

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 140 of 1996

Tuesday, this the 11th day of November, 1997

CORAM

HON'BLE MR. PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. AM SIVADAS, JUDICIAL MEMBER

1. N.M. Kevalan, S/o Marathan,
Extra Departmental Delivery Agent,
Koratty, Kizhakkummuri PO, residing at
Nedumpilly House, Koratty Kizhakkummuri PO.
Pin - 680 308

.. Applicant

By Advocate Mr. MR Rajendran Nair

Versus

1. The Chief Post Master General,
Kerala Circle, Trivandrum.
2. The Superintendent of Post Offices,
Irinjalakuda Division, Irinjalakuda.
3. Sri K.R. Raghunandanan, Postman,
Irinjalakuda Division,
Kakkanattu Veedu, Pulloottu PO,
Trissur District.
4. Union of India represented by
Secretary to Government,
Department of Posts, New Delhi.

.. Respondents

By Advocate Mr. Mathews J. Nedumpara, ACGSC (R1, 2 & 4)

The application having been heard on 11.11.1997, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant is an Extra Departmental Delivery Agent in
the Koratty, Kizhakkummuri Post Office. He had appeared for
the examination for promotion in the cadre of Postman held on
13.11.1994. He belongs to the Scheduled Caste and one vacancy
had been notified for Scheduled Caste in the departmental quota.

contd.

One vacancy reserved for Scheduled Caste Extra Departmental Agents was set apart for the seniority quota. There were no suitable candidates from the Scheduled Caste available for promotion in the departmental quota. There were also no suitable general candidates available against the departmental quota. Therefore, as provided in the rules, the 5 vacancies available for the departmental quota were transferred to the Extra Departmental merit quota, thus bringing the vacancies to be filled up under the Extra Departmental merit quota to 7 and the vacancies to be filled up under the Extra Departmental seniority quota to 3. The grievance of the applicant is that when the 5 departmental quota vacancies were added to the Extra Departmental merit quota, the reservation of one vacancy made for the Scheduled Caste in the departmental quota was not made available to be filled up from the Extra Departmental merit quota. His contention is that if such a vacancy had been provided for Scheduled Caste in the Extra Departmental merit quota after transferring the departmental quota vacancies to the Extra Departmental merit quota, he as a Scheduled Caste candidate would have had a chance for appointment as Postman. The applicant submitted a representation in this behalf (A-4 dated 27.1.1995) which was rejected by A-5 order dated 22.2.1995. He thereupon approached the Tribunal in OA No.512/95, which was disposed of by the Tribunal with a direction to the Chief Postmaster General, Kerala Circle, to consider the representation of the applicant. Applicant thereupon submitted a representation (A-7 dated 27.4.1995), which has been rejected by the impugned order A-8 dated 2.6.1995. Applicant prays that A-8 be quashed and for a declaration that the vacancy reserved for Scheduled Caste in the departmental quota is liable to be filled by Extra Departmental Agents belonging to Scheduled Caste and for a direction to respondents 1, 2 and 4 to consider the applicant for promotion

contd.

as Postman against the vacancy reserved for Scheduled Caste in the quota for departmental candidates which was transferred to the merit quota for Extra Departmental candidates with consequential benefits. There is also a prayer to declare that the promotion granted to the 3rd respondent who is a general category candidate against the vacancy reserved for Scheduled Caste is illegal and that the selection A-3 be quashed to the extent that the 3rd respondent is selected and appointed as Postman.

2. Respondents 1, 2 and 4 have stated in the impugned order that the applicant was under a misunderstanding that when the vacancy reserved for Scheduled Caste under departmental quota is offered to outsiders based on merit in the examination, the outsider should also be a Scheduled Caste candidate. According to respondents, the reservation of vacancy in the cadre of Postmen for Scheduled Caste departmental candidates is according to the rules of reservation for promotion and selection of outsiders to the cadre is a direct recruitment and reserved vacancies under these two categories cannot be interchanged. The unfilled quota for Scheduled Caste under departmental quota is to be carried forward and the principles of reservation are to be observed accordingly.

3. Respondents 1, 2 and 4 have adopted the same stand in the reply statement, where they state that in the absence of qualified departmental candidates the unfilled vacancies in the Departmental quota will be added to the quota for Extra Departmental Agents on the basis of merit. The unfilled vacancies of departmental quota transferred to the outsiders quota will go to the Extra Departmental Agents on the basis of merit only and the reserved point in the departmental quota will be carried forward to be filled in by qualified departmental candidates in subsequent years.

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Respondents 1, 2 and 4 submit that there is no provision for transferring the reserved point in the departmental quota to the outsiders quota.

4. The question, whether the reservation of a vacancy will be dereserved and carried forward when the vacancy is transferred from one mode of selection to another, was considered by the Hon'ble Supreme Court in Civil Appeal No. 2235 of 1997 which was disposed of on 17.3.1997. The rule governing the selection in this application is as follows:-

"Col.11-Method of recruitment-

- 1) 50% by promotion failing which by ED Agents on the basis of their merit in the Departmental Examinations.
- 2) 50% by ED Agents of the recruiting Division or unit in the following manner, namely:-
 - i) 25% from among ED Agents on the basis of their seniority in service and subject to their passing the Departmental examination, failing which by ED Agents on the basis of merit in the Departmental examination.
 - ii) 25% from amongst ED Agents on the basis of their merit in the Departmental examination."
(emphasis added)

In the case considered by the Hon'ble Supreme Court, the rules postulated three sources for recruitment, first by promotion; failing that, by transfer; and failing both, by direct recruitment. The Supreme Court held:

"Admittedly, the post was reserved for Scheduled Castes. Accordingly, the respondent was called for selection. When the candidate was available, resort to dereservation is clearly illegal and, therefore, the Tribunal was right in giving the direction to appoint the respondent who was duly selected by the Committee."

The Supreme Court thereby upheld the direction of the Tribunal in OA No. 1399/95, where the Tribunal had held:-

"According to respondents the vacancy is a promotion vacancy and there is no reserved candidate and the post has to be

contd.

dereserved. The method of recruitment is seen in Annexure.R.1(a). It states:

"by promotion failing that by transfer and failing both by direct recruitment"

This is a case where there are three alternate methods of appointment with three eligible categories. It cannot be said that there is no candidate belonging to the reserved group, unless the three alternatives are exhausted and there is no reserved candidate. The three categories are alternative categories. If there is no scheduled caste employee for promotion, then the department has to look for a scheduled caste employee by transfer and if there is no scheduled caste employee in either case, then they must go for a scheduled caste employee by direct recruitment. If they fail in all these, then only they can dereserve and make a promotion from the general category."

The law laid down clearly is that a reservation in the promotion mode will be transferred as a reservation in the direct recruitment mode, if the rules for selection provide for promotion failing which direct recruitment.

5. In the application before us also if there are no candidates available for filling up the 50% quota by promotion, then the vacancies will go to Extra Departmental Agents on the basis of their merit. Therefore, if there is no Scheduled Caste candidate available for filling up the reserved vacancy by promotion, then that vacancy will have to be transferred to be filled by an Extra Departmental Agent on the basis of his merit and who belongs to the Scheduled Caste category. Only if both these methods fail, the reserved vacancy can be carried forward to subsequent years.

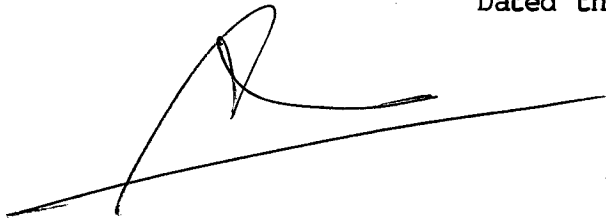
6. Following the law laid down by the Hon'ble Supreme Court, we declare that the vacancy reserved for Scheduled Caste in the departmental quota and for which there is no suitable candidate available, should be filled by a Scheduled Caste candidate belonging to the Extra Departmental Agents category to be filled on the basis of merit. The first respondent is directed to

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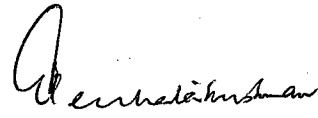
reconsider the selection already done on 13.11.1994 in the light of the above declaration and pass appropriate orders within three months from today. In order to enable the first respondent to do so, we quash A-8 and direct that A-3 selection will stand modified in the light of the orders that will be passed by the first respondent in pursuance of our above direction.

7. The application is disposed of as aforesaid. No costs.

Dated the 11th of November, 1997



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKĀTAKRISHNAN
ADMINISTRATIVE MEMBER

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LIST OF ANNEXURES

1. Annexure A3: Memo No.B2/CON/Rectt/P'man 1994 (2) dated 15.12.94 issued by 2nd respondent.
2. Annexure A4: Representation dated 27.1.1995 submitted by applicant to the 2nd respondent alongwith English Translation.
3. Annexure A5: Order No.B2/Rectt/Postman/94(2) dated 22.2.1995 issued by 2nd respondent to the applicant.
4. Annexure A7: Representation dated 27.4.1995 submitted by applicant to the 1st respondent.
5. Annexure A8: Order No.CC/2-58/95 dated 2.6.1995 issued by 1st respondent to the applicant.

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