

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP No.321/2001

OA No.1998/99

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New Delhi this the 14th day of December, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Bishamber Singh,  
S/o Shri Bhagwan Sahai,  
R/o Village Hirapur P.O. Nayagaon,  
Distt Buland Shahr UP.

2. Shri Badley Singh,  
S/o Shri Sulki Singh,  
P.O. Sarai, Distt. Bulandshahr  
UP.

-Applicants

(By Advocate Shri Sant Lal)

-Versus-

1. Shri B.N. Som,  
Secretary, M.O. Communications,  
Dept. of Posts, Dak Bhawan, New Delhi.

2. Shri V.P. Singh,  
Director Postal Services,  
O/O the Postmaster General,  
Agra Region, Agra UP.

3. Shri Piara Lal, Supdt. of Post Offices,  
Bulandshahr Division,  
Bulandshahr.

-Respondents

(By Advocate Shri N.S. Mehta)

O R D E R

By Mr. Shanker Raju, Member (J):

The following directions have been issued by an order dated 2.11.2000, in OA No.1998/99:

"8. In view of the above findings, we hold that the application succeeds and is accordingly allowed. The order posting on transfer to Bulandshahr, three candidates from outside divisions of 1997 examination for filling up the vacancies of 1998, for which exam. was held in December, 1998, is quashed. The respondents are directed to correctly work out, notify and consider the case of the applicants for appointment against those posts, on the basis of their performance in the examination conducted in December, 1998, in accordance with the rules and instructions governing reservation applicable if any. We also award to the applicants costs for this OA quantified at Rs.3,000/-."

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The aforesaid directions have been affirmed by the High Court on 26.2.2000 in CWP No.1275/2001. The Applicant No.1, who is a Scheduled Caste has alleged contumacious and wilful disobedience of the directions of this Court supra and stated that despite directions to consider their cases for appointment against the posts of Postman have not followed the rules and instructions, governing reservation. By placing reliance on the roster maintained from 1980 onwards it is stated that the SC candidates who have qualified on the basis of their own merit had been adjusted against the quota meant for them, as such they have encroached upon the quota with the result there is no availability of a vacancy against the SC quota as contended by the respondents. It is also stated that in all ten selections no SC candidate has been appointed despite 15% posts are reserved for them. It is stated that the applicant had secured 117 marks out of 150 and by their earlier letter dated 21.10.2000 filed before the Tribunal it is admitted that the applicant belongs to SC community whereas the post of back log vacancy was for ST in seniority quota. As there is no SC quota in the year 1998 he has not been considered. According to him as per the policy of reservation there is a provision for exchange of vacancies. In case of a ST candidate the same can be filled up by SC candidate on account of non-availability of ST candidate. As the applicant had topped the merit of SC candidate, in view of the notification amending the recruitment rules of 30.1.95 against the failing which clause Extra Departmental Agents can be considered and appointed as Postman on the basis of departmental examinations. The same has not been considered by the respondents. It is further stated that the respondents

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have deliberately not worked correctly the SC vacancies and as the last general candidate was selected having secured 118 marks and in their order dated 8.8.2001 no SC vacancy has been shown and out of 81 sanctioned posts 20 belong to SC, which is more than the prescribed quota of 15% reserved for SC candidates. It is in fact 21% as shown in OM dated 29.12.1993 in the DOP&T order. According to him 17 points are reserved for SC as per the post based roster. As per the OM dated 25.2.89 SC/ST candidates selected on their own merit without relaxed standards will not be adjusted against the vacancies reserved for them.

2. On the other hand, the respondents in their reply stated that the applicant had applied for the post against the unreserved vacancy, showing him to be belonging to the SC community and as per the decision of the Apex Court in R.K. Sabharwal v. Union of India, 1995 (1) ATJ 410 the reservation is to be operated postwise and any post falling vacant after the reservation is achieved is to be filled among the category of person to whom the reserved post belongs and since there was no vacancy of ST in the year 1998 as well as on the date of notification dated 8.8.2001 no notification with respect to SC community was issued. The post of back log vacancy was for ST and against which the applicant was not selected as he appeared in the merit quota. According to him as per the OM dated 2.9.64 the vacant post for SC/ST are to be carried forward to two subsequent recruitment years and it has now been increased to three recruitment years. The vacancy of back log of SC arisen during the year 1997 could not be exchanged in the year 1998 and was also in the seniority quota. In this view of the matter it is stated that no

candidate of SC has been selected on their own merit during the year 1997 and 1998 and there has not been any wilful or contumacious disobedience of the directions of this Court.

3. We have carefully considered the rival contentions of the parties and perused the material on record. In the OA the applicant in para 4.8 has stated that the applicant has not been considered for appointment against the vacancies reserved for reserved communities on the basis of their merit and had prayed for consideration to the posts of Postman as per the rules of reservation. The applicant has also applied as a SC candidate. The directions of the Court were to consider the case of the applicants on the basis of their performance in accordance with rules and instructions governing reservation. We do not find any wilful or contumacious disobedience of the directions of this Court as due to non-availability of vacancy in the reserved category for SC the consideration cannot be extended before 1998. The directions were to consider for the year 1998 and the vacancy position is to be ascertained at that time is relevant. Admittedly, there was no vacancy of SC community either in 1998 or on 8.8.2001. As such no notification of SC community was issued. Apart from it, after post based roster any post falling vacant in the cadre after the reservation is achieved is to be filled up among the category of person to whom the reserved post belongs. The applicant cannot be adjusted on the back log vacancy for ST in seniority quota as he had appeared in the merit quota and there is no vacancy in the SC quota in 1998. As regards conversion of vacancy is concerned, the same is to be carried forward for

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three years and the applicant cannot be adjusted against the same and the vacancy could not have been exchanged which was in ST quota.

4. However, we find that the resort of the applicant to contend that as per the amendment in the recruitment rules and having regard to the marks obtained by him and being stood next to the general candidate selected and getting 11<sup>1/2</sup> marks the respondents should have resorted to 'the failing which' clause under Rule 2 (1) on the basis of departmental examination, is a new cause of action, which cannot be gone into in the CP. In this view of ours we are fortified by the ratio of the Apex Court decision in J.S. Parihar v. Ganpat Duggar & Ors., JT 1996 (9) SC 611.

5. In the result and having regard to the reasons recorded, we do not find any wilful disobedience on the part of the respondents. The CP is dropped and the notices issued to the respondents are discharged. However, liberty is given to the applicant to assail any fresh cause of action, in the appropriate proceedings, in accordance with law, if so advised. No costs.

S. Raju

(Shanker Raju)  
Member(J)

'San.'

V.K. Majotra

(V.K. Majotra)  
Member(A)