

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.114 of 1991

Date of Decision: 8.7.93

Arjun Mohanty & Others

Applicant(s)

Versus

Union of India & Others

Respondent(s)

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(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

VICE-CHAIRMAN

MEMBER (ADMINISTRATIVE)

(16)

JUDGMENT

MR.H.RAJENDRA PRASAD, MEMBER (ADMN), In this application, three petitioners, S/Shri Arjun Mohanty, Sudhansu Sekhar Mohapatra and Radhakrishna Sahoo, Postal Accountants serving in three post different post offices in Bhubaneswar, have questioned their non-selection as Inspector of Post Offices on the basis of their performance at the relevant examination held by the Department of Posts in July, 1989. Their grievances are two-fold : that

- 1) the calculation of estimated vacancies for the examination was not correctly made in accordance with the instructions issued by the Director General, Department of Posts; and
- 2) the orders of the Government of India on communal reservations were not correctly interpreted and applied while declaring the results of the impugned examination.

2. We have heard the learned counsel for the petitioners, Mr. Deepak Mishra, who, while accepting the number of vacancies as announced by Respondent No.2 for the said examination in 1989, challenged the calculation of vacancies for the year 1990, as arrived at by the same respondent, vide R/4 to the counter, and, subsequently vide R-10 to the counter.

3. The basic contention of the petitioners is that, although 15 vacancies were announced for the year 1989, nil ^{notified} vacancies were ^{by} Respondent No.2 for the year 1990. According to him, the calculation of vacancies for the latter year, viz. 1990, was not correctly computed. In support of this argument he invited our attention to the modified calculation of vacancies for 1990 as revised and notified by Respondent No.2

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vide his letter No.RE/30-7/89 dated 29.5.1990, wherein as many as 20 vacancies were notified subsequently, as mentioned above. These 20 vacancies, according to him, should also have been included in the vacancies calculated initially in arriving at the total number at the time of the ^{earlier} notification. The petitioners, it was argued, would, in that case, have had a near-certain chance of being selected on the basis of their performance in the examination in July, 1989, inasmuch as they duly secured the prescribed qualifying marks in individual papers as well as in the aggregate for the entire examination.

3. The crucial point for determination under the circumstances would, therefore, be: whether or not the 20 vacancies calculated and notified in May, 1990, could have been reasonably anticipated and included in the number notified prior to the examination held in July, 1989, and whether there was any intentional or inadvertant lapse on the part of Respondent No.2 in this regard.

4. According to the Senior Standing Counsel for the Respondents, Mr.Ashok Mishra, the 20 vacancies announced in 1990 arose long after the calculations had been done and notified in July/August, 1989. This was on account of the fact that, firstly, 12 officers in the cadre of Assistant Superintendent of Post Offices were promoted to the Postal Superintendent Group-B on 1st November, 1989, i.e. more than one year after the vacancies were calculated on the first occasion for the July, 1989, examination. These promotions, it was explained, could not have been foreseen with any measure of precision, as the selections to Superintendent

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Group-B depends on the number of vacancies on an All India basis which could not possibly be known to Respondent No.2, and, for that matter, not even to Respondent No.1 at a given point of time, until such vacancies are tabulated painstakingly for the whole of the country once in a year.

5. It was also submitted that, secondly, some time in June, 1990, the Department came to contemplate providing additionally 5 trained Inspectors of Post Offices to each of the circles ^{ou} through the country in order to meet the recurring leave commitments and allied contingencies/ shortages. This evidently was a sharp departure from the earlier long-standing practice, prevalent in the Department of Posts, ^{of} resorting to adhoc, local promotions outside the ambit of competitive examinations.

6. Thirdly, it was reported by the Sr. Standing Counsel that the Department, around the same period, decided also to initiate certain administrative changes in the personnel-pattern and manning practices, and in the resulting reorganisation, selected head post offices located at district headquarters were to be chosen and identified to be placed under the charge of Group-B officers. This measure, ipsofacto, necessitated the promotion of a larger number of Asstt. Superintendent of Post Offices to Postal Superintendent Service Group-B than had been originally visualised. Consequently, these promotions set in motion a chain-effect of causing unanticipated vacancies in the Asstt. Superintendents, and in their turn, the Inspectors of Post Offices cadres.

7. According to the Sr. Standing Counsel, none of the

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above developments, administrative measures or policy changes was either decided upon, known or communicated to the respondents prior to November, 1988 viz., at the time of calculating, initially, the vacancies for 1990. The said measures or changes, it was stressed, were formulated after the initial determination of vacancies for the July, 1989 examination. As a corroboration of this statement it was pointed out that while the Respondent No.2 had expected only seven officials to be promoted to Group-B cadre, the actual number that came to be eventually promoted on account of some of the new measures, referred to above, was no less than 12.

8. Next it was averred on behalf of the respondents that, fundamentally, apart from retirements (which can be clearly anticipated), and promotions during a particular ensuing year (which may at best be imprecise), only 5 per cent of vacancies of the total cadre strength are allowed to be taken as unforeseen vacancies for that year. This has been a time-tested formula which has stood the department in good stead. Based on this longstanding stipulation, it was argued on behalf of the respondents, ^{that} the calculation of vacancies on both the occasions was correct and without any blemish in the light of the information that was then available or could be foreseen, when vacancies were calculated for 1989 and again for 1990. In support of this, the calculation sheets for the two successive years/drawn up on the said two separate occasions, were produced.

9. In the light of the facts which have come up during arguments as reflected above, a conclusion emerges that the

calculation of vacancies, as made by Respondent No.2 in July, 1989, was not flawed in any manner and that it reflected the actual position or requirements as could be reasonably foreseen. It also becomes inescapably apparent that the large number of vacancies, 20, which arose subsequently, could not have been anticipated or foreseen in advance for the reasons stated above. To argue, therefore, that the increased number of vacancies which emerged later on should have been included among those notified in the first instances, as the petitioners have done, is clearly not logical, because it was not feasible. The contentions of the respondents on this aspect are, therefore, upheld.

10. As regards reservation for SC/ST candidates, the petitioners argued that the reservations (permissible upto a maximum of 22½ per cent of the total cadre strength) are to be determined with reference to the number of posts borne on the cadre on a particular crucial date, and not on the number of existing or anticipated vacancies. This was pointedly refuted by the respondents who explained that the correct position, based on the orders of the Government, is that the number of vacancies reserved for these communities are determined with reference to vacancies and not on total number of posts. Based on these opposing approaches, the petitioners contended that the quota for reservations had actually been exceeded by the announcement of results of the impugned examination. It was argued, on the contrary, by the respondents that the reservations calculated and result announced for SC/ST candidates (3 and 1, respectively) for

1989 was correct and without flaw.

12. It was pointed out by the learned counsel for the petitioners at this stage that the Department of Telecommunications had issued instructions, in April, 1989, to the effect that the reservation for SC/ST appointments in services would be with reference to the posts and not to the vacancies. Based on this, it was urged on behalf of the petitioners that the same position should hold good as regards recruitment/appointment/selection in the Department of Posts as well. This was specifically countered by the Sr. Standing Counsel, who submitted that the said instructions issued by the Telecommunications Department (Annexure-7 to the petition) were really no more than in the nature of provisional/interim clarifications arising out of a judgment of Allahabad High Court (Civil Writ Petition No.1089 of 1972, J.C. Mallick & others vs. Union of India and Others, referred to in the Supreme Court of India - G.R. Kalra vs. Union of India & Others Civil/Misc. Petition No.27233 of 1989); that ^{the} Telecommunication Department had in any case decided to file a review petition thereon; and that, at any rate, no specific instructions had been received in this regard from the Department of Posts.

13. Averting to the petitioners' contention that there already existed an excess of 3 candidates belong to SC/ST, vis-a-vis the Gradation List of Inspectors of Post Offices as on 1st July, 1990, it was asserted by the Sr. Standing Counsel to the Respondents that ^{the} imagined excess is based on an erroneous assumption. It was explained that the gradation list of any cadre is, inter alia, a running record of

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seniority as well as periodical accruals to the cadre over the preceding years, viz. during the period intervening from the date of the issue of previous gradation list. While this was the admitted position, the community rosters for recruitment purpose are, on the other hand, annual features, confined to recruitments during a particular calendar year, based on arising vacancies. Thus, the total number of SC & ST officials which might figure in any gradation list may not necessarily reflect or conform to the exact level of permissible percentages at any given point of time. This is simply on account of the fact that recruitment against reserved posts is to be done annually, and not as a percentage of total cadre strength built over a number of years. The gradation lists by themselves, it was emphasised, are thus liable to mislead as they show the cumulative changes and not annual percentages. Secondly, it is entirely plausible that some at-least of the candidates belonging to SC & ST communities may indeed succeed in a competitive examination wholly on merit, and not by virtue of reservations for their respective communities; and such meritoriously successful candidates are still shown as SC/ST in the gradation list, as indication merely of the fact that they belong to a particular community and not necessarily to denote that they have been the beneficiaries of any particular ^{or} concession ^{or} reservation in their favour. It was finally submitted that, if analysed in the light of this logic, going by mere percentages may well give an inaccurate and misleading picture of the whole context.

14. To our mind, this appears to present an explanation

irrefutable argument, and we accept the same as reflecting the correct position. We therefore hold that the reservation and notification of results relating to the vacancies for SC & ST candidates at 1989 examination was valid and unexceptionable.

15. The judgment of Madras Bench of the Central Administrative Tribunal in Original Application Nos.922 of 1989, 50 of 1992 and 23 of 1990, have been relied upon by the petitioners in support of their pleas. It is, however, noticed that the issues raised in those applications are different, if not materially, at least in significant detail. A review petition is said to have been filed by the Department after the Special Leave Petition filed by it was rejected earlier. The result of the Review Petition is not known. Be that as it may, the judgment of Madras Bench contains some useful insights which seem to us to be germane to the case under consideration, and may shed some valuable guidelights on the possible emerging situations if some of the reliefs prayed for in this case are allowed. The following observations contained in Madras C.A.T. judgment are of interest and also relevant to the instant case.

" Once an examination is held and results announced there is no power for the recruiting agency to augment the number of vacancies. Such an operation would be viewed as having been modified by a desire to accommodate those who had failed in the examination, and who could be salvaged by the process of augmentation of vacancies. That would indeed be a very bad practice leading to blatant injustice which is susceptible of being assailed from all sides.

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We, therefore, hold that no relief, as prayed for, can be given to the applicant since the vacancy once announced cannot be modified...."

" Estimation of vacancies is mainly an administrative function and it is not open to this Tribunal to re-evaluate the vacancies on the basis of the pleadings in the case. There is no glaring omission or palpable error in the process of evaluation of vacancies which renders the decision patently illegal...."

" We are of the view that it is not open to the Tribunal to modify the number of vacancies once we find on the basis of the records that the vacancies had been properly assessed...."

Based on the assessment of foregoing arguments, records, and proceedings during the hearing of the case, it is evident to us that :

- 1) the calculation of vacancies by Respondent No.2 for the 1989 and 1990 Inspector of Post Offices Examination has been unblameworthy. We are not in favour of any enhancement in the number of vacancies since such measure is uncalled for, not correct or justified. We are, moreover, satisfied, on the basis of the records produced before us, that the assessment of vacancies for the said examination was not incorrect in any manner.
- ii) the upward revision of vacancies from nil to 20 for 1990 examination was arithmetically correct besides being logically acceptable, having been rendered inescapably necessary for reasons and which have been fully cogently enumerated.
- iii) under the circumstances which were explained

by the petitioners, the practices obtaining
on communal reservations, pertaining to various
facts of the question, reflect after all the
correct position.

15. Based on the above reasoning, we have
therefore, no doubt in our mind that the declaration of
results at the 1989 examination by the respondents is
quite in order. Accordingly, the petition is disallowed.
The petitioners are not entitled to any of the reliefs
prayed for. The original application is accordingly
disposed of. No orders as regards costs.

K. S. Sahoo
8/7/93
VICE-CHAIRMAN

T. G. D. M.
8/7/93
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 8.7.1993/ B.K.Sahoo

