postman has undergone a substantial change, as to the course to be followed, if qualified departmental hands are not available to fill up the posts. Earlier, such unfilled posts were being thrown open to the employees who are working as GDS, till the year 2010, whereas after the amendment of the Rules, the field to the said extent goes for direct recruitment. For convenience of reference, O.P. (CAT) No. 23 of 2015 is taken as the lead case.

2. All the petitioners herein belong to GDS, serving in different capacities for quite long. They were aspirants to be promoted to the post of Multi Tasking Staff which was in the Group D segment earlier (now classified as "Group C" post with lesser grade/pay) and

also for the post of Postman. The relevant Recruitment Rules formulated by the Government in exercise of the powers under Article 309 of the Constitution of India, which govern the field, are the Indian Posts and Telegraphs (Postman/Mail Guards/Head Mail Guards) Recruitment Rules, 1969. Considering the necessity to have it amended, the Government brought about necessary Rules [Department of Posts (Postman/Village Postman and Mail Guards) Recruitment Rules 1989] as per Annexure A1. The method of filling up of the vacancies, as per the relevant clause in Annexure A1 Rules, was substantially changed by introduction of Annexure A2 Rules in the year 2010 [Department of Posts (Postman and Mail Guard) Recruitment Rules, 2010], whereby the residual/left over vacancies [for want of qualified hands in the Department], which was hitherto given to the GDS employees, came to be allotted for direct recruitment, which was to the chagrin of the petitioners.

3. By the passage of time, some minor changes were introduced as per Annexure A3 Rules in the year 2012 [Department of Posts (Postman and Mail Guard) Recruitment Rules, 2012]. Though the provision for direct recruitment was introduced as per Annexure A2 Rules of the year 2010, the petitioners found it necessary to challenge the Rules only much later, i.e., after having issued Annexure A3 Rules in the year 2012. It was accordingly, that the petitioners approached the Tribunal by filing the O.As raising the prayers in the following terms [as given in O.P.(CAT) No. 23 of 2015 (arising from O.A. No. 649 of 2013)]:

"(i) To declare that (Annexure A2) Department of Posts (Postmen/Mail Guards/Head Mail Guards) Recruitment Rules 2010 as amended in Annexure A3 is illegal, unconstitutional and liable to be set aside.

(ii) To set aside Annexure A2 and Annexure A3 by quashing the same being invalid and inoperative.

(iii) To direct the respondents to consider the applicants for promotion against the unfilled departmental vacancies to the year 2012 to the post of post-man from the GDS as per 1989 rules and to offer them appointment accordingly with all consequential benefits.

(iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and

(v) Grant the cost of this Original Application.

4. The challenge was resisted from the part of the Department, who filed a detailed written statement as to the sequence of events and the circumstances under which the Rules were sought to be changed. The mistake pointed out from the part of the applicants as to the "name" of the Rules, which was sought to be repealed on issuing Annexure A2 Rules as given in the opening paragraph [in supersession of the earlier Rules], was conceded as an inadvertent mistake. After hearing both the sides and placing reliance on the verdicts passed by the Apex Court, the Tribunal held that there was absolutely no

rhyme or reason to interfere with the Rules and accordingly, the O.A.s were dismissed as per common order dated 01.01.2015, which is the subject matter of challenge in these Original Petitions.

5. Heard Mr. V. Sajith Kumar, the learned counsel appearing for the petitioners and Mr. N. Nagaresh, the learned Assistant Solicitor General appearing for the Department/Government in the O.Ps.

6. The learned counsel for the petitioners submits that Annexure A2 Rules formulated and issued by the Government, in exercise of the powers under Article 309 of the Constitution of India, obviously is in supersession of the "1969 Rules", as clearly given in the opening paragraph. It is stated that, at no point of time had Annexure A1 Rules of the year 1989 intended to be dealt with or varied by the Government as discernible from Annexure A2 and as such, the said Rules issued in supersession of "1969 Rules" cannot have any application in so far as the rights and liberties of the applicants are concerned. In other words, the applicants/petitioners have already got a vested right to be considered for the post in question, in accordance with Annexure A1/1989 Rules which still govern the field, having not been superseded.

7. With regard to the merits of the case, it is submitted that the plight of the employees who are working as GDS is quite pathetic and that right from inception, they were being treated as not being a part of the main stream, having been treated as "extra departmental" or not a departmental employee of their own. After decades long service, it was rather impractical for the employees who were having only minimum qualification, to compete with others in departmental examinations or otherwise and to get appointed or promoted to the post in question. By virtue of the relevant Recruitment Rules introduced in the year 1989 as per Annexure A1, provision to appropriate extent was made to see that, in the event any vacancy is resulted for want of qualified departmental hands, such vacancies were to be made available for considering the candidature of the GDS employees under the different streams as mentioned therein. By virtue of the amendment brought about as per Annexures A2 and A3, this door has been shut forever and the unfilled vacancies are now left to be filled up by Direct Recruitment. As a matter of fact, there is no rationale in having introduced such an amendment, detrimental to the rights and liberties of serving employees who are working as GDS. The fact that the employees working as the GDS have shed much of their blood and sweat for the Department is lost sight of and absolutely for no reason, benefit is being extended to the open market candidates. It was also contended by the applicants that merely since the method of recruitment was to be stipulated by the Rule Making Authority, it could not go arbitrarily under any circumstances. These vital contentions were not properly appreciated by the Tribunal while passing the order, which hence is under challenge.

8. The learned counsel further points out that the Department realised the mistake only on pointing it out by the applicants, which is discernible from the communication issued from the office of the Ministry to the CPMG of the Kerala Circle, Thiruvananthapuram, for

amendment of the Recruitment Rules after getting clearance from the Tribunal, because of the pendency of the matter. Having admitted the shortcoming on the part of the Department, to the effect that there was no proper amendment of the Rules, it was not for the Tribunal to have extended any benefit to the Department, non-suiting the applicants as against their vested right already accrued in this regard. The learned counsel adds that a counter affidavit has been filed on behalf of respondents 1 to 3 in the present Original Petitions and they have produced a copy of the ''rectified Rules'' namely, Department of Posts (Postman and Mail Guard) Recruitment Rules, 2014 as Ext.R1 (b). Since proper Rules have been issued only now, vide Ext.R1(b), the case of the applicants in relation to the vacancies which arise much earlier, has to be considered on the basis of Annexure A1 Rules and that Annexures A2 and A3 Rules, as further amended by Ext. R1 (b) Rules of the year 2014, might be given only prospective effect.

9. Sri. N. Nagaresh, the learned Asst. Solicitor General of India appearing for the respondents submits that the idea and understanding of the petitioners is thoroughly wrong and misconceived. All the relevant aspects were considered by the Rule Making Authority, who felt the need to amend the relevant Rules and it was accordingly, that the zone of consideration was changed, prescribing a different method of Recruitment, which is the best of its kind so as to meet the need of the hour. According to the respondents, the applicants/petitioners are trying to make a mountain out of a mole, capitalizing the inadvertent mistake crept in the opening paragraph of Annexure A2. Instead of naming the Rules correctly as Department of Posts (Postman/Village Postman and Mail Guards) Recruitment Rules 1989 [which was being superseded as per Annexure A2 Rules], it so happened that the name of the Rules came to be noted as the Indian Posts and Telegraphs (Postman/Mail Guards/Head Mail Guards) Recruitment Rules, 1969. The learned counsel submits that this mistake by itself cannot add any advantage to the case of the applicants/petitioners, as the Rules of the year 2010, can even otherwise stand on its own, with independent existence. With regard to the submission made by the learned counsel for the petitioners that, by virtue of Ext.R1(b) amendment brought about in the year 2015, effecting correction of the name of Rules which was actually superseded by Annexure A2 Rules, it has been categorically stated that the same would be retrospective in operation. In response to the submissions made by the learned counsel for the petitioners that Rules might be held as only prospective, it is submitted by the learned Assistant Solicitor General appearing for the respondents that such prospective operation could be given, only if the Rules, by virtue of the amendment, take away any accrued or vested right and never otherwise. What is a ''vested right'' under such circumstances, has already been explained by the Apex Court as per the decision reported in **High Court of Delhi & Anr. v. A.K. Mahajan & Ors. [(2009) 12 SCC 62]**, submits the learned counsel.

10. We have gone through the entire pleadings and proceedings. There is no dispute to the fact that the Rule making authority is none other than the Government and it is in exercise of the power under Article 309 of the Constitution of India, that the Rules were originally framed by introducing the Indian Posts and Telegraphs (Postman/Mail

Guards/Head Mail Guards) Recruitment Rules, 1969. Subsequently, by the passage of time, the need to amend the Rules was felt and it was accordingly, that the Rules were amended by introducing Annexure A1 Rules in the year 1989. Later, it is with reference to the very same power that the Rules were further amended as borne by Annexures A2 and A3 and even thereafter as per Ext.R1(b). In so far as there is no dispute as to the Rule making power of the Government and in so far as no challenge is raised as to the transgression, if any, made by the Government while formulating such Rules, the Rule making process is not liable to be deprecated in any manner; nor is there any necessity for this Court to examine this question any further.

11. The point to be considered is only with regard to the rationality of the amendment or whether Rule could be struck down for having changed method of Recruitment as to the course stipulated for dealing with "unfilled vacancies", if the qualified departmental hands are not available. In other words, mainly because of the reason that the "left over vacancies" were thrown open to the GDS hands to be considered got changed and were left to be filled up by Open Recruitment, will it tilt the balance in any manner, is the point to be answered. The answer can only be an emphatic "No", in so far as it is for the Rule Making authority to stipulate the norms for recruitment; especially, the qualification, experience, method of recruitment and the zone of consideration depending upon the job specification/job requirements and to meet the organisational interest. This alone has been virtually done by the Government, invoking the power under Article 309 of the Constitution of India and having done such exercise, it is not for this Court or the Tribunal to sit in appeal as to the feasibility, correctness or otherwise to hold whether the change brought about is liable to be sustained. We find support from the ruling rendered in **Dilip Kumar Garg v. State of U.P [(2009) 4 SCC 753]**

12. With regard to the submission made by the learned counsel for the petitioners, seeking to give only "prospective effect" to Annexures A2/A3 Rules, by virtue of the amendment brought about in the year 2014, vide Ext. R1(b), it is to be noted that the amendment is brought about only to correct the mistake in the name of the Rule which was superseded as per Annexure A2, and nothing else. This Court is of the view that, even if the name of the superseded Rules is not mentioned, Annexure A2 Rules can stand on its own. It is also to be noted that, at the time of introduction of Annexure A2 Rules, the Rules of the year 1969 were not in existence, having already been superseded by Annexure A1 Rules of the year 1989. The Government/Rule making authority was very much aware as to the supersession of 1969 Rules and as such, there was no need or necessity for the Government to have mentioned supersession of the "1969 Rules" in Annexure A2 Rules.

13. With regard to the retrospective nature of the amendment and the decision rendered by the Supreme Court sought to be relied on from the part of respondent [(2009) 12 SCC 62 (cited supra)], it has been specifically observed by the Supreme Court in paragraph 10 of the verdict that the retrospective amendment can be termed as arbitrary, discriminatory and violative of the rights guaranteed under Article 16 of the Constitution of India, if such

amendment is having the effect of taking away the benefit already available to the employees. Whether the benefit to be considered for promotion was a right already accrued on the employee, was also considered by the Apex Court. Paragraph 11 of the verdict is relevant, which reads as follows :

"11. Now, we find no discussion in the whole judgment as to what was the benefit which was available to the said employee. The High Court has observed that the benefit of consideration, which was available to the Writ Petitioner No. 8 prior to the retrospective amendment of the Rules, was not available to him after the amendment of the Rules. In our opinion, this is an incorrect notion. There can be no benefit of consideration. To be considered is a right of employee but merely being considered, in itself, is not a benefit as it may or may not result in the selection or promotion of an employee and hence it is in the nature of a chance. A mere chance of promotion being affected by amendment is in our opinion inconsequential. This Court has time and again held that since promotion is not a right of the employee, a mere chance of promotion if affected cannot and does not invalidate the action on the part of employer."

Further observations are there in paragraph 13 as well.

14. Viewed in the said circumstances, the gist of declaration of the law is that, a mere chance of promotion being affected by an amendment is inconsequential and that the same cannot give any vested or accrued rights to the employee to contend that the amendment of the Rule is unconstitutional. In any view of the matter, we find that the typographical mistake in naming the relevant Rule in the opening paragraph of Annexure A2 has been taken care of rectified/cured as per Ext.R1 (b) notification issued in the year 2015, giving retrospective effect. The said notification/amendment giving retrospective effect is never under challenge in these Original Petitions, the petitioners having not chosen even to amend the Original Petitions in this regard.

15. A conscious decision is taken by the Rule Making Authority as to the necessity to effect amendment of the relevant Rule which was in existence, changing the method of recruitment to the requisite extent. The petitioners could not connect this to any violation or infringement of the relevant provisions of law in the "rule making process" or as to violation of any Constitutional provisions in this regard. It is also brought to the notice of this Court that, the necessity to have the Rules amended, was because of some serious observations made by the Central Administrative Tribunal, Ernakulam and also by this Court some time ago, in connection with the necessity to provide reservation to OBC candidates. There was a challenge before the CAT as to the course being followed by the Department, without providing measures for reservation to OBC in respect of appointment to the post of Postman. The CAT held that the appointment to the post of Postman from the segment occupied by the GDS was by way of "promotion" and as such, question of reservation was never attracted. The said verdict was sought to be challenged by the aggrieved parties before this Court, by filing O.P., wherein interference was declined and the O.P. was dismissed holding that it was an instance of promotion and that the

principles of reservation would not apply. By virtue of the change in the Recruitment Rules [as per the amendment], the field has been thrown open to fill up the vacancies, also satisfying the Rules of Reservation in all sectors. This Court does not find it necessary to go further with regard to the scope of amendment, as we do not find anything wrong with the course pursued by the Government in amending the Rules, which in fact has been effected, exercising the very same power vested with the Government in formulating the Original Rules. In so far as no violation of any Constitutional provision is brought about, we are of the view that the finding rendered by the Tribunal does not warrant any interference. All these Original Petitions are dismissed as devoid of any merit.