

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 499/2008**

**FRIDAY this the 17th day of April, 2009**

**C O R A M**

**HON'BLE DR K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 Anju Thyagarajan D/o Sri M.R. Thyagarajan  
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14 Ajeeth R. S/o Sri Raveendran Nair  
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18 M.S.Saneesh Kumar S/o late V.K. Sankaranarayanan Nair  
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Piravom PO, Pin-686661 .. **Applicants**

By Advocate Mr. O.V. Radhakrishnan, Sr, Mrs. K. Radhamani Amma and  
Mr. Antonhy Mukkath

**Vs**

1 Director General, Dept. of Posts  
Dak Bhavan, New Delhi

2 Chief Postmaster General  
Kerala Circle, Thiruvananthapuram

3 UOI r/b Secretary,  
M/o Communications & Information Technology  
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4 S. Bhagyaraj S/o P.G. Unnikrishnan Nair  
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8 Smitha Sagar W/o D. Mohankumar  
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13 P. Sudhakaran S/o Gangadharan  
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Niramarathur, Tirur

14 Jalaja P.P W/o Dileep Shaju K.K.  
Postal Assistant, Tirur Head Post Office  
residing at Karyattukara House,  
Tirur. .. Respondents

By Advocate Mr.S. Abhilash, ACGTSC for R 1-3  
Advocate Mr. P.C. Sebastian for R 4-14

The Application having been heard on 18.2.2009 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants are aggrieved by Annexures A-5, A6, A-7 and A-16 orders dated 13.4.2007, 20.4.2007, 26.5.2008 and 13.8.2008 respectively issued by the 3<sup>rd</sup>/ 2<sup>nd</sup> respondents and notification of vacancies of the Limited Departmental Competitive Examination of Inspector of Posts and allotment of surplus qualified candidates.

2 The facts of the case, narrated by the applicants are as follows.

The applicants 1,3 to 7,9,11 to 18 are presently working as Postal Assistants in the various Postal Divisions and the applicant No. 2, 8 and 10 are Sorting Assistants under the Railway Mail Services in the Kerala Postal Circle. They were initially appointed as Postal/Sorting Assistant on various dates, confirmed in the post of Postal/Sorting Assistant and are fully qualified for promotion to the post of Inspector of Posts under 66.66% quota reserved for promotion. Promotion to the post of Inspector of Posts is governed by Department of Posts Inspector of Posts (Recruitment) Rules 2001 notified on 26.4.2001(A-1). Col. 12 of the Schedule provides for promotion through limited departmental competitive examination. Rule 279/1 of the P & T Manual Vol. IV Part-1 provides that examination for recruitment of Inspectors of Posts will normally be held once a year at the discretion of the DG. The 2<sup>nd</sup> respondent vide Annexure A-2 circular dated 1.1.2007 notified the departmental competitive examination for 12 vacancies of 2007. The applicants qualified in the examination. According to the applicant the practice followed in the Department was that candidates who qualified in the examination in respect of an year would be filled up against the notified vacancies and the remaining qualified

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candidates on the waiting list would be appointed against the vacancy of the succeeding year and no examination will be held for the vacancies of the succeeding year. After the issue of OM dated 13.4.2007 a departure was made and evolved a new system permitting the surplus qualified candidates in a Circle to be allotted to different Circles. It has further decided to draw up an All India merit list of successful candidates (A-5). The OM came into force w.e.f. 2007 Examination (A-6). All participating candidates were required to exercise their preference of Circle. Circle wise vacancy position and the names of surplus qualified candidates were kept in the panel (A7) in which the unfilled vacancies were shown as 76 and no vacancy was shown to be remaining unfilled for Kerala Circle. The applicants were shown in the list of surplus OC candidates who have qualified in the Examination 2007. Though applicants gave option indicating their first preference as Kerala Circle, fresh options were called for. The Department also notified the vacancy position for 2008 Examination as 10, which was later modified to 38 ( UR-31 and SC-5 and SC -2). The applicant submitted representations stating that there are adequate vacancies in Kerala Circle to accommodate them. In the meantime in answer to one Shri Jayachandran's application for obtaining information under section 6 of the Right to Information Act, 2005, it was stated that 35 vacancies are remaining unfilled in the Kerala Circle (A-14). Thus, according to the applicants there are 38 vacancies earmarked for promotion quota, out of which only 12 were filled up and in addition, the vacancies of 2008 examination are also available. The 1<sup>st</sup> respondent published a list containing names of officials allotted to various Circle (A16). The name of all the applicants except the 18<sup>th</sup> applicant was included in the list. They were allotted to different circles. Though the 18<sup>th</sup> applicant obtained more than the minimum marks prescribed for qualifying

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in the examination and after including in the list of surplus candidates his name cannot be excluded without notice. The applicants were subjected to hostile discrimination by denying appointment in the Kerala Circle despite availability of vacancies. Hence they have filed this O.A. on the following grounds:

- (i) The action of the respondents in treating the applicants as surplus to be allotted to other Circles is manifestly illegal, arbitrary, discriminatory offending Article 14 and 16(1).
- (ii) The select list of 2007 ought to have been expanded to the extent of 38 as there were 38 vacancies available for promotion quota.
- (iii) Introduction of OM dated 14.4.2007 (A-5) allocating the surplus qualified candidates to other Circles and holding examination for the vacancies of the succeeding year is contrary to the scheme of Rule 279/1 of the P & T Manual Vol. IV Part-I.
- (iv) The action of the Department in notifying the vacancies of the year 2008 and conducting the examination is also illegal and contrary to the Paragraph 279/1(2) of the P&T Manual Vol. IV.
- (v) The candidates who are qualified in the 2008 examination in Kerala circle cannot be appointed overlooking the applicants who have passed the 2007 examination.
- (vi) There would have been 38 vacancies under the promotion quota in 2007 but only 12 vacancies were filled up on the basis of 2007 examination. Therefore, the remaining 26 vacancies ought to have been filled up from among the 2007 examination.
- (vii) The applicants were compelled to give second option for the reason that those who do not indicate their preference would not be considered for allotment.

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3 The respondents resisted the averments in the O.A. and filed reply statement. They have submitted that Limited Departmental Competitive Examination is conducted every year and the vacancies are notified before holding the examination. Based on merit in the examination, All India merit list is prepared and seniority in the merit list is the criterion for promotion. On 13.4.2007, the Department evolved a system in which the surplus qualified candidates in a Circle could be allotted to deficient circles where the vacancies announced are left unfilled due to lack of qualified candidates. This system was introduced from 2007 with reference to the examination that was held from 10<sup>th</sup> to 12<sup>th</sup> August, 2007. After the examination, 12 candidates were selected to Kerala Cadre. After necessary training they were appointed on 3<sup>rd</sup> August, 2008. In accordance with Annexure A-5 OM regarding allotment of surplus qualified candidates to Circles having unfilled vacancies, Department of Posts issued a list of 86 surplus qualified candidates of 2007 examination to be allotted to the unfilled vacancies existing in different Circles based on the options exercised by the candidates. This list contains names of 17 surplus qualified candidates from Kerala Circle. It is also further submitted that the applicants herein excepting S/Sri Joymon C.I. and M.S. Saneesh Kumar have already been deputed for pre-induction training which has commenced from 22.9.2008 and 29.9.2008 respectively. They denied the contention of the applicants that they are fully qualified for appointment to the post of Inspector under 66.66% quota. They submitted that the applicants have qualified as surplus candidates over and above the vacancies declared for the examination quota in Kerala Circle.

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They denied the contention of the applicants that the it is open to the DG Department of Posts not to hold examination in any year in a Circle if the number of qualified candidates on the waiting list is adequate for the vacancies likely to occur in the next 12 months. They submitted that sub rule (2) of Rule 279/1 of P&T Manual stands amended as early as 1990. There is no provision for any waiting list as per the extant rules. The DG will draw a list of candidates out of the qualified candidates who are ranked in the order of merit in the Circle upto the number of vacancies announced for that Circle and reject the rest. However, as per the new scheme, the candidates who qualified but not selected against the vacancies announced for a particular Circle are eligible to be considered for the vacancies announced in other Circle which remain unfilled. They further submitted that the DG Posts is competent to amend the rules in the P & T Manuals.

As regards options submitted by the applicants, they stated that applicants 1,2,3,6,8,10,11,12 and 18 have not opted for Kerala Circle. Applicant No. 4 opted for Kerala Circle only. It is submitted that fresh option was obtained as directed by the 1<sup>st</sup> respondent.

They submitted that there were 26 vacancies earmarked for direct recruits as on 1.1.2007 out of which 7 candidates joined subsequently. They also denied the argument of the applicants that treating them as surplus qualified candidates of 2007 examination is unreasonable, arbitrary and discriminatory and are without any basis. The applicants have no legal entitlement for any post other than the vacancies announced for the 2007 examination. According to them, since only 12 vacancies were announced in the notification even if there was any mistake in the

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calculation of vacancies the applicants have no right to claim any vacancy over and above the notified vacancies. They relied on the order of this Tribunal in O.A. 267/95 in support of their argument. They submitted that the calculation of vacancies is as given in Annexure R-1. Annexure A-14 and A-15 contained only information sought under the RTI Act, and does not pertain to calculation of vacancies for the purpose of notifying for departmental examinations.

There was no compulsion on the applicants to submit options, to avail the new scheme for surplus qualified candidates.

4 The applicants filed rejoinder to the reply statement filed by the official respondents reiterating that the vacancies notified as per A-3 did not represent the correct number of vacancies available for promotion in the year 2007 and that the system introduced in 2007 has no statutory backing or executive sanction. Rule 279/1 of the P &T Manuall Vol. IV is an executive order issued by the Government which under Article 73 read with Article 77 of the Constitution of India cannot therefore be amended, modified or substituted. The applicants reiterated their averments in the O.A. that 24 vacancies would fall under promotion quota as on 1.1.2007.

5 The party respondents filed separate reply statement opposing the O.A. They submitted that the applicants have no legal right to be absorbed in the vacancies announced for the 2008 Examination. But for Annexure A-5 policy decision, applicants would not have been declared as qualified. The applicants appeared in the 2007 examination pursuant to the notification accepting the terms and conditions therein and exercised option for allotment to other Circles. It is well settled by a catena of

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decisions of the Hon'ble Apex Court that a candidate after having participated in a selection proceedings is estopped from challenging the same on finding that he failed to get selected.

6 The official respondents have filed additional reply statement reiterating the submissions in the reply statement.

7 The learned counsel for the applicants has relied on the following judgments in support of their case:

- 1 A.K. Subraman and Ors. Vs. Union of India and Others.(AIR 1975 SC 483)
- 2 Union of India and another Vs Central Electrical & Mechanical Engineering Service (CE & MES) Group-A (Direct Recruits) Assn., CPWD and Others.(2008) 1 SCC 354)
- 3 Mukundan V. State of Kerala and Others (1975 KLT 682)
- 4 Secretary, State of Karnataka and Others Vs. Umadevi and Others (2006) 4 SCC 1)
- 5 Ashok Kumar and Ors Vs. Chairman, Banking Service Recruitment Board and Others(1996)1 SCC 283

8 The official respondents have relied on the following judgments:

- (i) Ashok Kumar & Other Vs. Chairman Banking Service Recruitment Board & Others (1996) 32 ATC 235)
- (ii) A.K. Subraman and Others Vs. Union of India and Others AIR 1975 SC 483

9 The party respondents invited our attention to the following decisions in support of their case:

- (i) Ashok Kumar & Ors Vs. Banking Service Recruitment Board (1996(1)SCC 283)

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- (ii) Mukul Sakia Vs. State of Assam (AIR 2008 SCW 7979)
- (iii) Subha P. Nair Vs. State of Kerala and Ors. (2008 (7) SCC 710)

10 We have heard the learned counsels for the parties and perused the pleadings and the judgments relied on by the parties.

11 The learned counsel for the applicants vehemently argued that the action of the respondents in treating the applicants as surplus candidates to be allotted to other Circles is illegal, arbitrary, and discriminatory and that there were sufficient vacancies to accommodate the applicants in the Kerala Circle itself as is evident from A-13 and A-15 and that respondents have not followed Rule 279/1 of the P&T Manual Vol. IV Part-1 according to which the applicants should have been kept in the waiting list for appointment. According to the learned counsel, notification of vacancies for the year 2008 and conducting the examination are illegal and contrary to Rule 279/1(2). The learned counsel argued that the candidates who are qualified in the 2008 examination cannot be promoted overlooking the claim of the applicants who got qualified in 2007 Examination and that the applicants are not bound by the option submitted by them pursuant to A-6.

12 The learned counsel for the official respondents and the party respondents argued more or less on the same lines that Rule 279/1 of the P & T Manual Vol, IV Part-1 stands amended and the 2007 examination was conducted in accordance with the notification issued in accordance with amended Recruitment Rules of 2001 and the OM which envisages filling up of notified vacancies remaining unfilled in some Circles by surplus

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qualified candidates of other circles strictly according to their merit in the examination and only to the extent of the total vacancies announced. The applicants having participated in the examination which was conducted after introduction of the new scheme, having submitted options for being posted in other circles cannot now turn round and challenge the new scheme of the Department.

13 The main issues that come up for consideration in this O.A. is (i) whether Annexure A-5 OM dated 14.4.2007 introducing the system of allocating the surplus candidates to other Circles and holding examination for the succeeding year is in contrary to extant rules and (ii) whether the vacancies for the years 2007 and 2008 are correctly notified or not.

14 We find that recruitment to the cadre of Inspector of Posts in the Department of Posts being made as per the Inspector of Posts Recruitment Rules, 2001(A-1). The examination is conducted by the Director General, Department of Posts on an All India basis every year. Based on the merit in the examination in accordance with sub rule 2 of Rule 279.1 of the P & T Manual Vol. IV, an All India merit list is prepared. The examination for promotion to the cadre of Inspector of Posts for the vacancies of the year 2007 was notified on 16.1.2007. Later, the Department of Posts vide A-5 OM dated 13.4.2007 introduced an additional feature in the Inspectors' examination by bringing out a second list of meritorious candidates equal to the number of unfilled vacancies in different Postal Circles who are treated as surplus qualified candidates and allotted to other circles wherever the vacancies remained unfilled.

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The applicants are challenging the new system on the ground that it is against Rule 279/1 of the P & T Manaul Vol. IV and that the Rule cannot be amended/modified by an executive order. The respondents have averred that P & T Manuals contain rules and procedures intended for the guidance and instructions of the the Officers of the department in the performance of their administrative and executive duties. The volume-I which contains the PO Act empowers the DG Posts to amend the rules and procedures. Hence the DG Post, is competent to amend the rules and change procedures. These are done through the due process and circulated through correction slips to the Manuals. Accordingly, DG's letter No. 7/15/90-SPB-II dated 20.9.1990 forwarded the correction slips to Rule 279/1(2) of P & T Manual Vol. IV (5<sup>th</sup> edition). The applicant has cited the obsolete rule in his favour. Moreover, 2001 amended Recruitment Rules of Inspector of Post Offices are very much in force where no mention is made about maintenance of waiting list.

15 Relevant portions of amended Rule 279/1 sub rule 2 of the P & T Manual Vol.IV reads as follows:

**The following may be substituted in place of existing Rule 279/1(2)**

(a)- An examination for the recruitment of Inspectors of Post Offices/Railway Mail Service will normally be held once a year. The examination will be held, as far as possible, in the month of June in every circle. It is open to the Director General not to hold the examination in any year in any Circle for any reson. The examination will be held at selected centres in each Circle.

(b) The tabulation of results will be done in the Director General's office. TheDirector General will draw up separately for each Circle a list of candidates out of the qualified candidates who stand highest in order of merit in that Circle up to the number of vacancies announced for the examination for that Circle and reject the rest. However, in the case of a tie in respect of the last selected candidate and the next one or more candidates in regard to the marks obtained by the last ....

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16 It is made amply clear in Rule 279 /1(2)that it is left to the discretion of the DG to conduct or not conduct the examination once in every year. A list of candidates in the order of merit in the particular Circle upto the number required for that Circle will be drawn up and the rest will be rejected. A merit list of qualified hands equal to the number of vacancies notified will be drawn according to their merit in the examination. Therefore, the argument of the applicants that as per Rule 279.1/2 of P & T Manual Vol. IV, a waiting list is prepared and that no examination is conducted until the surplus qualified hands are accommodated, is untenable hence rejected.

17 As regards the competence of the DG, Posts to amend 279.1/2 of P & T Manual Vol. IV , PO Act Vol. I, we may examine the case laws relied on by the learned counsel for the applicants. In Union of India and another Vs. Central Electrical & Mechanical Engineering Service (CE & MES) Group-A (Direct Recruits) Assn. CPWD and Others (2008) 1 SCC 354) the Hon'ble Supreme Court dealing with non-statutory office orders held as follows:

"It is now a well settled principle of law that an executive order must be passed in conformity with the rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing rules. See Sant Ram Sharma Vs. State of Rajasthan (AIR 1967 SC 1910) and DDA v. Joginder S. Moniga (2004) 2 SCC 297). Such office orders must be subservient to the statutory rules."

In Union of India and another Vs. Central Electrical & Mechanical Engineering Service (CE & MES) Group-A (Direct Recruits) Assn. CPWD and Others (2008) 1 SCC 354) dealing with non-statutory office orders, A.K.Subraman and Ors. V. Union of India and others (AIR 1975 SC 483)

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the Hon'ble Supreme Court deals with enforcement of quota rule to determine inter se seniority, Mukundan V. State of Kerala and Others (1975 KLT 682) deals with whether periods spent on study leave could be counted for probation and seniority is not helpful to the case of the applicants.

In Secretary, State of Karnataka and Others Vs. Umadevi and Others (2006) 4 SCC 1) the Hon'ble Supreme Court deals with public employment-temporary, contractual, casual, daily wage or ad hoc employees and long continuance of such employees on irregular basis in public employment- if violated their rights under Arts. 14 and 16 held that such employees form a class by themselves- they cannot claim that they are discriminated against vis-a-vis those who have been regularly recruited on the basis of the relevant rules, or claims to be treated as on a par with the latter and that Supreme Court and High Courts should not issue such directions unless the recruitment itself was made regularly and in terms of the constitutional scheme.

In the case on hand, Rule 279/1(2) has been modified in 1990 which according to us will in no way adversely affect the applicants as contended by them.

18 The learned counsel for the party respondents drew our attention to the following cases in support of his case to buttress his argument:

(i) Subha B. Nair and Others Vs. State of Kerala and Others ( 2008) 7 SCC 210 . In that case the Hon'ble Supreme Court held as follows:

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"A decision on the part of an employer whether to fill up existing vacancies or not is within its domain. On this limited ground in the absence of discrimination or arbitrariness, a writ court ordinarily would not interfere in such matter. Even if it is assumed that 9 more vacancies could be filled up but if the employer takes a policy decision not to fill up any vacancy only because a person's name is found in the select list, the same by itself would not be a ground to compel the bank to fill them up."

(ii) In Ashok Kumar & Ors Vs. Banking Service

Recruitment Board (1996(1)SCC 283) the Hon'ble Supreme Court held as follows:

"Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted therefore, in appointing the persons from the waiting list prepared by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, the Supreme court would not interfere with these matters adversely affecting their appointments."

19 Now let us see the Recruitment Rules in force for selection of Inspector of Post Offices. A copy of Postal Directorate's notification No. F-44/93-SPB-II dated 26.4.2001 at A-1 shows that 66.66% and 33.34% of posts will be recruited through limited departmental competitive examination and direct recruitment through Staff Selection Commission respectively. While so, to tide over the problem of non filling of notified vacancies in Inspector of Posts cadre in certain Circles, year after year, A-5 was issued The relevant paras of Postal Directorate's letter No. A-34020/01/2007-DE dated 13.4.07 are extracted below:

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Extracts from OM No. A-34020/01/2007-DE dated 13.4.2007

Sub: Inspector of Posts Examination- Allotment of surplus qualified candidate

This is regarding promotion to the cadre of Inspector of Posts through a Limited Departmental Competitive Examination. The Recruitment rules prescribe that 33.34% of the posts be filled by direct recruitment through the Staff Selection Commission and 66.66% through the Limited Departmental Competitive Examination.

2 As per the past experience and based on the available data of the Inspector of Posts Departmental Examinations conducted during the years 2004 and 2005, it is seen that only 65% and 61% respectively of the notified vacancies could be filled up. Consequently, in a few Circles, the vacancies were left unfilled due to lack of qualified candidates.

3 The matter has been examined at the Directorate and it was felt that there is a need to evolve a system so that the surplus qualified candidates who are available over and above the selected candidates in a Circle can be allotted to the deficient Circles. It has now been decided that in the Limited Departmental Competitive Examination of Inspector of Posts, after completion of the first stage of drawing up the Circle-wise list of successful candidates (which is followed hitherto) an All India merit list in descending order strictly based on the marks secured by the surplus qualified candidates from all the Circles for each category will be drawn up. The number of candidates in this list shall be equal to the combined unfilled vacancies of all the circles.

4 The surplus qualified candidates in the All India merit list will thereafter be allotted to circles in accordance with the candidate's All India merit and choice of circle indicated, subject to availability of vacancies. On their allotment to a Circle other than their Home Circle, they shall rank junior to the last selected merit candidate of the Home Circle irrespective of the marks obtained by them. However, their All India seniority will be determined by their All India merit position.

5 In order to exercise the option of allotment to a Circle as a surplus qualified candidate the candidate will be required to give a choice in the descending order of preference covering all the 22 Circles at the stage of application itself. In case the candidate does not indicate his preference he will not be considered for the allotment, even if he is a surplus qualified candidate. The candidates shall also be required to give an unconditional undertaking that he shall accept allotment to one of the circles thus indicated by him. However, before the said allotment, the

surplus qualified candidate shall be given a final opportunity to revise their preference of Circles given earlier, after declaration of results when the unfilled vacancies pertaining to that examination are known. Reallotment requests to the Home Circle/other Circles will be considered only in accordance with Rule 38 of vol. IV.

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20      This order was made effective first time for the examination to be held in 2007 as is shown below:

**Extracts from letter No. A-34020/01/2007-DE dated 20.4.2007**

Sub:      Inspector of Posts Examination- Allotment of surplus qualified candidates

Ref: (i) Calendar of departmental examination issued vide Directorate's letter No.A-34012/4/2006-DE dated 21.12.2006

(ii)      Directorate's OM of even number dated 13.4.2007

X      X      X      X      X      X      X

.....It has now been decided that the date of effect of implementing the policy guidelines on allotment of surplus qualified candidates against the unfilled vacancies of Inspector of Posts Examination shall be from the Inspector of Posts Examiantion, 2007 instead of Inspector of Posts Examination,2008 as stated in the OM referred at (ii) above.

.....As stated at para 5 of the OM of even no. dated 13.4.2007 (referred at (ii) above), it may please be ensured that all participating candidates of IP Examination, 2007 shall exercise their preference of Circles for the purpose of allotment, in the descending order, covering all the 22 Circles. In case the applicant does not indicate his preference, he will not be considered for allotment, even if he is a surplus qualified candidate. Further, an undertaking from the applicants with reference to their acceptance of allotment to one of the circles thus indicated by them, may also be kept on record. This will be applicable to all the applicants who have applied for the IP Examination, 2007 slated for 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> August, 2007 and for whom the last date of submission of application forms was 23.3.2007 as per the calendar of departmental examination referred at (i) above).

X      X      X      X      X      X      X

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From the above it is seen that the DG, Posts introduced an additional feature in the existing recruitment procedure of Inspectors' examination by which the surplus qualified candidates selected through the second merit list who are willing to go to other Circles where unfilled vacancies are available due to lack of qualified candidates, could be appointed. The DG Posts is competent to evolve such schemes for the benefit of the employees who get good ranks in the merit list in an All India Departmental examination but not selected due to lack of vacancy in a particular Circle from where they took the examination. In fact, it is stated that it was an extension of such practice of allotment of surplus qualified Postmen and Group-D who take the Postal Assistant promotion examination from one Postal Division to another Postal Division in the Circle. This enshrines the principle of permitting all those who are interested in appearing for the examination, even in the absence of any notified vacancy in his parent Division so that, if he comes out successful in the examination he can be allotted to the nearby Division with unfilled vacancies, so that he gets promotion to the higher cadre at the earliest. Since it was a time tested scheme and it proved beneficial to many aspirants in the lower cadre of Group-D and Postmen to Postal Assistants cadre, the Department of Posts apparently made a logical extension of the scheme to the Postal Assistant cadre, for their elevation to Inspector of Posts Offices through limited departmental examination. The applicants are not in any way prejudiced by the modification/amendment of the Rules. The benefits enjoyed by the employees have not been taken away by the new Rules. On the other hand they got additional opportunity to get appointment earlier in the Inspector of Posts cadre which is the feeder cadre of Group-B.

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21 The applicants submitted that the option made by them are not voluntary and cannot bind them. The irrefutable evidence lies in R-(4) (a) to (i) the written options given by the 9 applicants. In A-5, DG has clearly stated that unless an option for the Circle of his choice is given, the surplus qualified candidate will not be considered for allotment. Therefore, in the absence of an option from a candidate his name will be deleted from the list. This shows clearly that there is no compulsion to exercise the option. The applicants not only exercised the option but they are undergoing the training now at Vadodara/Saharanpur Postal Training Centres. They cannot now turn around and state that the options are not voluntary.

Annexure A5 shows that the applicants after being appointed in Circles outside Kerala can register for transfer under Rule 38 of P & T Manual Vol. IV for re-allotment to home Circles. Hence the prayer of the applicants to declare them as entitled to be recruited, over and above the vacancies notified, for the year 2007 is not sustainable.

22 The official respondents filed Annexure R-7 true copy of the vacancy calculation sheet of Inspector of Posts Examination 2007 according to which there are 12 vacancies to be filled up by promotion from the candidates who qualified in 2007 Examination whereas the applicants contested the statement, according to them there are 18 vacancies yet to be filled by promotion as on 31.12.2007

In the reply statement, the respondents averred vide Annexure R7 that out of 91 posts, 30 are earmarked for direct recruitment and only 4 such directly recruited IPOs are working at present. Therefore, 26 Direct Recruit vacancies stood notified by 2006/2007 out of which, as shown at

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R-I, 11 were appointed.

Annexure R-1 shows the calculation of vacancy for 2007 examination. The anticipated vacancy due to promotion etc. in 2007 came to 14, to which the previous year's shortage of 9 was added. After deducting 11 under training, the net vacancy came to 12. Since under the DR quota the process of selection was being effected through Staff Selection Commission by the 1<sup>st</sup> respondent all the 12 vacancies of 2007 were earmarked to 2/3 promotion quota without leaving any for DR quota.

The applicants have contested the averment of the respondents on the basis of the vacancy position for 2007, obtained through Section 6 of RIT Act. It was given as 35 as on 1.1.2007 vide Annexure A-15. Since 19 were shown under 1/3 DR quota they argued that twice this figure that is 38 should have been allocated under 2/3 promotion quota.

Appointment is the result of a long process of notification of vacancies, preparation of eligibility list, holding the examination, valuation, publication of result, allotment of candidates, verification of certificates and testimonials, training and appointment. There can be time lag in any of these stages for the DR vacancies to be filled up by Staff Selection Commission. Twenty six vacancies were earmarked for such DR recruitment to Staff Selection Commission by 1.1.2007 as per the statement of the respondents. Therefore, applicants got this information of 35 vacancies being available as on 1.1.2007. However, they are not privy to the information regarding the category under which each vacancy falls whether 2/3<sup>rd</sup> or 1/3<sup>rd</sup> quota or those notified to SSC for 1/3<sup>rd</sup> quota

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recruitment or those kept for appointment of those who are undergoing training. Hence a simple arithematical calculation to arrive at vacancies attempted by the applicants can be misleading due to gap in information.

The fact remains that all the 12 vacancies of 2007 and 37 out of 38 of 2008 went to 2/3<sup>rd</sup> promotion quota. Obviously, the SSC could not keep up the time line of one year for recruitment. The delay at each stage of recruitment process is aggravated by the fact that SSC may furnish list of candidates belonging to any State which denotes further delay in getting acceptance letters from the selected candidates by Postal Circles to which they are allotted, arranging training and most important of all verifying educational and community certificates. Those who are already working may need further time to get relieved. Also the vacancies for 2008 announced as 10 vide Annexure A-10 was later modified as 39 vide Annexure A-13. Respondent-1 might have shifted more vacancies to 2/3<sup>rd</sup> quota, in 2008. Whatever may be the reason since posts remain vacant over a long period of time, the applicants get the impression that all vacancies are not being filled in 2007 or more in 2008. Hence, we may have an unenviable situation of both the applicants and respondents being right in their own respective stances based on their assumptions and presumptions.

So we can only look at the short point for adjudication which is the prayer of the applicants to declare them as entitled to be recruited, over and above the vacancies notified, for the year 2007, for Kerala Circle.

23 The scope of judicial review in this aspect is dealt with in O.A. 267/95 moved before this Tribunal. Para 5 of the order is extracted below:

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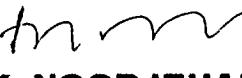
"When applicant approached the tribunal on an earlier occasion, the Tribunal stated:

We do not think that it is the function of this Tribunal to assess the number of vacancies and select people for those vacancies.

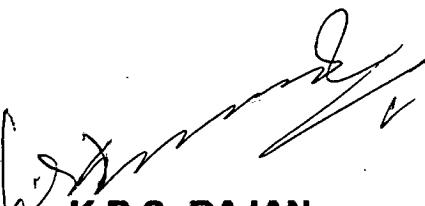
We do not see any patent error in the assessment of the number of vacancies which would warrant interference in a judicial review. Applicant was well aware of the number of vacancies for which the examination was conducted at the time he appeared for the examination, though he would try to make a fine distinction saying that when he had applied for the examination, the number of vacancies were not notified. This is mere hair splitting and if he had not accepted the number of vacancies as notified by A-6 dated 16.7.92 he should have raised the issue at that time before appearing for the examination on 23.8.92. Even assuming the number of vacancies assessed were not correct, once they were notified for a particular examination, it will not be proper to select candidates in excess of the notified vacancies and the proper course would be to hold a supplementary examination for vacancies which remained unfilled."

24 In our considered opinion, we would follow the decision given by a Division Bench of this Tribunal. Accordingly, the O.A devoid of merits is dismissed. No costs.

17<sup>th</sup> April, 2009.

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

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K.B.S. RAJAN  
JUDICIAL MEMBER