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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 1268/91 /19 Decided on : 18.10.95

Shri Mahaveer Singh & Another ... Applicant(s)

(By Shri Sant Lal Advocate)

versus

Union of India & Others ... Respondent(s)

(By Shri M.K. Gupta Advocate)

CORAM

THE HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. To be referred to the Reporter or not ? yes
2. Whether to be circulated to other Benches No
of the Tribunal ?


(K. MUTHUKUMAR)
MEMBER (A)

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1268 of 1991

New Delhi this the 18th day of October, 1995

**HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)**

1. Shri Mahaveer Singh
2. Shri Bhawani Shankar ..Applicants

Both the applicants are working as
Packer in the Krishan Nagar,
Head Post Office, Delhi-51.

By Advocate Shri Sant Lal

Versus

1. The Union of India through
the Secretary,
Ministry of Communications,
Department of Posts,
New Delhi-110001.
2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Building,
New Delhi-110001.
3. The Senior Postmaster,
Krishan Nagar Head Post Office,
Delhi-110051.Respondents

By Advocate Shri M.K. Gupta

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicants are Extra-Departmental Employees in Krishan Nagar, Head Post Office since 1980 and were promoted as Packers in 1987. They appeared in the departmental examination for promotion to the cadre of Postman/Village Postman on 08.07.90 and were declared successful by the respondents. Notification dated 20.07.1990 (Annexure-2). They were deputed for practical and theoretical training for 10 days with effect from 9.8.1990. The grievance

of the applicants is that despite their having been declared successful in the departmental examination and the successful completion of their training, the respondents have not promoted them as Postman against the existing vacancies, and have not responded to their several representations in this regard. They have, therefore, filed this application under Section 19 of the Administrative Tribunals Act, 1985 with the prayer that the respondents be directed to promote them as Postman and grant them benefits of service and consequential arrears of pay with effect from 19th August, 1990, the date on which they were due to be promoted.

2. The applicants maintain that they have the right to be considered for promotion once they are declared successful in the departmental examination, in which they were eligible to appear and have also successfully undergone the training. The respondents contend that although the applicants were eligible to appear as Extra-Departmental Agents against the vacancies for outsider candidates, there were no reserved vacancies for outsiders quota. The vacancy position, as indicated by them, was as follows:-

| | O/C | SC | ST |
|--------------|-----|----|----|
| Departmental | 2 | 1 | - |
| Outsider | 1 | - | - |

In their averments, the respondents have confirmed that the applicants, who are SC community candidates, have not qualified in the departmental test for outsider quota as they secured less than 45%

marks and there were only four candidates including the two applicants and that in the said examination, the applicants were erroneously declared successful on the basis of qualifying marks which was fixed as 30% for SC and ST candidates, as against 45% fixed for candidates from communities other than SC and ST. The applicant No.1 had secured 40% marks and the applicant No.2 had secured 38.66% marks. As the applicants did not get the minimum qualifying 45% marks for the outsider general candidates, and as there was no reserved vacancies for outsider quota, the applicants were not considered for appointment. The respondents maintain that erroneous declaration of results of the applicants was detected subsequently and, therefore, they were not given promotion for which they were not entitled.

3. The learned counsel for the applicant strongly urged that the applicants were considered as eligible candidates for outsider quota specifically and the Notification dated 20.7.1990 declaring them as successful in the test and deputing them both for practical and theoretical training clearly established that the respondents had taken into account the prescribed qualifying marks of 35% for candidates belonging to SC/ST community and there was no question of considering them against reserved vacancies. The learned counsel contended that the applicants were on par with all other candidates for all the existing vacancies and they have been provided relaxed standards for qualifying in the said examination. The learned counsel submitted that the respondents had nothing to show

that the relaxed standards for SC/ST candidates are only against reserved vacancies. The learned counsel for the respondents have contended on the otherhand that SC/ST candidates are to be considered for the reserved vacancies only and just because in the examination certain relaxed standard had been provided, it does not mean that the applicants can be considered against unreserved vacancy, and any such consideration will result in overstretaching the policy behind the reservation for SC/ST candidates. The respondents contend further that it is well settled that SC/ST candidates are entitled to compete with the general category candidates in respect of the posts which are not reserved and also can claim promotion to the same, if they are otherwise eligible by virtue of their seniority and merit. The learned counsel argued that the merit should be assessed on the basis of common standard. As the applicants were declared successful under the relaxed standard, they cannot compete against the vacancies meant for general candidates.

4. We have given our careful consideration to the rival contentions of the parties and have also perused the record. We have also perused the additional affidavit filed by the respondents and the supplementary rejoinder to the additional counter-affidavit filed by the applicant. The method of recruitment, as prescribed in the statutory rules, namely, Indian Posts and Telegraphs (Postmen/Village Postman and Mail Guards) Recruitment Rules, 1989, framed under Article 309 of the Constitution provide for recruitment to the post of Postman as indicated in the Schedule annexed

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to the above rules. The relevant Columns in the above annexures, are extracted below:-

"Col.5 - Whether Selection or non-Selection post
- Selection.

Col.7 - Age-limit for direct recruits -

- (i) Between 18 and 25 years (relaxable upto 35 years).
- (ii) ED Agents who have been recruited on or before 16-11-1982, shall be eligible if they are within 42 years (47 years for SC/ST) of age and those appointed after 16.11.982, shall be eligible if they are within 35 years (40 years for SC/ST) of age and have put in three years of satisfactory service.

Col.11 - Method of recruitment-

- (i) 50% by promotion failing which by ED Agents, on the basis of their merit in the Departmental Examinations.
- (2) 50% by ED Agents of the recruiting Division or unit in the following manner, namely:-
 - (i) 25% from among ED Agents on the basis of their seniority in service and subject to their passing the Departmental Examination, failing which by ED Agents on the basis of merit in the Departmental examination.
 - (ii) 25% from amongst ED Agents on the basis of their merit in the Departmental examination.

Col.12 - In cases of promotion -

- (1) Promotion from Group 'D' officials who have put in three years of regular and satisfactory service on the closing date for receipt of applications through a Departmental examination.
- (2) EDAs through a Departmental examination.
- (3) Direct recruitment through a Departmental examination".

From the additional affidavit, it is admitted that an examination for promotion to Postman/Village Postman was held on 8.9.1990. 4 candidates in all including the two applicants who are SC candidates appeared in the test. It is also admitted that the applicant No.1 secured 40% marks and applicant No.2 secured 38.66% marks in that examination. It is further admitted that no other candidate qualified in the test. It is also averred by the respondents that since the applicants had not completed 3 years of service as temporary Class-IV officials, they were ineligible for promotion under the departmental quota but were eligible under the outsider quota on the basis of their merit in the departmental examination. This is of course contested by the applicants, who in the rejoinder have stated that the applicants who are EDAs with 3 years of service, are also eligible under the departmental quota. It is also admitted by the respondents that the qualifying marks for general candidates is 45% and for SC/ST candidates,

it is 30%. We find that in the results declared, the senior Postmaster, Krishan Nagar has specifically notified vide their memo dated 20.06.1990, Annexure-A-2 to the application as follows:-

" As per result of departmental examination for promotion in the Postman/Village Postman and outsider quota from EDA's cadre from Class-IV and EDA's held on 8.7.90, the following Class-IV EDA's have been declared successful.

Annexure-I (Class-IV)

- (1) Srhi Mahavir Singh SC
- (2) Shri Bhavani Shankar SC

Annexure-II (EDA's)

None qualified.

Sd/-".

From the Recruitment Rules, it is evident that the Scheme provided for 50% by promotion from Group 'D' officials who have put in 3 years of service, failing which - Extra-Departmental Agents on the basis of their merit in the departmental examination, and the other 50% is exclusively from Extra-Departmental Agents (25% by seniority and (emphasis added) 25% by merit). The Recruitment Rules and the annexures thereto and Col.12 in particular provide that in case of promotion from Group 'D' officials failing which ED Agents on the basis of their merit in the departmental examination will be eligible for such promotion. The respondents' reference to the departmental quota is obviously with reference

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(21)

to the first 50% by promotion and the reference to the outsider quota is to the second 50% to be filled by ED Agents exclusively. There is no specific requirement of fixed period of service for the EDAs who appeared through a departmental examination for competing the first 50% of vacancies under the departmental quota. Therefore, we are of the considered view that the applicants should have been considered eligible under the departmental quota as well for promotion from the Group 'D' officials has failed in giving effect to the eligibility of the applicants, who are ED Agents on the basis of their merit in the departmental examination. Therefore, the contention of the respondents that the applicants are eligible for consideration ~~only~~ against the outsider quota only, is not tenable. In terms of the Rules, they are also eligible to be considered against the outsider quota ~~itself~~. In any case their eligibility for consideration against the departmental quota cannot be denied in terms of the aforesaid Recruitment Rules, which do not prescribe any minimum number of years of service. If the intention was to exclude ED Agents from the purview of the departmental quota for promotion, there is no need for the phrase "failing which by ED Agents" in the Recruitment Rules Col.11(i) of the Annexure. On the question of SC/ST candidates with relaxed standard competing against general vacancies, it is seen that the scheme of reservation is provided for relaxed standards for SC/ST candidates against reserved vacancies, where there is reservation for promotion

both under seniority-cum-fitness basis and on selection basis, and there is no specific provision for enabling the SC/ST candidates availing relaxed standards to compete for general vacancies.

5. Thus on the consideration of the entire matter, we are of the considered view that the applicants are eligible for being considered for departmental quota against the 50% promotion quota in the event of non-availability of the departmental candidates for promotion for the first 50%, provided they have qualified in the departmental examination. The plain reading of the rules suggests that the 50% of the total number of vacancies has to be filled by promotion of Group 'D' (Class-IV) failing which, these 50% vacancies can be considered for being filled up by ED Agents on the basis of their merit in the departmental examination. Therefore, to exclude them from the purview of the departmental quota, would not be in order. The applicants will, therefore, have a right to be considered against the vacancies meant for promotion quota, as it was not possible to promote a Group 'D' in the departmental quota. None of the general candidates have qualified in the examination with respect to the minimum marks prescribed for them. It is admitted that out of the 3 vacancies against 50% departmental quota for promotion, two are general vacancies and one is reserved vacancy. We, therefore, see no reason why the applicant No.1, who has qualified as per the minimum marks prescribed and has secured a higher merit position among the applicants should not

(23)

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be considered for promotion against this reserved vacancy.

6. In the conspectus of the above discussion, the application is partly allowed in respect of applicant No.1 and we direct the respondents to promote him as Postman with effect from the date he would have clearly been promoted, i.e., with effect from 19.08.1990 with the consequential benefits of arrears of salary, seniority etc. *within a period of 3 months from the date of receipt of this order.* In the circumstances of the case, there shall be no order as to costs.

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(K. MUTHUKUMAR)
MEMBER (A)

MR. A. V. Haridasan
(A. V. HARIDASAN)
VICE CHAIRMAN

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