

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00629/2019

Tuesday, this the 23rd day of March, 2021

C O R A M

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

Linsha K., aged 29 years,

W/o Sreenal

Residing at 'Ushas', Surya Narayana Temple Road,

Kadirur, Thalassery Kannur-670 642.

Presently residing at "Sreenas",

Near Olacherry Kavu,

Thalap, Kannur-670 001.

Applicant

(Advocate: Mr.Karol Mathews Sebastian Alencherry)

Versus

1. Union of India, represented by
The Secretary, Ministry of Labour & Employment,
Shram Shakti Bhavan, Rafi Marg,
New Delhi-110 001.
2. The Employees Provident Fund Organization
Bhavishya Nidhi Bhavan,
14, Bhikaji Cama Place,
New Delhi-110 066, represented by
The Central Provident Fund Commissioner
3. The Central Provident Fund Commissioner
Bhavishya Nidhi Bhavan, 14, Bhikaji Cama Place,
New Delhi-110 066, represented by
The Central Provident Fund Commissioner
4. The Additional Central Provident Fund Commissioner,
Zonal ACC Office, Kerala & LakshawEEP
(Thiruvananthapuram), P.B.No.1016, Pattom,
Thiruvananthapuram-695 004.

Respondents

(Advocate: Mr.A.Rajasimhan for R2 to 4)

The OA having been heard on 19th march, 2021, this Tribunal delivered the following order on 23rd March, 2021.

ORDER

By P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

- (i) Set aside Annexure A1 notification to the extent it doesn't notify the vacancies under the OBC category for the post of Social Security Assistant in Kerala & Lakshadweep region of the 2nd respondent organization.*
- (ii) Declare that Annexure A1 is bad in law in so far as it does not provide for the vacancies under the OBC category in Kerala & Lakshadweep region.*
- (iii) Declare that the applicant is entitled and eligible to submit the application for the post of Social Security Assistant under the OBC category in Kerala & Lakshadweep region of the 2nd respondent organization.*

2. The applicant is a person aspiring to get a Central Government employment.

The second respondent in this case invited applications to the post of Social Security Assistant (SSA) as per notification produced as Annexure A1. As per Annexure A1, the second respondent had shown various available vacancies in the SSA as on date of publication of the notification in various States in India including State of Kerala and Lakshadweep. As per the said notification, applicants have to apply on line from 27.6.2019. The applicant in this case is an OBC candidate and when she attempted to apply for the same, she could not complete the application since she had already completed 27 years. According to her, OBC candidates are entitled to have 3 years age relaxation and if that is applied, she is entitled to apply for the same. Even though she approached the respondents, they did not give any exact reply and they also did not permit her to file any application directly. According to her, as per the notification, there are chances for variation of number of vacancies and hence according to the applicant, there is every chance of OBC vacancies arising before 31.12.2019 and hence the denial of the respondents in permitting her to apply for the post is arbitrary and illegal. As per Annexure A1, the vacancies reported in State of Kerala and Lakshadweep were only general category vacancies.

According to her, the vacancies have to be ascertained on the basis of cadre strength and reservation registers and roster of registers and the rejection of the applicant's application is illegal and arbitrary. So the applicant seeks to set aside A1 notification to the extent it does not notify vacancies under OBC category for SSA in Kerala and Lakshadweep and also to issue an order declaring that Annexure A1 notification is bad in law and also to declare that the applicant is entitled and eligible to submit application for the post of SSA under OBC category and to hold that the applicant is eligible to participate in the examination. She also sought for permission to submit an application for the post of Social Security Assistant as per Annexure A1 and sought for an interim direction to the respondents to allow her to participate in the competitive examination scheduled on 31.8.2019.

3. When the matter came up before the Tribunal on 22.8.2019, this Tribunal had taken a view that the applicant can apply as an OBC candidate in other States and appear in the examination and the final outcome can be determined when the OA is disposed of and on ascertaining OBC vacancies. But the applicant did not apply for vacancies in other States but she filed OP (CAT) 225/2019 before the Hon'ble High Court and the High Court had granted a provisional permission to participate in the competitive examination subject to the result of the Original Application pending. It also directed this Tribunal to dispose of the OA as expeditiously as possible.

4. The respondents appeared and filed a detailed statement denying the contentions of the applicant. According to them, Employees Provident Fund Organizations were having Lower Division Clerks (LDC) and Upper Division Clerks (UDC) and a new cadre of Social Security Assistant in the pay scale of 4000-6000 (pre-revised) was introduced in the organization with effect from 3.1.2004. Recruitment Rules was also published on 23.12.2003. After the introduction of new cadre of SSA, the cadre of UDC was declared as a dying cadre. It also provided for

switching over of all persons holding the post of UDC on regular basis to the post of SSA by qualifying a computer skill test. All the existing LDCs of the organization having qualification of matriculation were given a chance for promotion to SSA subject to their qualifying the computer skill test. Thus all the UDCs converted as SSA were accommodated against SSA DR quota and all LDCs who were promoted as SSA after passing computer skill test were accommodated as SSA DP quota. For Kerala region, there were 69 vacancies as on that date. While computing the category wise bifurcation during that time, reservation was applied to the whole sanction under DR quota which included UDCs who had been converted as SSA and accommodated against DR quota. Thus the entire 69 vacancies were earmarked for OBC and recruitment was made. Later on, the rosters were revised according to instructions of the Government as per OM dated 28.10.1972. After revision of the rosters it was found that officials in the OBC category were in excess and had to be adjusted against the future vacancies. Therefore, at present there is no vacancy for OBCs in Kerala and Lakshaddweep.

5. The notification issued was for anticipated vacancies upto 31.12.2019. The online application window was opened on 27.6.2019 to 21.7.2019. The details of vacancies available in various Zones/States etc. were furnished in the notification. The Kerala Lakshaddweep region had a total of 27 vacancies out of which 4 are reserved for Scheduled Caste and 2 reserved for Economically Weaker Sections (EWS) and 21 under General Category. The applicant in this case had completed 27 years of age and hence she is not eligible to apply under general category. There was no vacancy under OBC category for her. However, clear vacancies of OBC category were available in other States and Divisions for which the petitioner did not apply till last date. There is no merit in the contentions put forward by the applicant in this case.

6. We have heard the applicant as well as the respondents. The only contention raised by the applicant is that as per Annexure A1 notification, it is specifically mentioned that “the vacancies include anticipated vacancies upto 31.12.2019 and therefore likely to change”. According to the applicant, since it is mentioned that the vacancy position may change, there is also likelihood of a vacancy coming up for OBC also. So denial of the opportunity to participate in the examination was illegal. The notification did not permit the applicant to participate in the examination and it is highly arbitrary action on the side of the respondents.

7. The counsel for the respondents, on the other hand, would contend that if the applicant wanted to apply for OBC category, she could have very well applied for OBC vacancies in existence in nearby States. She did not do so. Instead the applicant approached this Tribunal and this Tribunal also advised the applicant to file applications under the OBC category in other States and the matter can be adjudicated when the OA is disposed of on merit. Instead of doing the same, the applicant approached the Hon'ble High Court and obtained a provisional permission to participate in the examination even without filing an application. She was permitted to participate in the examination and the result of the examination was produced by the counsel appearing for EPFO and the counsel submitted that the applicant did not qualify in the examination.

8. On a perusal of the notification produced as Annexure A1, it is clearly stated that the vacancies shown in the notification include all anticipated vacancies upto 31.12.2019. This does not imply that OBC vacancy may come or there will be additional vacancies at this stage. The said clause is only a reasonable condition imposed since there is no way to find out the correct vacancies that may arise before 31.12.2019. For the time being it can be clearly understood that the respondents have added all the anticipated vacancies upto 31.12.2019 and there was no vacancy

in existence for OBC category in Kerala region. It is clearly mentioned in the reply statement that when the new cadre of SSA was formed the LDCs and UDCs who were in existence in the department were permitted to participate in the computer skill test and they were absorbed as SSA.

9. According to the respondents, the OBC candidates are in excess in the department and hence there is no possibility of having vacancies for OBC in Kerala during this time. They have clearly stated the reasons for not including OBC in the notification. There is no merit in the contention raised by the applicant in this case. There is no arbitrariness and there is no unreasonableness in the condition incorporated in the notification regarding future vacancies that may arise till the end of 2019. we do not find anything wrong in the notification. Further the applicant in this case had participated in the examination and was not successful in coming up on merit. After participating in the examination, it is not proper to challenge the notification itself.

10. In the conspectus of the facts and circumstances, we find that there is absolutely no merit in the contentions raised by the applicant in this case and it is liable to be dismissed. Accordingly we hereby dismiss the OA. No order as to costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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Annexures filed by the applicant:

Annexure A-1: True copy of the relevant pages of notification numbered as File No. Exam. 12(1)2018/ SSA/DR published in the website of the 2nd respondent Organization.

Annexure A-2: True copy of :he Secondary School Leaving Certificate of the applicant.

Annexure filed by the respondents

Annexure R1: True copy of the judgment of the Hon'ble High Court of Kerala in OP (CAT) No.225/2019 dated 5.9.2019.