A

CENTRAL ADMIISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 801 of 2005
with
O.A. Nos. 517/2006 and 755/2006

Thursday, this the 21st day of June, 2007

CORAM:

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER

1. O.A. No. 801 of 2005:

Sathi V.K.,
D/o. Shri E.N. Kunju,
Working as Gramin Dak Sevak Mail Packer,
Muvattupuzha HO, Aluva Postal Division,
Residing at Kadambanattu House,
Kizhakkambalam P.O.,
Ernakulam District ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr. with Mr. Antony Mukkath)

versus

1. Senior Superintendent of Post Offices,
Aluva Division, Aluva : 683 101

2. Postmaster General,
Central Region, Kochi.

3. Chief Postmaster General,
Kerala Circle,
Thiruvanathapuram.

4. Union of India, represented by its
Secretary, Ministry of Communications,
Department of Posts, Dak Bhavan,
New Delhi.

5. K.M. Sidhik,
Gramin Dak Sevak Mail Deliverer,
Kovallur, Aluva Postal Division ... Respondents.

[By Advocate Mr. P.M. Saji, ACGSC (for R1-4)]

2. **O.A. No. 517 of 2006:**

P.P. Ravidas,
S/o. Pangan, Pulikkal house,
Vallachira, Thrissur District,
Now working as Extra Department
Delivery Agent (E.D. Agent),
Vallachira Post Office, Thrissur ... Applicant.

(By Advocate Mr.B.K. Purushothaman)

versus

1. Union of India, represented by
The Secretary, Postal Board Services,
Department of Posts, New Delhi.

2. The Director General of Post Offices,
Department of Posts, India, New Delhi.

3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Divisional Superintendent,
Post Offices, Irinjalakuda Division,
Irinjalakuda, Thrissur District.

5. P.P. Velayudhan,
Postman, Irinjalakuda Head Post Office,
Irinjalakuda. ... Respondents.

[By Advocate Mr. P.J. Philip, ACGSC (for R1-4)]

3. **O.A. No. 755 of 2006:**

1. S. Krishnan,
S/o. M. Subraniam,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1

2. R. Sudhakaran,
S/o. V. Raghavan,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1 ... Applicants.

(By Advocate Mr. Sasidharan Chempazhanthiyil)

versus

1. The Senior Superintendent,
RMS TV Division,
Thiruvananthapuram.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.

4. A. Sankaranarayanan,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1

5. G.S. Manikantan Nair,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1

6. G. Rajendran Pillai,
GDSMM, SRO, Koilam,
Presently posted as Temporary Mail Man
(Group-D), SRO, RMS TV Division,
Thiruvalla.

7. The Secretary,
Department of Personnel & Training
Govt. of India, New Delhi ... Respondents.

(By Advocates Mr. P.J. Philip, ACGSC (for R1-3) and
Mr. T.C. Govindaswamy (for R4 & 5)

O R D E R

BY HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The above cause titled OAs have common issue and the issue involved is as under:-

When Gram Dak Sevaks belonging to the SC/ST categories enjoy certain age concessions in respect of promotion to the higher post or for participating in the departmental examinations, whether such candidates within the relaxed age limits are to be considered for promotion to the post of Postman, even when the vacancies pertain to general category.

2. The brief facts of the case with terse sufficiency as contained in the respective OAs are as under:-

(i) **O A No. 801 of 2005:**

(a) The applicant is presently working as Gramin Dak Sevak Mail Packer, Muvattupuzha HO. She belongs to Scheduled Caste. Applicant is aged 52 years, her date of birth being 14.11.1953. According to DG Posts letter dated 28.08.1990 (Annexure A/2) in order to be eligible to take the examination for recruitment to Postman's cadre, an ED Agent should have completed a minimum 5 years' satisfactory service as on 1st January of the year in which the examination is held. For ED Agents, the age limit will be 50 years with five years relaxation for SC/ST candidates as on 1st July of the year in which the examination is held.

(b) Applicant is the senior most Scheduled Caste candidate eligible to be considered for appointment to the cadre of Postman in Aluva Postal Division. In the seniority list (Annexure A/3) of ED Agents as on 30.09.1997, the applicant is ranked at serial No. 79. The 5th respondent is an OC candidate and is ranked at serial No. 93.

(c) The method of selection for appointment to the cadre of Postman laid down by the Department is as follows:

> (I) 50% of the vacancies in the cadre of Postmen/Village Postmen will be filled in by promotion of Group 'D' officials who qualify in the examination according to their seniority in Group 'D' cadre.
>
> Note: Unfilled vacancies will be added to the ED Agents merit quota and that quota will be increased to that extent.
>
> (II) The remaining 50% vacancies are for outsiders quota and are filled in from amongst ED Agents. This 50% of vacancies will be further devided into two halves and will be filled up in the following manner.
>
> 25% vacancies of Postman shall be filled up from amongst ED Agents with a minimum of 15 years of service and who are within the prescribed age limit on

the basis of their seniority. ED Agents to be considered under this 25% seniority quota should have a minimum educational qualification of 8th pass. No examination is prescribed for filling up this 25% seniority quota.

(d) the selection has been notified in the circular dated 10.02.1998 (Annexure A/4) issued by the 2nd respondent. Applicant applied for selection for appointment as Postman under the seniority quota on 02.08.2005 before the last date fixed for receipt of applications alongwith relevant certificates. Applicant being the Scheduled Caste candidate was legitimately expecting that she would be selected for appointment as Postman under the seniority quota. However, to her shock and surprise, she was not included in the list (Annexue A/6) of candidates declared to have selected for appointment as Postman. In Annexure A/6 dated 23.08.2005, 5th respondent is shown to have been selected under seniority quota. 5th respondent is shown as belonging to unreserved category. The applicant has been illegally superseded by the 5th respondent who is far junior to her, for appointment as Postman under seniority quota. A representation dated 27.08.2005 (Annexure A/7) was submitted to the the 1st respondent pointing out that she is far senior to the 5th respondent and she has been denied appointment as Postman illegally and requesting to review the selection granted to the 5th respondent. The applicant was served with a letter dated 12.09.2005 (Annexure A/8) informing that the vacancy under seniority quota is earmarked for 'OC' quota and that the applicant has crossed 50 years as on 1.7.2005 and, therefore, she could not be considered for the post. It has been further stated that as the vacancy is for 'OC' quota, the age relaxation for 'SC' category could not be given. The applicant was within the upper age limit prescribed for SC/ST if age relaxation by five years is granted.

(ii) <u>OA No. 517 of 2006 :</u>

(a) The applicant is working as Extra Department Delivery

Agent in the Postal Department from 22.08.1977 onwards. For the Extra Department Delivery Agents, there is a 25% promotion quota for appointment to the post of Postman, on seniority basis, on the condition that for eligibility for promotion one should have (1) minimum 15 years' of service, (2) 8th standard pass as educational qualification and (3) within the age of 50 (with 5 years relaxation for Scheduled Caste/Scheduled Tribe candidates). The applicant belongs to Scheduled Caste Pulayan Community. Applicant fulfils all these conditions. In the Annexure A/III seniority list, applicant is at sl. No. 56 and that of the 5th respondent at sl. No. 73. All persons upto 55th rank in annexure A/III have already been promoted as Postman and so the applicant is legally entitled for promotion for the next vacancy in 2006.

(b) The applicant was proposed to be promoted as Postman on the basis of 25% promotion quota and his willingness was asked by Annexure A/IV to which he promptly replied as "willing" by Annexure A/V letter. But by Annexures A/VI and A/VII, 5th respondent was promoted as Postman ignoring the legitimate claim of the applicant. Aggrieved by this, applicant has filed the present O.A.

(iii) OA No. 755 of 2006 :

(a) The applicants are the senior-most GD Sevaks in RMS TV Division for being considered for appointment as Group 'D'. Applicants belong to SC community. They are aged above 50. The Recruitment Rules prescribe an upper age limit of 50 for recruitment as Group 'D'. However, SC/ST employees have a relaxation of 5 years as per the policy of the Government of India and also as per orders of the Department itself. At present, 3 vacancies of Group 'D' in RMS TV Division are being filled up on the basis of seniority. However, the applicants are overlooked/sidelined on the ground of being over-aged. Being aggrieved, the applicants have approached this

Tribunal through this O.A.

3. The respondents have contended that when age relaxation is granted, the same would go to show that concession is given to the reserved category. Reserved category would then be entitled to be considered only against the SC vacancies and not vacancies meant for other categories. Here, the vacancy is meant for only the O.C. And as such, there is no question of any age relaxation being given to consider the case of the Reserved Category candidates even if they be senior to other category candidates.

4. When the case came up for consideration, the following two decisions have been cited by the senior counsel for the applicant in OA No. 801/05:-

(a) Order dated 6th October, 2006 in OA No. 516/05 of the Ernakulam Bench, wherein the claim of the applicants for age relaxation to appear for the posts against General Vacancies had been rejected.

(b) Order dated 10-10-2006 in OA No. 1208/2004 of the Madras Bench, wherein it has been held that the SC candidates are entitled to the age relaxation when they are considered for promotion against the general category vacancies.

The relevant portion in the above two orders is extracted below:-

(A) ***Relevant portion of order dt. 6.10.06 in OA No. 516 of 2005.***

"12 The question therefore to be considered is whether a scheduled caste candidate when he is being considered against an unreserved vacancy is eligible for the age concession. The applicant has produced the relevant instructions of the Department of Personnel in this regard. which are self explanatory as-Annexures A14 & A-15. By A-14, the relaxation in age limits granted to SC/STs in Direct Recruitment has been extended by the Government to promotions. A-15 is an extract of the clarifications given by the DOPT to certain doubts expressed by the Departments in implementing the Reservation roster. Point 2 clarifies the issue raised in this OA thus:

Doubt	*Answer*
Whether a senior-most official in a cadre belonging to reserved category can be considered for promotion on seniority cum fitness basis despite of excess representation of such reserved category in higher post. If yes, the point against which the official can be shown in the roster of higher post.	If a vacancy arises in a cadre which falls on an unreserved point of the reservation roster and the senior-most candidate in the feeder grade belongs to SC or ST category, such SC or ST candidate cannot be ignored on the plea that the post is not reserved. Such a candidate will be considered for promotion alongwith other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.

13 It is clear from the above that the SC candidate has to compete on par with the general candidate in all respects when he is being considered against an unreserved vacancy. In such circumstances , the age limit of 50 yrs would be applicable to the applicant and not the relaxed limit of 55 years. Hence the respondents are right in contending that the applicant was not eligible for appointment to Gr-D as per the recruitment rules in the year 2003 as he had become over-aged for such recruitment and therefore his juniors had to be appointed. The vacancy which arose on 2004 was also an unreserved vacancy. The applicant will have to await his turn against a reserved vacancy in accordance with his seniority position.

14 In the result we do not find any justification or reason to interfere with the impugned orders. OA is dismissed. No costs."

(B.) *Relevant portion of order dt. 10.10.06 in O.A. 1208 of 2004*

"21. ..... The stand of the respondents is that the age relaxation other and concessions will not be allowed in case of filling up of unreserved vacancies. In other words, the concession and relaxation would be restricted only to reserved vacancies. It is nothing but defeating the very object for which these concessions are granted to the SC/ST candidates. As already held by the Hon'ble Supreme Court the concessions and relaxations provided under Art. 16(1) is different from reservation made under Art. 16(4A). The clarification given in GOI DOP&T O.M. No. 36011/1/98 Estt(Res) dated 1.7.1998 cannot take away the rights conferred on the SC/ST by way of relaxation and concession including age limit, experience etc. th original O.M. made in GOI DOP&T O.M. No. 36011/1/98 Estt(Res) dated (SET) dated 1.7.1998 relates to the steps taken to increase the representation of SC/ST in the service of the Central Govt in the direct recruitment vacancies it was decided that the candidates selected on their own merit without relaxed standards will not be considered against the reserved share of vacancies. The clarification

was issued obviously in reference to direct recruitment. Further the said clarification speaks about the counting of SC/ST candidates against reserved vacancies after selection. Neither the initial O.M. nor the clarificatory O.M. speaks of promotion and eligibility to apply and contest in case of promotion in unreserved vacancy:

> 14. What the Govt. has set out in the OM dated 1.7.1998 is that if the SC/ST candidates want their selection to be counted on their merits, then the question of considering their claim would arise and that they may not be adjusted with relaxed standards. But in this case, even before going for selection for promotion, the SC/ST candidates are denied their concessions and relaxation. The Govt. order never intended that these concessions are available to SC candidates only to the vacancy set apart on reservation. In other words, the SC/ST candidates are entitled to seek promotion with the age relaxation even in unreserved vacancies. The question of counting them on their own merit arise in the case where the vacancies are unreserved and after selection.
>
> 15. The Constitution Bench of the Hon'ble Supreme Court in the case of State of Kerala vs. NM Thomas AIR 1976 SC 490 was concerned with the provision extending the period of two years for promotion to members of the SC/ST of the of the Constitution and upholding the validity of this Rule, the Hon'ble Supreme Court held as follows:
>
> > "44. Our Constitution aims at equality of status and opportunity for all citizens including those they are socially, economically and educationally backward..... If members of the Scheduled Castes and Tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Articles 15 (4) and 16(4) bring out the position of backward classes to merit equality. Social provisions are made for the advancement of backward classes and reservations of appointments and post for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Articles 14, 15 (1) and 16(1). The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutionally permissible object. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are a rational classification recognized by our Constitution. Therefore, differential treatment in standards of selection are within the concept of equality.

45. A Rule in favour of an under represented backward community specifying the basic needs of efficiency of administration will not contravene Articles 14, 16(1) and 16(2). The Rule in the present case does not impair the test of efficiency in administration inasmuch as members of Scheduled Castes and Tribes who are promoted have to acquire the qualification of passing the test. The only relaxation which is done in their case is that they are granted two years more time than other to acquire the qualification. Scheduled Castes and Tribes are descriptive of backwardness. It is the aim of our Constitution to bring them up from handicapped position to improvement. If classification is permissible under Article 14 it is equally permissible under Article 16 because both the Articles lay down equality. The equality and concept of equality is that if the persons are dissimilarly placed they cannot be made equal by having the same treatment. Promotion of members of Scheduled Castes and Tribes under the impeached rules and orders is based on the classification with the object of securing representation to members of Scheduled Castes and Tribes. Efficiency has been kept in view and not sacrificed."

16. The Hon'ble Supreme Court of India in Superintending Engineer, Public Health Chandigarh vs. Kuldip Singh in AIR 1997 SC 2133 has laid down that the appointing authority is under constitutional duty coupled with power.
A public servant entrusted with duty and power to implement the constitutional policy under Article 16(4), 16(4A), 15(4) , 335 and all inter related directive principles, it should exhibit transparency in implementation and of accountable (sic) for due effectuation of constitutional goals..."

22. The clarification in reference to relaxed standard has to be understood in the context of the relevant rules.
For instance, the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955, provides for age relaxation under Regulation 4. Regulation 7 deals with the list of successful candidates. Sub Rule 2 of Regulation 7 says that candidates belonging to SC/ST may, to the extent of number of vacancies reserved for them be recommended by the Commission by the relaxed standard subject to the fitness of the candidates for selection to the service. The proviso to Sub Rule says candidates who have been recommended without resorting to relaxes standards shall not be adjusted against vacancies reserved for SC/ST.

The implication of the above provision is that within the quota set apart for SC/ST the candidates shall be selected by relaxed standards. The Rule further states that those candidates selected without relaxed standards, shall not be adjusted against the quota. The relaxed standard is therefore referable only to examination conducted for selection.

The Hon'ble Supreme Court in Union of India vs. Satya Prakash (2006 (4) SCC 550), while referring to a similar provision of Civil Services Examination Rules, 1996, held that a reserved category candidate recommended by the Commission (UPSC), without resorting to the relaxed standard will have the option of preference from the

reserved category but while computing the quota/percentage of reservation, the candidates will be deemed to have been allowed seat as an open category candidate. Their Lordships also referred and approved the view of the Hon'ble Supreme Court in Ritesh R. Shah Vs. Dr. M.L. Vamdi (1996 3 SCC 253).

> Therefore, the concession given in the form of age relaxation, cannot take away the right of SC/ST candidates to claim for unreserved vacancies.

23. Applying the ratio and view of the decisions referred earlier, the applicant cannot be denied the age relaxation available to OBC candidates and consideration on the pleas that the vacancy is meant for open category.

24. For all the above reasons we find that the non selection the applicant and the selection of the private respondents overlooking the claim of the applicant are illegal."

5. In view of the above conflicting views of two Benches of the Tribunal, it becomes essential to refer the matter to a full Bench and the reference formulated in this regard is as under:-

> **When Gram Dak Sevaks belonging to the SC/ST categories enjoy certain age concessions in respect of promotion to the higher post or for participating in the departmental examinations, whether such candidates within the relaxed age limits are to be considered for promotion to the post of Postman, even when the vacancies pertain to general category. And which of the orders of the Tribunal to be followed – (a) Order dated 6-10-2006 in OA No. 516/05 of the Ernakulam Bench which negatived the claim of the reserved category candidates or (b) Order dated 10-10-2006 in OA No. 1208/04 of the Madras Bench, which held that age relaxation is admissible in such cases.**

6. Registry shall transmit the files to the Principal Bench for consideration by the Hon'ble Chairman for constituting a Full Bench to deal with these cases.

(Dated, 21st June, 2007)

Dr. K S SUGATHAN
ADMINISTRATIVE MEMBER

Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.

CENTRAL ADMIISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 801 of 2005
w i t h
O.A. Nos. 517/2006, 755/2006, 270/07 AND 473/07

Monday , this the 22nd day of October, 2007

C O R A M :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN (A)
HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J)
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

1. O.A. No. 801 of 2005:

Sathi V.K.,
D/o. Shri E.N. Kunju,
Working as Gramin Dak Sevak Mail Packer,
Muvattupuzha HO, Aluva Postal Division,
Residing at Kadambanattu House,
Kizhakkambalam P.O.,
Ernakulam District ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr. with Mr. Antony Mukkath)

v e r s u s

1. Senior Superintendent of Post Offices,
Aluva Division, Aluva : 683 101

2. Postmaster General,
Central Region, Kochi.

3. Chief Postmaster General,
Kerala Circle,
Thiruvanathapuram.

4. Union of India, represented by its
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5. K.M. Sidhik,
Gramin Dak Sevak Mail Deliverer,
Kovallur, Aluva Postal Division ... Respondents.

[By Advocate Mr. P.M. Saji, ACGSC (for R1-4)]

2. O.A. No. 517 of 2006:

P.P. Ravidas,
S/o. Pangan, Pulikkal house,
Vallachira, Thrissur District,
Now working as Extra Department
Delivery Agent (E.D. Agent),
Vallachira Post Office, Thrissur ... Applicant.

(By Advocate Mr.B.K. Purushothaman)

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1. Union of India, represented by
The Secretary, Postal Board Services,
Department of Posts, New Delhi.

2. The Director General of Post Offices,
Department of Posts, India, New Delhi.

3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Divisional Superintendent,
Post Offices, Irinjalakuda Division,
Irinjalakuda, Thrissur District.

5. P.P. Velayudhan,
Postman, Irinjalakuda Head Post Office,
Irinjalakuda. ... Respondents.

[By Advocate Mr. P.J. Philip, ACGSC (for R1-4)]

3. <u>O.A. No. 755 of 2006</u>:

1. S. Krishnan,
S/o. M. Subraniam,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1

2. R. Sudhakaran,
S/o. V. Raghavan,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1 ... Applicants.

(By Advocate Mr. Sasidharan Chempazhanthiyil)

v e r s u s

1. The Senior Superintendent,
RMS TV Division,
Thiruvananthapuram.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Union of India, represented by its
Secretary, Ministry of Communications,
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4. A. Sankaranarayanan,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1

5. G.S. Manikantan Nair,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1

6. G. Rajendran Pillai,
GDSMM, SRO, Kollam,
Presently posted as Temporary Mail Man

(Group-D), SRO, RMS TV Division,
Thiruvalla.

7. The Secretary,
Department of Personnel & Training
Govt. of India, New Delhi ... Respondents.

(By Advocates Mr. P.J. Philip, ACGSC (for R1-3) and
Mr. T.C. Govindaswamy (for R4 & 5)

4. O.A. NO. 270 OF 2007

K. Surendran,
S/o. S. Kunju Krishnan,
GDSMM, HRO, RMS TV Division,
Thiruvananthapuram ... Applicant.

(By Advocate Mr.G. Sasidharan Chempazhanthiyil)

v e r s u s

1. The Senior Superintendent,
RMS TV Division,
Thiruvananthapuram.

2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3. Union of India, represented by its
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4. A. Sankaranarayanan,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
Thiruvananthapuram : 1

5. G.S. Manikantan Nair,
Gramin Dak Sevak Mail Man (GDSMM),
Head Record Office, RMS TV Division,
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Presently posted as Temporary Mail Man
(Group-D), SRO, RMS TV Division,
Thiruvalla.

7. The Secretary,
Department of Personnel & Training
Govt. of India, New Delhi ... Respondents.

(By Advocates Mr. P.A, Aziz, ACGSC (for R1-3 & 7) and
Mr. T.C. Govindaswamy (for R4-6)

5. O.A. NO. 473 OF 2007

P.Lohidakshan,
S/o. Rarukutty,
GDSMD Peruvannamuzhi,
Acting Group 'D', Perambra P.O.,
Residing at Punnavalappil House,
Chakkittapara P.O., Kayanna : 673 526 ... Applicant.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

1. The Superintendent of Post Offices,
Vadakara Division,
Vadakara : 673 101

2. The Director General,
Department of Posts,
Dak Bhawan, New Delhi.

3. Union of India, represented by
The Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi. ... Respondents.

(By Advocate Mr. P.M. Saji)

(Advocate Mr George Joseph, ACGSC appeared in general)

O R D E R
BY HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

In view of divergent views expressed by two Division Benches (Madras and Ernakulam) in respect of a particular legal issue viz whether the concession of age relaxation is available to the Scheduled Caste/Scheduled Tribe Candidates in matters of promotion against unreserved vacancies/post, the following reference had been made for consideration by a Full Bench, vide order dated 21st June, 2007 in O.As 801/2005, 517/06 and 755/2006:-

> *"When Gram Dak Sevaks belonging to the SC/ST categories enjoy certain age concessions in respect of promotion to the higher post or for participating in the departmental examinations, whether such candidates within the relaxed age limits are to be considered for promotion to the post of Postman, even when the vacancies pertain to general category. And, which of the orders of the Tribunal to be followed – (a)Order dated 06-10-2006 in OA No. 516/05 of the Ernakulam Bench which negatived the claim of the reserved category candidates or (b) Order dated 10-10-2006 in OA No. 1208 /04 of the Madras Bench, which held that age relaxation is admissible in such cases."*

2. We find that when the decision of the Madras Bench had been cited before the Principal Bench, the Hon'ble Members had doubted the

correctness of the decision and had referred the matter to a Full Bench. We have come to the notice that by the order dated 29.7.2007 the Full Bench to which one of us, [Hon'ble Mr M Ramachandran (J)] was a party had held inter-alia as under:

> *"10. The Office Memorandum relied on by the Madras Bench, according to us, is insufficient for reaching a conclusion that in respect of general vacancies, SC/ST or OBC candidates would be entitled to any relaxation. The question referred to us is answered as above.*
>
> *11. We hold that there is no merit in the claim of the applicant, as urged by him, as the legal position would be that in respect of general vacancies as are proposed to be filled by the direct recruitment, persons otherwise entitled to reservations will have to compete with general candidates and will not be entitled to claim any relaxation in the matter of qualification, attainments of prescription regarding age stipulations. Whatever minimum requirements to be satisfied by a general candidate will have to be possessed by a candidate who might be entitled to reservation benefits otherwise."*

3. Of course Mr O.V.Radhakrishnan, Senior Counsel had submitted that the case dealt with by the Principal Bench was one which related to a Public Sector Enterprise, when they had opted for recruitment from the open market. He points out that the facts disclosed that the issues were totally different and the claims of an OBC candidate for relaxation was the matter which has examined. He also points out that the impugned office memorandum viz. O.M.No.36011/1/98-Estt (Res) dated 1.7.1998 was not subject to any specific attack there. Taking note of the submissions as above, we may consider the matter with an open mind although respondents had strongly contended that the principle had already been explained by the Full Bench in O.A.No.208/2007 (FB) and the issue required to be given a quietus.

4. Succinctly stated, the issue involved in these cases is that for Gramin Dak Sevaks, provision exists for appointment to the post of

postman under a 25% quota on seniority basis on condition that for eligibility for promotion, one should have the educational qualifications upto a minimum of 8th pass and should have minimum 15 years' service and that the age limit shall be 50 years. The applicants in these OA belong to reserved category and by virtue of a general provision of 5 years' age relaxation available to the reserved category, the question arose whether such a general age relaxation is available at the time of appointment under the above-said 25% quota for Gramin Dak Sevaks against unreserved vacancies. The respondents, on the basis of Department of Personnel & Training O.M. No. 36011/1/98-Estt(Res) dated 01-07-1998 have rejected the claim of the applicants for such age relaxation. When the case came up, as aforesaid, the divergent views of the two Benches were brought to the notice consequent to which the reference, as extracted above, has been made.

5. Learned Senior Counsel for applicants in OA No. 801/05 stated that the Full Bench Judgment referred to above did not conclude the issue involved in this case. He has stated that primarily and principally, age relaxation is not linked to the post/vacancy but to the category of person. Thus, if a person belongs to the reserved category, he has the concession of age relaxation, irrespective of whether the vacancy falls against the slot of unreserved category or reserved one. Referring to the order dated 08-12-1971 issued by the Nodal Department (Department of Personnel), the learned senior counsel stated that by virtue of that memorandum, the general age relaxation for the SC/ST candidates, which was hitherto applicable to the direct Recruitment, had been extended the case of promotion as well. Again, referring to another memorandum dated 22-05-1989 the

learned senior counsel argued that by this Memorandum, it was decided that in cases of direct recruitment to vacancies in posts under the Central Government the SC and ST candidates who are selected on their own merit without any relaxed standards along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will thus comprise SC and ST candidates who are lower in merit than the last candidates on the merit list but otherwise found suitable for appointment even by relaxed standards, if necessary. According to the senior counsel, the above would go to show that the term 'relaxed standards' certainly meant only as to the merit and none else. The confusion was created only with the issue of memorandum dated 01-07-1998 para 3 of which reads as under:-

> "3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied in general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example, in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies"

6. According to the learned senior counsel, the above has overstepped the original order dated 22-05-1989 in that whereas in the original order what has been stated is only "relaxed standard", in the so called clarificatory order other aspects including age relaxation have been added. The learned Senior Counsel argued that the term "relaxed standard" confined its meaning only to the merit aspect and nothing else. To buttress his arguments, he has cited the decision in the case of ***Union of India v. Satya Prakash,(2006) 4 SCC 550*** , wherein

the Apex Court has held as under:-

> ***18.*** *By way of illustration, a reserved category candidate, recommended by the Commission without resorting to* ***relaxed standard (i.e. on merit)*** *did not get his own preference □say IAS in the merit/open category. For that, he may opt a preference from the reserved category. But simply because he opted a preference from the reserved category does not exhaust the quota of OBC category candidate selected under the relaxed standard. Such preference opted by OBC candidate who has been recommended by the Commission without resorting to the* ***relaxed standard (i.e. on merit)*** *shall not be adjusted against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. This is the mandate of the proviso to sub-rule (2) of Rule 16. (emphasis supplied)*

7. The Learned Senior Counsel further argued that there is difference between conditions and standards. In so far as age factor is considered, it could only come within the term, 'condition' and not 'standard'. To substantiate his point, reference was invited to the decision of the Apex Court in the case of ***Atlas Cycle Industries Ltd. v. Workmen,1962 Supp (3) SCR 89.*** wherein, in para 8, the Apex Court had observed:

> *Article 217(1) deals with the former, and, in form, it has reference to the termination of the office and can therefore be properly read only as imposing, by implication, a restriction on making the appointment. In strong contrast to this is Article 217 (2) which expressly refers to the qualifications of the person to be appointed such as his having held a judicial post or having been an advocate for a period of not less than ten years. We think that on a true construction of the article the* ***prescription as to age is a condition attached to the duration of the office and not a qualification for appointment to it.*** *(Emphasis supplied)*

8. The learned Senior Counsel further stated that even the very circular relating to the examination for promotion to the post of postman brings the aspect of age under the column, 'eligibility condition'. As such, the term 'relaxed standard' cannot embrace in it the age factor and consequently, the clarificatory order dated 01-07-1998 has, by including the age relaxation within the ambit of the term

'relaxed standard' has certainly overstepped the original order and the same is, therefore, illegal.

9. The Senior Counsel further stated that in so far as the Recruitment Rules are concerned, Rule 6 relates to savings clause and the same reads as under:-

> "6.*Nothing in the rule shall affect reservations, relaxation of age limit and other concessions required to be provided for the scheduled caste, scheduled tribes, ex-servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.*

10. The learned senior counsel stated that vide Annexure A-2, para 2.4 thereof clearly states that for EDAs, the age limit will be 50 years with five years' relaxation for SC/STs candidates as on 1st July of the year in which the examination is held. And similarly vide Annexure A-11, the general provision of five years' age relaxation is admissible for promotion too. And, the above-said orders have not distinguished between reserved vacancies and general vacancies and as such, in view of the above statutory provisions, the age relaxation by 5 years allowed cannot be denied to the applicants on the ground that the vacancies are meant for unreserved category.

11. The following case laws have also been cited by the learned senior counsel in support of his case:-

(a) **Ritesh R. Sah v. Y.L. Yamul (Dr), (1996) 3 SCC 253 ,** with particular reference to the following portion:

> *Therefore, the candidates belonging to Backward Classes but selected as general candidates for admission to graduate or postgraduate medical course are entitled to the concessions or*

scholarships and other benefits according to the rules or instructions of the State Government or the Central Government as the case may be.

(b) ***R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745*** wherein it has been observed:

4. *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 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 reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.*

12. Learned Counsel for the Applicant in OA No. 517/06, apart from adopting the arguments of the Senior Counsel as stated above, supplemented that the very advertisement provided for such a

concession and as such, by way of principles of estoppel, the respondents precluded from denying the concession available to the reserved candidates in respect of age relaxation while filling up the vacancies of unreserved category.

13. Learned counsel for the applicant in OA No. 755/06 and 270/07 submitted that the Full Bench Judgment did not consider the decision of the Apex Court in ***Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217*** which traces the history of the very reservation policy and the purpose thereof. He has invited the attention of the Bench to the said decision, especially to the following paragraphs:-

> ***152.*** *It will be befitting, in my opinion, to extract a passage from the book, Bakke, Defunis and Minority Admissions (The Quest for Equal Opportunity) by Allan P. Sindler wherein at page 9, the unequal competition is explained by an analogy which is as follows:*
>
> > *A good way to appreciate the something more quandary is to consider the metaphor of the shackled runner, an analogy frequently advanced by spokesmen for minorities:*
> >
> > > *Imagine two runners at the starting line, readying for the 100-yard dash. One has his legs shackled, the other not. The gun goes off and the race begins. Not surprisingly, the unfettered runner immediately takes the lead and then rapidly increases the distance between himself and his shackled competitor. Before the finish line is crossed over the judging official blows his whistle, calls off the contest on the grounds that the unequal conditions between the runners made it an unfair competition, and orders removal of the shackles.*
>
> *Surely few would deny that pitting a shackled runner against an unshackled one is inequitable and does not provide equality of opportunity. Hence, cancelling the race and freeing the disadvantaged runner of his shackles seem altogether appropriate. Once beyond this point, however, agreement fades rapidly. The key question becomes: what should be done so that the two runners can resume the contest on a basis of fair competition? Is it enough after removing the shackles, to place both runners back at the starting point? Or is □something more□ needed, and if so, what? Should the rules of the running be altered, and if so, how? Should the previously shackled*

runner be given a compensatory edge, or should the other runner be handicapped in some way? How much edge or handicap?□

153. *To one of the queries posed by the author of the above analogy, the proper reply would be that even if the shackles whether of iron chains or silken cord, are removed and the shackled person has become unfettered, he must be given a compensatory edge until he realises that there is no more shackle on his legs because even after the removal of shackles he does not have sufficient courage to compete with the runner who has been all along unfettered.*

154. *Mr Ram Awadesh Singh, an intervener demonstrably explained that as unwatered seeds do not germinate, unprotected backward class citizens will wither away.*

155. *The above illustration and analogies would lead to a conclusion that there is an ocean of difference between a well advanced class and a backward class in a race of open competition in the matters of public employment and they, having been placed unequally, cannot be measured by the same yardstick. As repeatedly pointed out, it is only in order to make the unequals equal, this constitutional provision, namely, clause (4) of Article 16 has been designed and purposely introduced providing some preferential treatment to the backward class. It is only in case of denial of such preferential treatment, the very concept of equality as enshrined in the Constitution, will get buried 50 fathoms deep.*

....

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(14) While reservation is a remedy for historical discrimination and its continuing ill effects, other affirmative action programmes are intended to redress discrimination of all kinds, whether current or historical.

14. The learned counsel argued that it is with the above spirit in mind the matter has to be examined. And, the Full Bench judgment is against the above-said well settled principle. According to him, reserved candidates have a right to compete against the general vacancies and the concession in age limit cannot be the ground to reject their case if they prove their mettle and vie with general candidates in merit. Such an age concession cannot be a bar. It is meant to equalize the reserved candidates with the general candidates, and unless this equalization is made, same upper age limit

both for the general categories and the reserved categories would result unequals being treated as equal which is against the principles of equality. In addition, the counsel further gave a hypothetical illustration that if a reserved candidate applies for a lone post (unreserved) and amongst all the competing candidates, he stands first in merit, can he be rejected on the ground that he has availed of the age concession.

15. Counsel for the applicant in OA No. 473/07 also adopted the arguments advanced by the learned senior counsel and submitted that the concession of age relaxation is available to the reserved category right from 1952. While originally it was available for direct recruitment only, this concession has been extended to the case of promotion also vide order dated 08-12-1971. Such a concession cannot be denied through a clarificatory order.

16. Counsel for the respondents submitted that the issue is no longer res-integra as the Apex Court in the case of ***Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan, (1997) 6 SCC 283*** , has held as under:-

> *It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate. Only one who does get admission or appointment by virtue of relaxation of* ***eligibility criteria*** *should be treated as reserved candidate. (emphasis supplied)*

17. Learned counsel for the respondents has referred to para 3 of Additional Reply to rebut the contention of the learned Senior Counsel, as under:-

> *"With respect to the averments and allegations contained in paragraph No. 4(vii) it is humbly submitted that the contention*

of the applicant that the 'relaxed standard' contained in Annexure A-9 connotes lower standard in merit only, is not correct. The subject of the annexure A-9 OM itself reads, 'Measures to increase SC/ST representation through direct recruitment – Reserved vacancies to be filled by candidates lower in merit or even by relaxed standard; candidates selected on their own merits not be adjusted against reserved quota.' The term 'relaxed standard' referred to in Annexure A-9 OM is elaborately defined in Annexure A-10 OM as age limit, experience, qualification, permitted number of chances in written examination etc., Therefore, the contention of the applicant that Annexure A-10 out-steps Annexure A-9 is wrong."

18. Learned counsel for the private respondents in OA 755/06 submitted that there is no fundamental right in respect of concession or relaxation. Art. 15(4), (16(4) of the Constitution are only enabling clauses. The last sentence in the order dated 01-07-1998 clearly provides that candidates availing of any relaxed standard would be deemed as unavailable for consideration against unreserved vacancies. He has also submitted that the decision reported in AIR 1962 SC 1100 cited by the counsel for the applicant has no application to the facts of this case. The learned counsel concluded his arguments stating that the saving clause relied upon by the learned senior counsel for the applicant did not afford any right to the applicants and he has also submitted that there is no infringement of any of the concessions available to the SC/ST candidates and in case a reserved category candidate aspires to be considered against an unreserved post, then, he must be comparable in all aspects to any general candidate.

19. Arguments were heard and documents perused. At the very outset it should be stated that normally, if a coordinate Bench has decided an issue, other Benches should, (save in the event of holding a view not in tandem with the earlier judgment in which case should refer the matter to a larger Bench.) follow the precedent. In this regard, the decision of the Apex Court in the case of ***Sub-Inspector***

Rooplal v. Lt. Governor, (2000) 1 SCC 644, has held as under:-

> *"..... This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. ..... A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement."*

20. The full Bench judgment of the Principal Bench does clinch the issue. It is for this reason that at the end of his argument, the learned senior counsel had concluded that this is a fit case to be referred to a still larger Bench. As already stated earlier, independent of the same the case has been heard to see as to whether an independent analysis of the case by this Bench leads to the same conclusion as of the Principal Bench or a different note is struck, in which event alone the case has to be referred to a larger bench.

21. A look at various orders of the Nodal Ministry (DOPT) would be appropriate at this juncture.

Order dated 08-12-1971 (Annexure A-11 in OA 801/05) which contains the provisions of age relaxation in respect of promotion reads as under:-

> *"In accordance with the Ministry of Home Affairs Resolution No. 42/19/51-NGS, dated 25-06-1952 and No. 15/1/55-SCT dated 30-04-1955, the maximum age-limit prescribed for appointment to a service or post is to be increased by 5 years in the case of candidates belonging to Scheduled Castes/Scheduled Tribes. This relaxation is being granted in all services/posts filled by direct recruitment. Enquiries made from different Ministries/Departments regarding the upper age-limit prescribed for the posts/services filled by promotion reveal that for a large number of posts/services, either o upper age-limit has been prescribed or where such limit is prescribed, a relaxation of 5 years is already being*

granted in favour of Scheduled Castes/Scheduled Tribes employees. The question whether the upper age-limit prescribed in posts/services filled by promotion should be relaxed in favour of scheduled Castes and Scheduled Tribes where such relaxation is at present not available has been under the consideration of the Government. It has not been decided that where an upper age-limit not exceeding 50 years in favour is prescribed for promotion to a service/post, it shall be relaxed by 5 years in favour of Scheduled Castes and Scheduled Tribes. This decision, however, would not apply to posts which have arduous field duties or are meant for operational safety and to posts in paramilitary organizations."

22. OM dated 22-05-1989 clarified that in case any of the reserved category candidate could compete with general category candidates and on merit is selected then, his selection cannot be counted while working out the total number of reserved candidates to be selected. And it has been explained vide para 2 of the said memorandum, that the SC and ST candidates who are selected on their own merit **without any relaxed standards** along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The said para reads as under:-

"2. It has now been decided that in cases of direct recruitment to vacancies in posts under the Central Government the SC and ST candidates who are selected on their own merit without relaxed standards along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will thus comprise SC and ST candidates who are lower in merit that the last candidate on the merit list but otherwise found suitable for appointment even by relaxed standards, if necessary."

23. The 1989 memorandum which talks of the term, "relaxed standards" had not explained as to what are they. On doubts having been raised, the Nodal Ministry had clarified the same as contained in para 2 of OM dated 01-07-1998. It has been contended by the

Learned Senior Counsel for the applicants that this clarification has out-stepped the original order dated 22-05-1989 and to substantiate his point, the counsel relied upon the decision of the Apex Court in the case of Satya Prakash (*supra).* The decision in Satya Prakash is only with a view to comparing a more meritorious and less meritorious reserved category candidate and it holds that if a more meritorious candidate has been accommodated against a general category vacancy, he cannot be placed in a disadvantageous position in relation to the concessions available to the reserved category on the grond that he has not been accommodated against any reserved vacancies. Such a reserved candidate is entitled to such benefits as are available to those who are appointed/promoted against reserved vacancies. It is not indicated in the judgment that the meritorious reserved candidate accommodated against an unreserved vacancy was one who had availed of the age concession available to the reserved candidates. Thus, it cannot be stated that the clarification order is overstepping the original order.

24. OM dated May, 1989 was issued by the DOPT and clarification is also issued by the very same authority. Such a clarification became necessary to remove any doubt or ambiguity in interpreting the term, "relaxed standard". Thus the Government was only explaining as to what the expression meant in matters on recruitment. We have no doubt in our mind that such clarifications were within the power of executive and hyper technical argument as raised could be understood only as self serving. It has been held in the case of ***Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group,(2006) 3 SCC 434*** as under:-

> **222.** *Furthermore, it is one thing to say that the clarification is beyond the statutory power of the State or plainly contrary to*

> *the Regulations, the effect whereof is required to be determined,* ***but it is another thing to say that while doing so the State gives out its mind as to what it meant thereby as an author of the Regulations.*** (Emphasis supplied)

25. Our view is fortified with yet another letter communication as referred to in the Full Bench Judgment of the Principal Bench, vide para 9 of the said order, which reads as under:-

> Our attention had been invited to a clarification that had been given by the Union Public Service Commission (Annexure R-1A) dated 23-04-2001, which is in line with our thought process. This clarification was addressed to the NCERT. The text of the letter could be extracted hereinbelow:-
>
> > *"I am directed to refer to your letter No. F-4-1/91-SC/ST Cell (Vol II) dated 27th March, 2001 addressed to Sh. R.L. Sighu, Liaison Officer for SC/ST, Union Public Service Commission, New Delhi on the subject cited above and to say that in accordance the Commission while making recruitments to posts, allow relaxation in the uppoer age limit upto 5 years to the SC/ST candidates and upto 3 years upto 5 years to OBC candidates only for the post(s) reserved for SC/ST and OBC respectively. No age relaxation is available to the SC/ST/OBC candidates for unreserved/general vacancies"*

26. Though an order of the State Government does not apply to the cases of the Central Government employees, yet, it is appropriate to cite a memorandum issued by the Government on 19-10-1992 in respect of recruitment through UP Public Service Commission just to reflect the thought process of the State Government. The instruction contained therein was to the following effect:

> *"Allocation/selection of the candidates successful in the combined examinations held for more than one service ought to be made treating each service separately. If any candidate belonging to reserved category, succeeds on merits, without availing himself/herself of the facility of relaxation in norms and exemption in age-limit prescribed for the general candidates, on the basis of his preference, he will not be adjusted against the vacancy/post of the reserved quota. On the contrary, if any candidate belonging to the reserved category, finds place in the*

selection list, after having availed himself/herself of the facility of relaxation in norms and exemption in age-limit prescribed for the general candidates, on the basis of his preference, he ought to be adjusted against the vacancy/post of the reserved quota."

(This has been referred to in the decision of the Apex Court in the case of ***Anurag Patel v. U.P. Public Service Commission,(2005) 9 SCC 742).***

27. The saving clause in the recruitment rules is relied upon by the counsel for the applicants. In fact the said rule reads "6.*Nothing in the rule shall affect reservations, relaxation of age limit and other concessions required to be provided for the scheduled caste, scheduled tribes, ex-servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.* This rule is of greater assistance to the respondents' contention as the impugned order is one which comes within the term, "*in accordance with the orders issued by the Central Government from time to time."*

28. As regards the contention of 'promissory estoppel' by the counsel for the applicant in OA No. 517/06, it can be safely stated that the doctrine of promissory estoppel does not apply in this case since the applicants have sufferred "threshold bar and are not to be considered for the post" (see ***Satish Kumar Sharma v. Bar Council of H.P.,(2001) 2 SCC 365)*** and that all that has been done by the authorities is only to rectify the mistake, which they are entitled to (see ***Vividh Marbles (P) Ltd. v. CTO,(2007) 3 SCC 580).***

29. The contentions of the counsel for applicants in OA Nos. 755/06,270/07 as well as 473/07 that the concessions are based on with a laudable view to uplifting the 'lowly and lonely' which have been in existence since 1952 and that the Full Bench Judgment had been

passed in violation of the settled principles and that unless the age relaxation is admissible, unequals would be treated as equals, do not hold good in the context of this case, for, none of the concessions available to the reserved candidates with reference to their entitlement/eligibility against the vacancies had been denied to them. Nor is the door closed for such candidates to compete with other general candidates. All that has been stated is that in case the reserved candidates want to compete with the general candidates, they should be at par with them in all aspects without availing of any concessions available in respect of reserved vacancies. In insisting for such conditions as applicable to others belonging to the general category, it cannot be stated, that the unequals have been treated as equals. And the hypothetical illustration that if a reserved candidate is No. 1 in merit list, then what happens to his merit position is also not properly placed since, nothing prevents any such reserved candidates to compete and come in the merit, provided such candidate fulfills all the conditions as for a general candidate.

30. Thus, none of the contentions of the applicants persuades us to come to a conclusion different from the one arrived at by the Full Bench of the Principal Bench.

31. Counsel for the respondents referred to the decision of the Apex Court in the case of ***Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan, (1997) 6 SCC 283*** *wherein the term used is, "**eligibility criteria**"* Eligibility Criteria certainly includes age limit. In fact, Annexure A-4 circular (vide OA 8-1/05) brings in the subject of age only under the term, "Eligibility". That the term eligibility criteria includes age limit is evident from the observation made in the case of R.L.

Bansal v. Union of India, 1992 Supp (2) SCC 318 : wherein, the Apex Court has observed - "*The eligibility criteria is the same as is provided for appointment under method (a) except in the matter of age.*"

32. In the result, we respectfully agree with the decision of the Full Bench in O.A.208/2007 dated 29.7.2007. Consequently, the reference is answered that when Gram Dak Sevaks belonging to the SC/ST categories participate in the departmental examinations for promotion/recruitment, against vacancies of general category, they will not be entitled to age relaxation available for promotion against the reserved vacancies.

33. In view of the above, OA Nos. 801/05, 517/06, 755/06, 270/07 and 473/07 are all dismissed.

34. No costs.

(Dated, the 22nd of October, 2007)

(DR. K B S RAJAN)
Judicial Member

(JUSTICE M. RAMACHANDRAN)
Vice Chairman (J)

(SATHI NAIR)
Vice Chairman(A)

cvr.