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Central Administrative Tribunal, Allahabad

Registration O.A.No.1083 of 1988

K.S.Pande ... Applicant

Vs.

Union of India and others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This is an Application u/s.19 of the Administrative Tribunals Act XIII of 1985. The case of the applicant, in brief, is that he had joined the Postal Service as a Clerk (now known as Postal Assistant) in Oct.1964. In accordance with the policy laid down by the Respondents for the promotion of Postal Assitants (for short PA) to Lower Selection Grade (for short LSG) cadre, 2/3rd quota was fixed for promotion on the basis of seniority subject to rejection of unfit and 1/3rd vacancies were to be filled up by qualifying examination. In order to fill the vacancies of 1/3rd quota of the years 1977 and 1978, an examination was held on 10.12.1978 and the Applicant, who had appeared in the said examination along with other candidates was declared success -ful as notified by the Sr.Superintendent of Post Offices, Allahabad on 12.5.1979, copy annexure 1. The candidates in excess of the vacancies of that year could not be absorbed and were kept on waiting list according to rule 272-A of Posts and Telegraphs Manual Vol.IV which lays down that the names of persons not absorbed in any year for want of vacancies are to be carried forward to the next year for filling up the vacancies of that year. No examination was held in 1979 and the examination of 1980 was held on 15.2.1981 and its result was declared on 29.8.1981.

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The persons declared successful in the examination held on 15.2.1981 and other unabsoed qualified candidates of the previous qualifying examinations were reshuffled and on the basis of the seniority in the Circle Gradation List, a combined list of qualified officials was prepared and on its basis, the Respondent no.2 -the Post Master General, U.P. issued a circular letter on 10.2.1982 vide copy annexure 4 through which vacancies against 1/3rd selection quota for 1979 were filled. The Applicant, though he was selected in the qualifying examination in the year 1977-78, his name was not included in the list. Shortly thereafter, the Sr. Superintendent of Post Offices issued another circular letter on 12.2.1982, copy annexure 5, for filling up the vacancies of the year 1980 against 1/3rd selection quota to LSG cadre, in which the name of the Applicant was included.

2. The grievance of the Applicant is that his name should have been included in the circular dated 10.2.1982 issued for filling up the vacancies of 1979 and not in the subsequent circular issued for filling up the vacancies of the year 1980. He made representations against non-inclusion of his name in the circular dated 10.2.1982 but his request was turned down by the Post Master General on 31.5.88. He accordingly filed the present petition for quashing the circular order dated 10.2.1982 and for revising the circular letters dated 10.2.82 and 12.2.82 so as to absorb him against vacancies of 1979 and for other consequential benefits.

3. In the reply filed by the Respondents, it was admitted that the Applicant was qualified in the selection held for the year 1979 but as vacancies of 1/3rd quota of LSG cadre were to be filled from the unabsorbed qualified candidates of the previous examinations held in 1975 and 1976, the Applicant could not be absorbed due to his lower position in the Circle Gradation List. Due to stay granted by the Hon'ble Supreme Court, no vacancies could be filled in 1980 and 1981. It has been further stated that in LSG cadre, the qualified candidates are absorbed according to their inter-se seniority in the PA cadre and the Applicant could not be promoted due to his lower position in the seniority list and when a chance came according to his position in the seniority list, he was promoted against the vacancy of 1980. No person junior to the Applicant was promoted before him and as Rule 272-A of the Posts and Telegraphs Manual was amended ^{and as Rule 272-A of} ~~the Posts and Telegraphs Manual was amended,~~ according ^{2 and} ~~1~~ to the D.G.P&T letter dated 4.10.1977, copy annexure CA-1, all the candidates passing the examination which is merely a qualifying one, are to be absorbed according to their inter-se seniority of PA cadre among all the qualified officials irrespective of the year of passing the qualifying examination, the Applicant was absorbed on his turn as he was junior to others who were absorbed earlier than him. His representation was rightly rejected and he has no real cause of grievance to approach this Tribunal.

4. The Applicant has placed his reliance on an unreported decision of the Kerala High Court in Writ Petition No.229 of 1981 K.J.Joseph and others Vs. Director of Postal Services decided on 15.2.1983. Its copy has been filed as annexure 6 to the petition. A perusal of this judgment shows that 7 Petitioners before the Kerala High Court were almost situated in the similar circumstance and though they had passed the qualifying examination conducted on 10.12.1978, they were not absorbed in the vacancies of 1979 and some persons who had passed the qualifying examination after them but were otherwise senior them in the Circle seniority list, were absorbed earlier than them. They had, therefore, sought identical relief in that writ petition in addition to their absorption against 2/3rd promotion quota on the basis of seniority on the ground of their passing the examination. In that case, on behalf of the Respondents a plea was raised that Rule 27-A of the Posts and Telegraphs Manual on which the reliance was placed on behalf of the Petitioners was amended by subsequent circular dated 8.3.1978 ^{according to} ~~on the basis~~ of which the absorption of the qualified candidates was to be made on the basis of seniority. This plea of the Respondents was turned down and after examining this circular letter dated 8.3.1978 it was held that it did not amend or modify R.27-A in any manner. The relief claimed by the Petitioners on the basis of seniority against 2/3rd quota on the ground of their passing the qualifying examination was turned down by the Keral High Court but they were granted the other relief repelling the contention of the Respondents that even in the case of qualifying candidates for promotion against 1/3rd quota, the absorption was to be made on the basis of seniority of the Circle.

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The following two paragraphs of the said judgment appear relevant in this connection:-

"The petitioners have been qualified for selection to the cadre of Lower Selection Grade in the examination conducted for that purpose and as per the existing rule they could look for promotion to that post in the one third quota set apart for being filled up on the basis of selection. Such right acquired by the petitioners cannot be interfered with arbitrarily.

In this view, I would declare that the petitioners are entitled, on account of their inclusion in the list of qualified officials selected on their success in the examination conducted in 1978 (as is clear from Exts.P-1,P-4 and P-3), for absorption in vacancies of the year 1979 in the Lower Selection Grade before the persons who were successful in the subsequent test conducted in respect of the vacancies combined for 1979 and 1980. The petitioners would accordingly be given their due posting in the Lower Selection Grade and the consequent benefits."

5... The contention of the Respondents, however, is that the Applicant cannot take any advantage of the decision of the Kerala High Court as it was a judgment between the parties to it and it was not a judgment in rem. They have further cited another circular letter of an earlier date -4.10.1972 (copy annexure CA-1) in support of their contention that R.272-A stands amended and the Applicant cannot base his claim on it.

6. After a careful examination of the whole matter, we agree with the Respondents in part and it appears to us that though the circular letter dated 4.10.1977 does not speak of R.272-A anywhere it did modify certain other instructions regarding promotion to LSG cadre. Paragraphs 1 and 2 of the circular letter state about the prevailing or previous practice and rules in that connection. Only para 3 of this circular is relevant so far as the question of amendment or modification is concerned and for the sake of proper appreciation, it is reproduced

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below :-

"The matter has been reviewed and it has been decided by Govt. in partial modification of the instructions, referred to above, that the 1/3rd selection quota of vacancies in LSG shall in future be filled on the basis of a qualifying examination and in order of seniority from among those who have actually qualified in the examination. Scrutiny of service records shall be made to ensure satisfactory service before permission is granted for appearing in the qualifying examination."

7. Para 3 aforesaid does speak that 1/3rd selection quota of vacancies in LSG shall in future be filled on the basis of qualifying examination and in order of seniority from those who have actually qualified in the examination. But in our opinion, this seems to have been wrongly interpreted by the Respondents as the word used is 'examination' and not 'examinations'. Thus the question of seniority has to be examined among the candidates passing the common qualifying examination and not among the candidates passing successive examinations till they are absorbed. The contention of the Applicant thus appears to have force and after his having been found successful in the qualifying examination for the year 1978 he should have been absorbed against the vacancies of that year or against ~~carry~~^{ied }} forward vacancies considering his seniority among the candidates passing the qualifying examination held on 10.12.1978 with him and not on the basis of his seniority among the qualified candidates of the subsequent years. This seems to be in accordance with ^{the }} spirit of R.272-A which clearly states that if any official already in the panel has not been absorbed during the year, he will be absorbed first in the vacancies of the next year and the vacancies for the next year will

be correspondingly reduced by the number of approved officials brought forward. This rule further speaks that the position of the vacancies after taking into consideration the retirements and other casualties should be reviewed at the beginning of each year and anticipated vacancies calculated accordingly. Cases of officials considered but overlooked should be reviewed when next selection is made. We are, therefore, of the view that for the purposes of promotion against 1/3rd selection quota the seniority among the successful candidates of that year alone should be the basis and the practice followed by the Respondents to the contrary is not in accordance with rule 272-A and the circular letter dated 4.10.77 issued by the DG P&T.

8. There is no other point for consideration in this case.

9. We accordingly allow the petition and direct the Respondents to refix the seniority of the Applicant by absorbing him in the vacancies of 1979 against 1/3rd selection quota with all consequential benefits in the light of the observations made above. The compliance of this order be made within 3 months from the date of its communication. The parties are directed to bear their own costs.

MEMBER (JO)

MEMBER (A)

Dated: 5th July 1989
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