

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

FRIDAY, THIS THE 27TH DAY OF SEPTEMBER, 2002

ORIGINAL APPLICATION NO. 168 OF 1999.

WITH

ORIGINAL APPLICATION NO. 169 OF 1999.

HON. MAJ. GEN. K. K. SRIVASTAVA, MEMBER-A

HON. MRS. MEERA CHIBBER, MEMBER-J

Balendra Kumar
a/a 25 years
s/o Sh. Bhagat Singh
c/o Sh. Jawahar Singh,
Rawali Road,
Bijnore Applicant in O.A 168/99

Jitendra Kumar
s/o Jai Bansh Singh,
r/o village and
post Agri,
Dist-Bijnore Applicant in O.A 169/99

(By Advocate:-Sh. R.P.Singh)

Versus

1. Union of India, through the Secretary, Ministry of Posts & Telegraphs (Communications) New Delhi.
2. Chief Post Master General, U.P.Circle, Lucknow.
3. Superintendent of Post Offices Bijnore Division, Bijnore.
4. Assistant Director (Recruitment) Office of the Post Master General Dehradun Region, Dehradun..... Respondents.

(By Advocate:- Sh. Manoj Kumar.)

O R D E R

HON. MRS. MEERA CHIBBER, MEMBER-J

These two O.As have been filed by the applicants claiming
claiming following reliefs :-

(a) a writ, order or direction in the nature of mandamus directing the respondents to make selection and modify or amend the select list dated 30.8.1996 according to the notification issued to the Employment Exchange dated 17-4-1995 and also according to Reservation Policy.



(b) a writ, order or direction in the nature of mandamus directing the respondents that after modification of the select list dated 30-8-96 according to the notified dt. 17-4-95 select and appoint the petitioner on the post of Postal Assistant.

(c) any other writ, order or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

(d) To award costs."

2. The grievance of the applicants in these cases namely O.A No. 168/99 and 169/99 are same. However, for the purposes of demonstrating the facts, ~~which~~ shall ^{be} refer to O.A No. 169/99. It is submitted by the applicant's counsel that by notification dated 17-4-1995, 25 posts of Postal Assistant were to be filled out of which 11 posts were to be filled from OC, 6 from the SC, 1 from the ST and 7 from the OBC. This was sent to the Employment Exchange for sending the names of eligible candidates. After evaluating and as a result of selection in connection ~~with~~ recruitment of Postal Assistant of Bijnore Division by Director General Posts, New Delhi, the result of 11 unreserved candidates, 6 SC candidates, 7 OBC candidates and one ST were declared. Thus, the grievances of the applicants that even though, as per the notification, 11 posts were to be filled from General candidates yet while declaring the result, 3 posts were filled meant for unreserved class also from the OBCs and 1 from SC. As a result of which the applicants were ~~not~~ ^{excluded} from this result and, in case, ~~of~~ 11 posts meant for General candidates ^{only}, ~~the~~ had been filled from the General candidates, the applicants ~~would have~~ ^{never} got the said posts as they were at Sl. No. 14 and 15 as per the merit list. It is submitted by the applicants' counsel that since ~~one~~ separate result has been made ~~for~~ SC, ST and OBC, there was no justification to take these reserved class candidates even in the unreserved posts

which was meant for the General Candidates. However, since the applicants name were not included in the result, ~~therefore~~, the applicants gave a representation to the Superintendent of Post Offices, Bijnaur, marked as Annexure-4 stating therein that by taking the reserved candidates even against the unreserved candidates, they have violated the fundamental rights of the general candidates. Therefore, they should be removed from the selection/select list and the applicants should be included in the select list for the purposes of giving them appointment. However, since no reply was given to the said representations. The applicants had no other option but to approach the Tribunal.

3. The respondents, on the other hand, opposed the O.A. The respondents have explained that there were 28 vacancies of Postal Assistant for the direct recruitment for the year 1995 in Division Bijnore. However, after the revised model roaster was issued by letter dated 25-2-1994 the community wise break up of the above 28 vacancies came to be as under: 11 for OC+ 3 for Ex.Serviceman, 6 for SC, 1 for ST and 7 for OBC. They have further clarified that the action to fill up the 3 vacancies of Ex.serviceman was to be taken by the PMG by RO/CO and the action to fill up the remaining 25 vacancies were to be taken by the SPOs Bijnore as such the nomination of 5 times of the said 25 vacancies were called for from the Employment Exchange, Bijnore by sending the requisition vide letter dated 17-4-1995 whereupon a list of 124 candidates was submitted and applicant also figured in the said list. Out of 124 nominees only 102 candidates submitted their application forms and attested copies of required certificates/documents who were allotted Roll Numbers to appear in the aptitude test and interview. All 102 candidates appeared in the



aptitude test held on 29-10-1995 and also appeared in the interview held from 1-3-96 to 3-3-96. Thereafter, a consolidated list of marks obtained by each candidates was prepared and a select list was prepared in descending order of merit totalling the marks obtained by the candidates in the components given in the para 2 and 3 of D.G Posts communication No. 60-36/93 SPBI-I dated 28-2-95 as per instructions. It is therefore, submitted by the respondents counsel that the select list of candidates dated 30-8-1996 was correctly prepared as the candidates belonging from the SC/ST/OBC category, who appeared in the direct recruitment test and selected ^{on} ~~their~~ own merit, were not adjusted against the reserved vacancies which was in compliance of the OM issued by Ministry Personnel, PG and Pension, Department of Personnel and ~~they~~ training dated 29-1-1999. ~~Therefore~~, further explained that as per the marks obtained by the candidates, the ~~names~~ ^{be} applicants ~~were~~ figured at Sl. No. 14 and 15, respectively. However, since only 11 candidates were to be taken against the unreserved posts the 11 persons as per their merit starting from number 1 to 11 were taken and put in the select list for 11 unreserved posts irrespective of the fact whether they belong to SC/ST/OBC because they have come in the merit on their own efforts and this was not been given to them by way of any relaxation or preference for the reserved category and since, the applicants were down below at Sl. No. 14 and 15, obviously ~~be~~ they could not selected and didnot find place in the select list. In support of their contention they have relied on the Suprem Court Judgement decided in R.K.Sabarwal and others Vs State of Punjab and others reported in 1995(2)SCC 745 wherein it was clearly held that when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points it has to be taken that the posts shown at the reserve points are to be filled from

48

amongst the members of reserve categories and the candidates belonging to the General category are not entitled to be considered for the reserved posts. On the other hand, the reserved category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out ~~of~~ the percentage of reservation. The ^{rrred} same view was ~~refey~~ referred to and followed in (1996) 2 SCC 715 in the case of Ajit Singh Januja and others vs State of Punjab and others as well. In para 11 of this Judgement the Hon'ble Supreme Court referred to R.K. Sabafwal Judgement and once again reiterated that in respect of members of SC that if they are appointed/ promoted on their own merit, then such candidates shall not be counted towards its percentage of reservation fixed for them. Relying on these judgements and Annexure CA-I which is OM dated 29-1-1999 the respondents have submitted there is no merit in the O.A as they have acted in accordance with law as ~~have been~~ ^{per} laid down by Hon'ble Supreme Court as such the OA is liable to be dismissed.

4. We have heard both the counsel and perused the pleadings as well.

5. These cases should not detain~~ed~~ us for too long as the controversy raised in these cases is already settled by Hon'ble Supreme Court long back in 1995, in the case of R.K.Sabarwal and others. We are satisfied with the explanation given by the respondents as to why the SC candidates and OBC candidates were included in the select list meant for 11 unreserved post because they had reached ^{by B} that placed on their own merits and not ~~way~~ ^{of} virtue



of any relaxation or preference. Therefore, we do not find any merit in the contention ~~placed~~ ^{raised} by the applicants' counsel. Apart from it, even though, the respondents have not taken any preliminary objection to the maintainability of the O.A yet we find that this O.A is not maintainable even otherwise because the applicants here in have sought quashing of the select list issued on 30-8-96 but neither those persons, who are likely to be affected, in case the relief is to be granted, are impleaded as respondents in the O.A nor the O.A was filed immediately on the declaration of the said select list. This O.A has been filed only in the year 1999 by which time those candidates who were selected must have been appointed to the said post and vested rights have accrued in their ~~future~~ ^{favour}. Therefore, in any case even ~~on~~ ⁱⁿ these two technical grounds also both the O.As failed. The O.As are accordingly dismissed with no order as to costs.



Member-J



Member-A

/madhu/