

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 1/2002

MONDAY, THIS THE 11th DAY OF OCTOBER, 2004.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. K. Vasudevan Achary S/o late P. Kunchu Achary
Assistant Director of Postal Services
Office of Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram-695 033
residing at Anisham, TC 23/939-4
Valiyasala, Thiruvananthapuram.
2. K.M. Kumaran S/o K.M. Kannan
Assistant Director of Postal Services
Office of Post Master General,
Central Region, Kochi-682 016.
residing at 43/2296, Near Mosque, SRM Road,
Kochi-18.
3. M. Ananthakrishna Iyer S/o Sri V. Mahadeva Iyer
Assitant Director of Postal Services
Office of Postmaster General,
Central Region, Kochi-682 016
raesiding at 43/2297, Near Mosque
SRM Road, Kochi-18
4. A. Raja S/o Aliar Kunju
Superintendent, Circle Stamp Depot
Ernakulam, Kochi-682 020.
residing at 64/4, Satellite township
Padamugal, Kakkanad West
Kochi-30
5. P.K. Narayanana S/o Sri K. Kesavan
Superintendent of Post Office
Changanacherry Division
Changanachery-686 101
residing at Peeroosha, Kollad
Kottayam.
6. C.A. Mathew S/o late Abraham
Deputy Superintendent, RMS EK Division,
Kochi-682 011
residing at Chevakachalil, Arakunnam PO
Ernakulam.
7. T.P. Nambiar S/o Sri Govindan Nambiar
Assistant Director of Postal Services
residing at 27/684, Sreepadmam, Kuthiravattom
Calicut.
8. K. Ramachandran S/o late K.N. Krishnan Pillai
Assistant Director of Postal Services
Office of Postmaster General,
Central Region, Kochi-682 016.
residing at Pournami, AKG Road, Thykoodam
Vytttila P.O., Kochi-19.

9. N. Gopalakrishnan Nair S/o late N. Kesavan Nair
Assitant Director of Postal Services
Office of the Chief Postmaster General
Kerala Circle, Thiruvananthapuram-695 033
residing at Aswathy House, Niranam PO
Tiruvalla.

Applicants

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Director General
Department of Posts
Dak Bhavan, New Delhi-110 001.
2. Union of India
represented by its Secretary
Government of India
Ministry of Personnel, Public Grievances
& Pension, Department of Personnel & Training
New Delhi.-110 001.

Respondents

By Advocate Mr. C. Rajendran, SCGSC

The Application having been heard on 13.7.2004 the Tribunal delivered the following on 11.10.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicants, all belonging to the General category, were appointed to the IPO/IRM cadre in the order of merit in a competitive examination held in November, 1972. They were allotted different seniority positions from 50 to 103 in that cadre. They were promoted to the Postal Service Group-B cadre in the 1992 batch and were allotted different seniority positions in the serial from 625 to 666 as on 31.12.1999. They are aggrieved by the fact that SC/ST candidates who had been selected through the same 1972 Examination and were allotted lower positions in the order of seniority, were promoted to the Group-B Postal Service in 1989 (i.e. three years earlier) and went on to be inducted into the Junior Time Scale of the Indian Postal Service between 1998 and 2000, some of them in excess of quota, while they, despite their seniority are languishing in Group-B

12-1-20

Postal Service. They are further aggrieved by the fact that subsequent batches of SC/ST candidates who joined the IPO/IRM cadre from 1973 to 1975 were promoted to the Group-B Postal Service between 1989 and 1991 and some of them have been already inducted into the Group-A of Indian Postal Service. It is their contention that the accelerated promotions given to SC/ST officers, as reflected in the A-16 Seniority list of Group-B Postal Service, has placed them in seniority positions far below these SC/ST officers in disregard of the 'Catch-up' rule propounded by the Supreme Court in Ajit Singh II (1999 7 SCC 209). It is also their contention that A-14 and A-15 orders granting promotions to such juniors, to the Postal Service Group-A as reflected in the A-19 seniority list, while they were still continuing in Group-B, has further widened the gap. Their representations against the unjust treatment meted out to them, have been rejected without considering the full implication of these irregular promotions granted to SC/ST officers in contravention of the principle enunciated by the Apex Court in Union of India Vs. Virpal Singh Chauhan and Others (1995) 6 SCC 684) followed in Ajit Singh Junuja Vs. State of Punjab (1996) 2 SCC 715 and approved by the Constitution Bench in Ajit Singh and Others(II) Vs. State of Punjab and Others (1999) 7 SCC 209).

2. So aggrieved, they are seeking the following reliefs:

- (i) to call for the records relating to Annexure A-16 Seniority list of PS Group-B Officers as on 31.12.1999 and to set aside the same to the extent roster point promotees are given higher rank and seniority over the applicants herein and also set aside Annexures A-14 and A-15 promoting the roster promotees to JTS of IPS Group-A without considering the applicants who are seniors to them by the application of 'catch-up rule' propounded by the Hon'ble Supreme Court in Ajit Singh-II reported in

(1999) 7 SCC 209 and to quash the decisions of the Postal Directorate communicated in Annexures A-18(a) to A-18(i) rejecting representations filed by the applicants.

(ii) to issue appropriate direction or order directing the respondents to amend the Seniority list in the cadre of PS Group-B in respect of the applicants who reached that level before the roster promotees were promoted to TS of IPS Group-A assigning rank and seniority to the applicants above the roster promotees in terms of the seniority position at the basic cadre of IPO/IRM.

(iii) to issue appropriate direction or order directing the respondents to promote the applicants to the JTS of IPS Group on the basis of the seniority and rank reassigned applying the 'catch-up rule' in terms of Ajit Singh-II with effect from the dates of their entitlement with reference to their revised seniority, with all consequential benefits and also to amend Annexure A-19 Civil List on that basis

(iv) to issue appropriate direction or order directing the respondents to push down the excess roster promotees in the cadre of JTS of IPS Group-A applying the post based roster as directed in Annexure A-11 OM dated 2.7.1997.

(v) to set aside Annexure A-12 OM dated 30.1.1997 to the extent it restricts the operation of the instructions contained therein from the date of its issue, namely, 30.1.1997 and to the extent it is not made applicable to the cases prior to 30.1.1997 and also to set aside Annexure A-13 OM dated 21.3.1997 which conflicts with the ratio of the decision in Ajit Singh-II reported in (1999)7 SCC 209.

(vi) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case such other and

(vii) to award costs to the applicants

12-6-24

3. The learned counsel for the applicants argued that Annexure A-14 and A-15 orders promoting Postal Service Group-B officers to the Junior Time Scale of the Indian Postal Service on the basis of their accelerated seniority and rank assigned to roster-point promotees in excess of quota of reservation was contrary to Annexure A-11 set of orders (effective from 1.7.1997) on post-based rosters, and violated the principles set in the declaratory judgments of the Supreme Court of India. Referring to Annexure A-12 memo of the Department of Personnel and Training dated 30.1.1997, he argued that by making this order effective from the date of issue (i.e 30.1.1997) the policy-makers in effect restricted the scope of application of the ratio emerging from the Apex Court's judgments in Virpal Singh Chauhan 1995 (6) SCC 684 and in Ajit Singh Januja Vs. State of Punjab (1996) 2 SCC 715). The effect of declaration of law made by the Supreme Court in Ajit Singh-I, approving the judgment in Virpal Singh Chauhan is that it must apply to acts, which have been completed, or to interests which had vested before the declaration of the law made by the Apex Court. It necessarily means that the specious seniority given to those roster promotees cannot be maintained and kept up. Annexure A-12, to the extent it directs that the instructions on the basis of the judgment of the Supreme Court need be given effect to from the date of issue of A-12 memo is clearly ultra vires. The learned counsel emphasised that the second respondent has no authority to restrict the operation of the declaration of law made by the Apex Court by giving it only prospective application. Referring to the judgment of the Supreme Court in Ajit Singh-II (1999 (7) SCC 209) the learned counsel pointed out the Apex Court ruling

12-1-22

that in case any senior general candidate at level-2 reaches level-3 before the reserved candidate at level-3 goes further up to level-4, then the seniority at level-3 has to be modified by placing such a general candidate above the roster-promotee reflecting their inter-se seniority at level-2 and further promotions to the level-4 must be on the basis of such a modified seniority at level-3. The Supreme Court had also held that while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority. He argued that seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed and will count only from the date on which they would have otherwise got normal promotion in any further vacancy arising in a post previously occupied by a reserved candidate. It follows that the applicants who are seniors to the roster point promotees shown in Annexure A-10 statement, in the basic cadre of IPO/IRM, would regain seniority in the cadre of Postal Service Group-B when the seniority list is modified in accordance with the principles laid down and accordingly their claims for promotion to the Junior Time Scale of the Indian Postal Service cannot any more be overtaken by the roster promotees. No protection against reversions would be available to those promoted after 1.3.1996.

4. The learned counsel for the respondents submitted that the DOPT OM dated 30.1.1997 issued in compliance of the direction of the Supreme Court in Virpal Singh Chauhan's case could have been applied only prospectively as a close reading of the text of the judgments would show that the question of protection would arise for excess roster-promotees and not to

12-1-22

roster promotees as a class, for they would require no such protection. The applicants, he argued, have reached an arithmetical conclusion by counting numbers, disregarding the extant rules at that point of time to the effect that number of SC/ST candidates equal to the reserved vacancies notified were treated as reserved category candidates and those in excess of that number who got promoted due to their place in the zone of consideration on the basis of their seniority were treated as general candidates. That, according to the respondents, explained the numbers that are misconstrued by the applicants as excess over quota. Arguing that there is a continuity of policy behind the instructions on the handling of the quota related numbers, he pointed out that as per the latest instructions issued by DOPT, the SC/ST candidates who get promotion on their own merit will be treated as general category candidates and vacancies of SC/ST candidates will be filled up through those SC/ST candidates who figure at the bottom of the zone of consideration and through extended Zone, if necessary. Referring to DOPT OM dated 21.1.2002 (Annexure R1) he submitted that the applicants have no case as the A-12 OM dated 30.1.1997 stands withdrawn from that date itself in pursuance of the Constitution (eighty-fifth) Amendment Act 2001. Thus, it would have to be conceded by the applicants that the catch-up rule does not even exist. If there is no A-12 OM, there is no catch up rule and hence date of effect of the OM is only a fictional point for adjudication. As the Government sought to negate and thereby neutralise the effect of A-12 OM, they amended the Constitution by replacing the words "in matters of promotion to any class" by the words "in matters of promotion, with consequential seniority, to any class" in Art. 16(4A). This Act, which received the

12.6.20

Presidential assent on 4.1.2002, was deemed to have come into force on 17.6.1995. Thus, from that date onwards no consequential seniority enjoyed by roster promotes can be questioned on the ground of its legality or constitutionality. So, the seniority list as on 31.12.1999, which purportedly depicts the culminating seniority in Postal Service Group-B would remain unassailable. Nor would it be in order to challenge the seniority list as on 1.1.1995 after a prospective seniority list has come to attain finality under constitutional guarantee.

5. The learned counsel for the applicants, responding to the argument of the respondents with reference to the Eighty-fifth Constitutional Amendment that protected consequential seniority argued that the benefit of this Amendment can be claimed only by those who were promoted against reserved roster on or from 17.6.1995 and not those who came to be promoted long prior to 17.6.1995. He reiterated that the applicants are claiming priority over those roster promotees who came to be promoted to the cadre of Postal Service Group-B before 1992, and more precisely, before the date of promotion of the applicants to the cadre of Postal Service Group-B. The applicants were selected for promotion to Postal Service Group-B by the DPC held in 1992 and they were promoted on various dates in the months of November and December, 1992. Therefore, the learned counsel for the applicants argued, the Eighty-fifth Constitutional Amendment Act, applicable from 17.6.1995 cannot have any application to the issues involved in the Application. The applicants should have regained their seniority over the roster-promotees in the cadre of Postal Service Group-B

12-1-2

'co-instanti' on being promoted to PS Group-B in November/December, 1992, before the roster promotees came to be promoted to IPS-JTS, in pursuance of the Apex Court decisions already cited. As a corollary, the roster point promotees cannot steal a march over the applicants for promotion to Group-A even after 17.6.1995. Responding to the position of the respondents that number of promotions in excess of quota in respect of SC/ST officers was against general quota due to their seniority in the zone of consideration, the learned counsel for the applicants pointed out that seniority positions gained in PS Group-B seniority list by SC/ST Officers were on account of their having received out of turn promotions against reserved points. Thus, the SC/ST officers were not promoted on merit and hence the instructions of DOPT dealing with the placement of merit promotees from amongst SC/ST, would be wholly misplaced in the present context. If the existing rules and orders had been strictly followed, there would have been no excess over and above the quota specified for SC/ST officers. The learned counsel for the applicants, also brought to our notice that the Constitution (Eighty-fifth) Amendment Act 2001 is under challenge before the Supreme Court in WP(Civil) No. 61 of 2002.

6. Heard. The worthy counsel for the parties (Shri O.V. Radhakrishnan for the applicants and Sri C. Rajendran for the respondents), through their exhaustive arguments and painstakingly complied details, have rendered our task in the complex array of legal subtleties, constitutional mandates and policy imperatives, mercifully easier, so that we deliver justice without being enmeshed in procedural booby traps. We

12-8-22

can now see clearly that after the amendment of Art. 16 (4A) of the Constitution, and the withdrawal of Annexure A-12 OM from its date of issue (30.1.1997), the field is cleared of any fallout of the 'catch-up' rule as the rule itself has been withdrawn leaving no one in doubt as to whether the seniority of Government servants determined in the light of OM dated 30.1.1997 shall be revised as if that OM was never issued. Thus, the judgments of the Hon'ble Supreme Court in Virpal Singh Chauhan and Ajit Singh et al would have to be read from 17.6.1995 onwards in the light of the Eighty-fifth Amendment. Would that then not leave scope for applying the judgments to a period in time that preceded the amendment? We would reply in the negative, as we hold that those SC/ST officers who have been promoted prior to 17.6.1995 by virtue of rule of reservation and are enjoying the consequential seniority of that promotion 17.6.1995 onwards would retain their status and be eligible for further promotion if eligible, without being unsettled by the 'catch-up' rule. The applicants could have involved OM of 21.1.2002 (Annexure R1) had they been actually the beneficiaries of the 'catch-up' rule before the issue of the OM, if not for seniority, atleast for the protection of their promotion and pay. The applicants failed to get the benefit of A-12 as it was made applicable from 30.1.1997, and there was no way in which they could have been bestowed the benefit when there was no retrospective application. The judgment in the case of Union of India Vs. Virpal Singh Chauhan was delivered on 10.10.1995. If the constitutional Amendment came into force on 17.6.1995, then it has to be conceded that there was no locus for the claim now, unless the applicants had come to enjoy the benefits of the Court judgment which the subsequent

12.1.20

constitutional amendment sought to take away in a retrospective sweep. The cases of the applicants are rooted in 1992. To cite only one case for clarity the first applicant Vasudev Achary was at Sl. No. 50 in the IPO/IRM seniority list in 1972, while K. Babu Naik (ST) was at Sl. No. 157 of the same list. But, in application of the reservation rules Babu Naik was promoted to Postal Service Group-B in 1989, while Vasudev Achary had to wait until 1992 for his promotion to PO Group-B. If Vasudev and any of the present applicants were aggrieved by this, they should have sought redressal of their grievance at the appropriate time in appropriate forum. They did not do so, ostensibly because there was no rule or court ruling they could rely on. Their grievance, in principle taken up by Virpal Singh Chauhan and contested by the government of India led to the enunciation of the catch-up rule in judgment delivered by the Supreme Court on 10.10.1995, but the benefits would not accrue automatically to Vasudevan Achary and others in the Postal Department as they were not parties in the case and the A-12 memo in implementation of Court directive was made applicable w.e.f. 30.1.1997. By 30.1.1997 the reserved candidates were already settled in points of higher seniority over the applicants and their next promotion was to the JTS of Indian Postal Service. Going strictly by the rule, the respondents held that JTS of IPS would not be the stage where the applicants would be entitled to catch up with the seniority lost owing to accelerated promotion of roster point candidates. This view of the respondents was not challenged at that point of time. The Apex Court in its judgment in the case of Ajit Singh II went on to lay down the modalities of the operation of catch-up rule in the context of reserved

candidates promoted in excess of roster points. The Hon'ble Court observed that "seniority in the promoted cadre of such excess roster point promotees shall have to be reviewed after 10.2.1995 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post which was previously held by a reserved candidate." The only residual point that remains in the light of this declaration of principle is whether there were any reserved category promotees in excess of the roster points due. The applicants have reached a conclusion by arithmetical computation that there were excess quota promotees while the respondents have contended that they were in fact promoted against the general category owing to their seniority in the Zone of consideration. The applicants have contested this contention without showing how that could not be so. We have scrutinised the details submitted to us with reference to the seniority list. Mere identification of a candidate as SC or ST in these lists would not imply that they are all promoted by applying the quota rule. If there are SC or ST candidates in the Zone of consideration beyond those promoted by application of quota, then how would these persons be promoted? Evidently, they would take their normal place along with general candidates and places taken by them would not be reckoned for the purpose of quota calculation. In regard to the operation of post based roster, the roster is to be operated on the principle of replacement and not as a 'running account' as it was run until 2.7.1997. On 2.7.1997, the post based roster system was made effective in line with the decision of the Constitution Bench of the Supreme Court in the case of R. K. Sabharwal Vs. State of Punjab (1995)2 SCC 745) and J.C. Mallick Vs. Ministry of

12-1-22

Railways (1978 (1)SLR 844). The Court had held that the vacancy based roster can operate only till such time as the representation of persons belonging to reserved categories, in a cadre, reach the prescribed percentages of reservation. That being the guideline built into the 2.7.1997 orders, it could be seen that after that date, points would be plotted upon roster promotees in a cadre and those points alone would be filled up when vacancies are released by retirement, resignation or promotion. The applicants have made an emphatic plea that the post based system was given a go by as vacancies went on being filled by reservation irrespective of the fact that the roster was fully used up, thereby promoting in excess of quota. They have however failed to show how on a point to point reckoning quota has been exceeded. As we have stated earlier mere arithmetical excess would signify nothing much on the face of the averment by the respondents that those in excess of the quota limit were promoted in the order of their seniority and did not occupy reserved points. That the roster-promotees were fortuitous beneficiaries of earlier promotion and hence their subsequent promotion, because they are in excess of quota, must be hit by the Ajit Singh II ratio, is atbest a matter of speculation without evidence as we have not been shown how the roster was injudiciously or irregularly administered.

7. In conspectus, we find no infirmity in Annexures A-14, A-15 orders, and find nothing objectionable in the Anneure A-16 seniority list. Consequently we see no locus for issuing the directions sought for by the applicants.

12.6.22

Annexure A-12 as already stated stands withdrawn from the date of its issue and hence no decision on the scope of its application would be warranted. Thus, there are no grounds for considering the application.

8. In the result, we dismiss the Application leaving the parties to bear their own costs.

DATED 11.10.2004.

H. P. Das
H.P. DAS
ADMINISTRATIVE MEMBER

kmn


A.V. HARIDASAN
VICE CHAIRMAN