

OA.615/2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

O.A.No. 615/2013

Dated *Thursday*, this the 17th day of March, 2016

CORAM:

**HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Surendran V. M. Aged 51,
S/o Paithal, Gramin Dak Sevak Mail Packer,
Chokli Post Office, Residing at Kangentavida,
Kaviyoor, Chokli,
Kannur District 670 672.

Applicant

(Applicant Mrs. R. Jagada Bai, Advocate)

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1. Union of India, represented by
The Secretary to Government of India,
Department of Posts, Dak Bhavan,
New Delhi 110 001.
2. The Superintendent of Post Offices,
Thalassery Division,
Thalassery 670 102.

3. C.Pradeepan,
(Father's Name not known)
Postman, Thalassery Head Post Office,
Thalassery 670 101.

... Respondents

(Respondents by Mr. S. Ramesh, ACGSC)

This Application having been finally heard and reserved for orders on 23.02.2016 and the the Tribunal on 17/03/2016 delivered the following:

ORDER

PER: MR. U. SARATHCHANDRAN, JUDICIAL MEMBER:

The applicant is aggrieved by his non-selection to the post of Postman under the seniority quota from amongst the Gramin Dak Sevaks (GDS), notified vide Annexure A/1 for filling up the vacancies for the year 2010. His

grievance is that respondent No.3, a junior to him in the Annexure A/3 seniority list of GDSs, was selected as postman under the seniority quota bye-passing him. He sent Annexure A/6 representation to respondent No.2. He was informed vide Annexure A/7 reply that there were only two vacancies in the seniority quota for the year 2010 and that they were filled up following the reservation policy. Out of those two vacancies one was reserved for Scheduled Caste and the other was unreserved. On seeking information under the Right to Information Act 2005 regarding the unfilled vacancies available in Thalassery Postal Division as on 30/11/2010, he was informed vide Annexure A/9 reply that as on 30.11.2010 there were fourteen unfilled vacancies in the cadre of Postman in that Postal Division and that three vacant posts arose in 2005 and 2008 are manned by GDS on officiating basis. According to the applicant, on the basis of that information three vacancies under the seniority quota could have been filled up by the respondents in 2010. According to him Shri K.M. Antony selected in the unreserved post under the seniority quota was at Sr. No.49 in the Seniority List of GDSs. Applicant is at Serial No.63 and respondent No.3 who was selected for the post reserved for Scheduled Caste is at serial No.64 in the Seniority List. Applicant states that although he was subsequently promoted to the cadre of MTS in the seniority quota with effect from 23/4/2013 he is aggrieved because the post of Postman bears higher pay and status than those of MTS. He alleges that denial of promotion of the applicant under the seniority quota to the cadre of postman on par with his junior, respondent No.3 is arbitrary. Hence he prays for:

"1. Call for the records.

2. Declare that applicant is eligible to be promoted as Postman against the vacancies available in 2020 on the basis of his running seniority against one of the vacancies falling under 25% quota set apart for the GDS



and to promote him to the post of Postman from 15.11.2010 at par with his junior, the Respondent No.3 with all consequential benefits.

3. To issue such other appropriate orders or directions this Tribunal may deem fit, just and proper in the circumstances of the case."

2. Respondents filed reply statement contending that as per the notified examination for recruitment of Postman/Mail Guards for the vacancies of year 2010, the applicant was considered under the seniority quota of GDSs. Out of the two posts approved under the seniority quota one post was reserved for members of the Scheduled Castes and the other for candidates in the unreserved category. Applicant is at no. 63 in the Seniority List of GDS as on 12.1.2010, in the Thalassery Division. Respondent No.3 was appointed as Postman since he is the senior most amongst the GDS members of Scheduled Caste though he was at serial no.64 in the Seniority List. According to the respondents though there were 14 unfilled vacancies of Postman available from 2005 to 30-11-2010, 7 vacancies arose and were reported by respondent No.2 vide Annexure R(1) letter dated 19.5.2010 for approval, for filling up in the year 2010. The remaining 7 vacancies were kept unfilled for abolition, by way of a policy measure, to achieve the long term objective of reduction of 10% staff in the category of direct recruitment within five years. Out of the seven vacancies approved for filling up in 2010 two were earmarked for seniority quota as per Annexure R/2. It is further stated in the reply statement that out of the 14 vacancies available as on 30.11.2010, only 7 vacancies were approved for filling up by the competent authority and the remaining vacancies were to be abolished for achieving 5% cut in all direct recruitment posts which is a policy decision of the Government.

3. In the rejoinder the applicant states that the argument that there were seven vacancies earmarked for abolition is aimed at ~~to~~ defeating his claim



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in an arbitrary manner, especially when no sanction of the screening committee is required for filling up the post of postman. According to him he was eligible for promotion to the available vacancies in 2010.

4. In the additional reply statement filed by the respondents it is contended that the seven vacancies of postman in the Thalassery Division kept aside for abolition arose during the previous years from 2005 to 2008 and were kept unfilled for the purpose of abolition. On recalculation, 3 more vacancies were identified for abolition in 2005 and hence there is a total of 7 + 3 vacancies for abolition. Respondents state that abolition of those posts were approved by the Chief Post Master General vide Annexure R/3 communication dated 14.9.2012, on a review of the establishment and vacancy position in the cadre of Postman/Mail Guard for the period 200-01 to 2012. It is further stated by the respondents that the 7 vacancies notified for filling up in 2010 arose after the Postman Examination for the vacancies notified for the year 2009. It is also stated by the respondents that 7 vacancies kept aside for abolition were identified from among the direct recruitment quota for the previous years, before the Postman Examination held in 2009.

5. In the light of the above contentions of the parties we have heard the counsel appearing on both sides. Mrs. Jagada Bai, learned counsel appeared for the applicant and Mr.S. Ramesh learned ACGSC appeared for the respondents. We have perused the record.

6. The controversy in this case is whether the applicant could be considered for recruitment under the seniority quota of GDSs for the vacancies of Postman available as on the date of Annexure A/1 notification in the Thalassery Division or not?. According to the respondents only two

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posts were available under the seniority quota, as reported by respondent No.2 to the Post Master General, Northern Region, Calicut vide Annexure R/1 dated 19.5.2010. The Post Master General, Northern Region approved the same on 25.8.2010 by Annexure R/2. Examination for promotion to the cadre of Postman was conducted on 29.8.2010. Applicant states that there were more than two vacancies available under the seniority quota. By invoking the provisions of the Right to Information Act 2005, he obtained Annexure A/9 information from respondent No.2 that as on 30.11.2010 the total number of sanctioned posts of Postman in the Thalassery Postal Division was 96 and total number of vacant posts in the Postman in that Division as on 30/11/2010 was 14. It is also seen in Annexure A/9 information that three posts of Postman were became vacant at the Temple Gate Post Office on 12/12/2005, 31/8/2008 and 26/3/2011 and that three G.D.Ss are officiating in those vacant posts from the aforesaid dates. Applicant claims that when 14 vacancies were available as on the date of Annexure A/1 Notification, as per recruitment rules respondents ought to have set apart at least 25% thereof i.e. at least three posts to be filled up under the seniority quota of G.D.Ss. This contention is strongly refuted by the respondents by contending that out of the 14 vacancies available as on 3.11.2010 only 7 vacancies arose after the recruitment made in 2009 and only those vacancies were approved for recruitment as per Annexure A/2 and R/2 communications. It is contended by the respondents that the 7 vacancies which existed even before 2009 were kept unfilled and were kept aside for abolition as per the Government policy to abolish 5% of the posts to be filled up through direct recruitment. In the additional reply statement respondents contend that in fact three more vacancies were kept aside for



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abolition and thereby 10 posts had to be abolished in terms of the Government Policy.

7. Respondents contend that the posts as per Annexure A/2 / R/2 approval were filled up as per the reservation policy. One post was reserved for Scheduled Caste and the other was kept unreserved. According to them the candidate at Sl.No.49 in Annexure A/3 Seniority List of GDSs (as on 1.1.2010) being the senior most eligible candidate he was recruited for the unreserved vacancy and respondent No.3 who was in the Seniority List just below the applicant was selected for the post reserved for Scheduled Castes. According to the respondents selection of the aforesaid persons in pursuance of Annexure A/1 notification under the seniority quota was in accordance with the Annexure A/3 seniority list and in tune with the reservation policy.

8. Learned counsel for the applicant referred to the decisions of this Tribunal in OA No.704/2006 and OA No.349/2009. She submitted that vide Annexure A/10 order dt. 23/4/2007 in OA 704/2006 this Tribunal held that approval of the Screening Committee was not necessary for promotion to the cadre of Postman under the seniority quota. In OA 349/2009 this Tribunal vide Annexure A/11 order dt. 22.2.2011 held that the selection and appointment of a junior candidate to the cadre of Postman overlooking the seniority of the applicant therein is arbitrary, illegal and *ultravires* of Articles 14 and 16 of the Constitution of India. Respondents contend that Annexure A/10 and A/11 orders of this Tribunal are quoted out of context and are only to mislead the Tribunal. Respondents state that the requirement of obtaining approval of Screening Committee was stopped from 2009 and hence there is no need for obtaining prior approval of the Screening Committee for filling



up the posts of Postman and that in this case no such approval was obtained from the Screening Committee. With reference to the Annexure A/11 decision of this Tribunal respondents argue that though respondent No.3 is junior to the applicant in the seniority list he was appointed in the post reserved for Scheduled Castes and hence Annexure A/11 decision is not applicable to the present case.

9. Now the amplitude of the controversy in this case has narrowed down to the question whether the respondents were justified in not including the entire 14 vacancies available as on 30.11.2010 for the recruitment process initiated under Annexure A/1 Notification? Respondents rely on a policy decision of the Government not to fill up the 7 vacancies which arose between 2005 and 2009. No record or copies of administrative instructions were produced by respondents to prove that there was such a policy decision in accordance with which certain number of posts had to be abolished. According to the applicant, the decision not to fill up the 7 out of 14 posts existed as on 30.11.2010 was prejudicial to the applicant because he had an inalienable right to be considered for those posts under the seniority quota. According to him if the entire 14 posts were notified for recruitment process there would have been at least one more post available, to be filled up under the seniority quota. He states that since the remaining other GDSs senior to him do not meet the qualifications prescribed in Annexure A/1 notification, he would have certainly got selected as Postman. He further states that though he has been subsequently selected as M.T.S., the status and pay of Postman being higher than those of the M.T.S, he has been substantially prejudiced by the non-filling of all the 14 posts of Postmen that existed on 30.11.2010.



10. We have carefully considered the arguments of the counsel appearing on both sides. Mr.Ramesh, learned ACGSC pointed out that Annexure R/3 dated 14-9-2012 Memo issued by the Chief Post Master General has authorised the abolition of 10 posts. Annexure R/3 is the very first document produced by the respondents along with their additional reply statement to indicate that authorities have taken a decision for abolition of 10 posts. But, it has to be noted that Annexure R/3 is dated 14/9/ 2012 which is an event occurred much after the recruitment process that took place as per Annexure A/1 Notification.

11. True, creation, abolition or merger etc. of posts is within the prerogative of the State. Normally the Tribunals/Courts will not interfere with the discretion of the State/administrative authorities for exercising the aforementioned functions relating to posts which are within the domain of the authorities. Nevertheless, every administrative action involving the discretion has to be exercised in a judicial manner which involves actual exercise of judgement and consideration of the facts and circumstances which are necessary to make a sound, fair and just determination and knowledge of facts upon which the discretion may properly apply.

[see *Corpus Juris Secundum* Vol. 27-29, quoted in C.K. Thakker "Administrative Law" (2nd Edition), Page 705 Eastern Book Company.]

In *Sharp v. Wakefield*, Lord Halsbury held:

" 'Discretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion ... according to law and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself." [see page 704 "C.K. Thakker (supra)"]

In *Chief Constable of the North Wales Police v. Evans* 1982 3 All ER (HL) [see Thakker "Administrative Law Page 721 (supra)"] Lord Hailsham

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said:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court."

12. In the instant case we notice that the respondents chose not to fill up 7 posts out of the 14 posts that were available as on 30.11.2010 without any proof of authority to indicate that those posts were in fact authorised to be kept aside for abolition. Annexure R/3 decision for abolition was taken at the level of Chief Post Master. But, as observed by us above, it is an event that took place nearly two years after the recruitment process in this case was concluded. It appears to us that as there is no supporting document for proving that the official respondents have validly exercised the discretion to keep aside 7 posts for not filling up it has to be held that the respondent authorities have gone into the vitiating realms of arbitrariness. Without exercising the power of abolition in a just and reasonable manner with proper justification as evidenced through records, such act of non-filling of 7 vacancies acquire the colour of *gerrymandering*, to the chagrin of the applicant and other candidates who were eligible to be considered. The Applicant therefore had lost his valuable right under Article 16 of the Constitution to be considered for a 3rd post of postman that could have been set apart under the seniority quota. The subsequent approval for abolition of the posts by Annexure R/3 does not efface the vice of arbitrariness already appearing in Annexure Nos. A/2, R/1 and R/2 during the recruitment process in this case.

13. In the above circumstances, we declare that applicant is eligible to be considered for promotion as Postman against the vacancy available on

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2010 on the basis of his running seniority against one of the vacancies falling under the 25% quota set apart for GDS and for promoting him to the post of Postman from 15/11/2010 at par with his junior respondent No.3 with all consequential benefits.

14. Respondents are directed to implement this order within 45 days from the date of receipt of a copy of this order. The O.A. is disposed of accordingly. Parties shall bear their own cost.



(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER



(U. SARATHCHANDRAN)
JUDICIAL MEMBER

sj*