

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.45/95

Thursday, this the 18th day of April, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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1. B Thankamani Amma,
Extra Departmental Delivery Agent,
Vendor Post Office, Kottarakara.
2. S Udayakumar,
Extra Departmental Stamp Vendor,
Kollam Head Post Office, Kollam.

....Applicants

By Advocate Shri PC Sebastian.

vs

1. Senior Superintendent of Post Offices,
Kollam Division, Kollam.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Union of India represented by the Secretary,
Ministry of Communications,
Department of Posts, New Delhi.
4. O Thankachan,
Extra Departmental Delivery Agent,
Odanavattom PO, Kollam.
5. N Babu, Extra Departmental Delivery Agent,
Velichikala PO, Kollam.
6. G Kamalamma, Extra Departmental Sub Postmaster,
Nedumpana PO, Kollam.

....Respondents

By Shri James Kurian, Addl Central Govt Standing Counsel.

The application having been heard on 15th April, 1996,
the Tribunal delivered the following on 18th April, 96.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Extra Departmental Agents who were candidates in the departmental examination for recruitment of Postmen announced in A2. According to A2, there were ten

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vacancies to be filled under the departmental quota and ten vacancies to be filled under 'outsider quota'. The departmental quota is to be filled by promotion of Group D employees. According to respondent Department, there was only one candidate who appeared for the departmental quota and he did not qualify in the examination. As prescribed by rules, the departmental quota of ten vacancies were accordingly transferred to the 'merit quota'. The outsider quota of ten vacancies is again divided into two, namely, half of the vacancies to be filled by Extra Departmental Agents (EDA) on the basis of seniority in service and qualifying in the departmental examination and the remaining half by EDAs on the basis of merit in the departmental examination (merit quota). Rules also provide that vacancies remaining unfilled in the seniority-cum-qualification quota will be added to the merit quota. According to A3, the policy of reservation is applicable to these vacancies. There were two vacancies reserved for Scheduled Castes (SC), one for Scheduled Tribes (ST), two for Other Backward Classes (OBC) and one for Physically Handicapped (PH) in the outsider quota of ten vacancies. Instructions A1 state:

"From among the 50% of the vacancies reserved for outsiders, one half will be filled in from amongst EDAs on merit and another half will be filled in from amongst ED Agents on the basis of length of service. Therefore, one roster of 100 points will be maintained. The reserved points should also be divided equally between the quota of length of service and that on merit. The odd figure should be added to the quota for those based on length of service. If that vacancy is not filled in on the basis of the length of service, the vacancy will go to the quota meant for those selected on merit."

[Emphasis added]

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2. According to respondent Department, five candidates were selected on the basis of length of service out of which three were from unreserved category, one was from SC and one from OBC. The vacancy reserved for STs was not filled for want of a suitable candidate and, therefore, the vacancy was transferred to the outsider quota and left unfilled. Respondent Department state that as a consequence, as against twenty vacancies, only nineteen were selected--five from the quota against seniority-cum-qualification in the examination and fourteen from merit quota.

3. Applicants contend that if the vacancy for ST has been transferred to the merit quota as required under A1 rules, only four persons should have been selected under the seniority-cum-qualification quota, instead of five. Therefore, the fourth respondent who is the fifth person shown under seniority quota should not have been selected. Applicants further contend that the law laid down by the High Court of Allahabad in JC Malik and others vs Union of India and others, 1978 SLJ 401, namely that communal reservation should be with reference to posts and not vacancies, and that there should not be any reservation if the total number of posts in the cadre occupied by SC/ST officials exceeds their quota, has been violated by the respondent Department, since according to applicants, out of 179 posts in the cadre of Postman as on 1.7.91 (A5), 45 posts are held by persons belonging to SC community and the percentage works out to 25, which is in excess of the reservation for SC. Applicants accordingly contend that fifth and sixth respondents who have been selected against vacancies reserved for SCs in the merit quota should not have been selected. According to applicants, if the selection of fourth, fifth and sixth respondents is set aside on the above contentions, they, being next in the panel in the order of merit, would be eligible for being selected and appointed as

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Postmen. Applicants pray that A2 be quashed to the extent that certain vacancies are shown reserved for SC community and A3 be quashed to the extent that fourth, fifth and sixth respondents, who are actually not eligible to be selected, are shown as selected. Applicants further pray that in the resultant vacancies caused by deletion of fourth, fifth and sixth respondents from A3, they may be selected and promoted as Postmen.

4. Since there were no qualified departmental candidates, it is not in dispute that the selection under challenge consists of selection against twenty vacancies out of which five vacancies are to be filled by candidates from the seniority-cum-qualification quota and fifteen vacancies from the merit quota. Since the pattern of the number of vacancies to be filled has changed, the scheme of reservation shown in A2 is obviously not valid since that reservation contemplates filling up of twenty vacancies under the departmental and outsider quotas whereas as a result of the examination, selection has to be made against twenty vacancies belonging only to outsider quota. It is pertinent to note that A2 itself shows that the break-up of vacancies (for various reserved categories) are subject to review according to the number of candidates qualified in the departmental quota. Once the vacancies are shown as entirely for the outsider quota, the break-up of reservation has to be arrived at by applying the 100-point roster to twenty vacancies. The pleadings do not indicate what would be the break-up if the 100-point roster is applied to twenty vacancies. According to A1 instructions, such break-up after being arrived at has to be distributed equally between the quota for seniority and the quota for merit, with the odd vacancy being given to the seniority quota and if that odd vacancy is not filled for want of eligible candidates, it will go to the merit quota. The roster for the departmental quota is separate from the roster

for the outsider quota. Since the departmental quota could not be filled up for want of eligible candidates and the departmental quota contained, according to A2, reservation for two SC candidates and one for ST candidate, these three vacancies naturally have to be carried forward to subsequent selections under the departmental quota in accordance with the carry forward rules. There is no provision for transferring reservations from one mode of recruitment to another. On the other hand, the twenty vacancies available to be filled up under the outsider quota have to be filled up in terms of the 100-point roster as applied to twenty vacancies. There could be no interaction between the roster for the departmental quota and the roster for outsider quota. Since the number of vacancies for the reserved categories to be arrived at by applying the 100-point roster to the twenty vacancies in the outsider quota is not available in the pleadings, we cannot give a direction as prayed for by the applicants. It is for the respondent Department to work out the break-up among the reserved categories of twenty vacancies under the outsider quota in terms of the 100-point roster and then draw up the select list of candidates for promotion as Postmen in accordance with such break-up.

5. We may now examine the contention that the number of posts filled by SC candidates exceeds the percentage reserved for SC community and, therefore, the question of reservation in this selection does not arise. The Supreme Court has clearly held in Union of India and others etc vs Virpal Singh Chauhan etc, AIR 1996 SC 448, that percentage of reservation has to be worked out in relation to the number of posts which form the cadre strength and that the concept of vacancy has no relevance in operating the percentage of reservation. The Apex Court has further stated (at page 457--para 28):

"(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent indicated in para 5 of RK Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

(ii) The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies."

What has been done before 10.2.95 (the date of the judgement in RK Sabharwal) will not be vitiated by reason of the decision in RK Sabharwal and others vs State of Punjab and others, (1995) 29 ATC 481 (para 11). We have not been shown any orders issued by the Government of India in the light of the above decision of the Supreme Court. A6 orders relate to Telecom Department, though the Department of Personnel had been consulted, and it cannot be applied to this case. Respondent Government of India have to consider the procedure for the filling up of the vacancies under the merit quota based on the decision set out above.

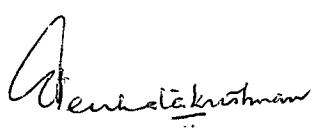
6. In the light of the above discussion, we direct respondent Department to arrive at the break-up of vacancies reserved for various categories by applying the 100-point roster for the twenty

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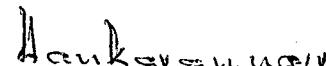
vacancies under outsider quota and then to draw up the list of selected candidates for promotion to the posts of Postman in accordance with such a break-up. This will be done within four months from today.

7. Application is disposed of as aforesaid. No costs.

Dated the 18th April, 1996.


PV VENKATAKRISHNAN

ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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List of Annexures

1. Annexure A1:- True copy of letter No.44-44/82-SPB-I dated 7.4.1989 issued by Director General, Posts(not a respondent).
2. Annexure A2:- True copy of letter No.88/27/Exam/94 dated 7.11.1994 sent by 1st respondent.
3. Annexure A3:- True copy of Memo No.88/27/Exam/94 dated 27.12.94 issued by 1st respondent.
4. Annexure A5:- True copy of Gradation List of Postmen as on 1.7.1991 in Quilon Division(relevant portion).
5. Annexure A6:- True copy of letter No.271-100/88-STN dated 7.4.1989 sent by Government of India, Department of Telecom (on behalf of 2nd respondent) (relevant portion).