

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA. NO. 187/2003

MONDAY THIS THE 9th DAY OF JANUARY, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER**

MC Vijayan

Mail Guard, Sub Record Office
Railway Mail Service
Kayamkulam.

..Applicant

By Advocate Mr. Thomas Mathew.

Vs.

1 Senior Superintendent
Railway Mail Service
TV Division
Trivandrum.

2 Chief Post Master General
Kerala Circle,
Trivandrum.

3 Union of Indian
represented by Secretary
Department of Posts
New Delhi.

4 Director,
National Commission for SC & ST
Kerala & Lakshadweep
Vazhuthacaud,
Trivandrum.

..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

The applicant is working as a Mail Guard in the Sub Record Office, Railway Mail Service (RMS), Kayamkulam and is a member of the

Scheduled Caste community. His next promotion is to the post of Sorting Assistant, 50% of the vacancies of the Sorting Assistants are to be filled up by promotion. The applicant is aggrieved that though he is eligible and qualified to be considered for promotion against S.C. quota for departmental vacancies, the respondents have not correctly calculated the vacancies and had not applied the relaxed standards which have been prescribed for SC candidates. The Departmental Examination was held on 22.4.2001 in which the applicant participated. The examination was meant for filling up of 16 posts of Sorting Assistants as intimated in the circular issued by the first respondent dated 30.1.2001. According to the mark sheet obtained, the applicant had secured 35 marks in Part-I, 35 marks in Paper-II and 31 marks in Paper-III. The applicant being a member of the SC community was entitled for consideration with relaxed standards and he submitted a representation accordingly (Annexure A-5) to which it was replied that there was no vacancy in the post of Sorting Assistant under the SC quota. The applicant had again represented the matter requesting for an enquiry into the number of vacancies to which the respondents replied that he could not be promoted as he did not obtain the required percentage of marks in the written examination. The applicant further represented to the 4th respondent for re-valuation of the answer papers which has not been replied to by the respondents. The applicant therefore challenges the replies given by the respondents to the representations stating that he has not obtained the prescribed percentage of marks and also that there are no vacancies in the SC quota.

2 The respondents have denied the averments of the applicant, in the reply statement. They have stated that the examination for promotion of lower grade officials to the cadre of Sorting Assistants was held on 22.4.2001 in RMS TV Division and only one candidate namely Shri

Mohanam was selected and the result was communicated to all concerned. At the time of inviting application from candidates it has been notified that the minimum qualifying marks for the unreserved posts would be 40% in each paper and the qualifying marks for posts reserved for SC/ST would be 33% of marks for each paper. The applicant has secured only 31 marks out of 100 in Paper-III, thus he did not qualify even on the relaxed standard prescribed for SC./ST. There is no provision to consider SC candidates under relaxed standard for promotion against an unreserved vacancy. On the question of vacancies they have contended that the total number of departmental quota posts available as on 1.1.2001, the crucial date taken for calculation of vacancies for the Recruitment Year 2001 were 95. According to the reservation the strength of each category would be unreserved- 74, SC-14, ST-7 total 95. Thus, there was over-representation of SC officials in the Division and there was no selection made under the ST category in the recruitment year 2001 under that quota. There were only 16 vacancies of Sorting Assistants to be filled in the Division from among the departmental candidates. Regarding re-valuation of the answer papers, it was stated that there was no provision in the rules for re-valuation of Answer papers and that only re-totalling/verification of marks could be done on payment of the prescribed fee.

3 The applicant has filed rejoinder disputing the stand of the respondents that there is no short fall of SC community in the Departmental quota in the RMS TV Division. According to him there was a shortfall of 13 vacancies in SC community at the material time and the respondents ought to have considered the applicant even if he had not acquired the required percentage of marks in terms of Annexure A-12 memorandum dated 3.10.2000. The respondents have not correctly calculated the number of posts in the Department for reserved categories.

The split up of departmental posts given by the respondents is factually incorrect as the total number of posts in the cadre of Sorting Assistants in the RMS TV Division was 471, 50% being earmarked for promotion, the actual departmental quota should have been 235 posts. This is evident from the gradation list produced at Annexure A-15. Therefore, at least 35 posts should have been earmarked for SC community and hence there was no justifiable reason for not making any selection in the SC category.

4 Respondents filed additional reply statement accepting that the total number of posts in the Time Scale of Sorting Assistants was 471 but that 50% of the total number of vacancies arising in each year is earmarked as departmental quota and sufficient number of lower grade officials are not qualifying in the examination for promotion of Lower Grade Officials on the basis of the qualifying examination being conducted for the purpose. The remaining 50% vacancies are filled up by direct recruitment. If sufficient number of officials does not qualify in the examination for promotion candidates selected by direct recruitment are appointed to fill up the vacancies earmarked for departmental quota. The required number of departmental officials had not appeared for the examination many a time. If at all they appeared the required number of candidates do not come out successful. As a result, the number of direct recruits outnumbered the departmental promotees. It was under these circumstances that the number of departmental candidates had been reduced to 95. Though the applicant had appeared in the examination six times he could not come out successful. Even in the examination held on 27.4.2003 for the seventh time he failed. There were 16 unreserved vacancies to be filled up on the basis of the result of the examination conducted on 22.4.01. But only one candidate passed the examination and 15 unfilled vacancies have to be filled up by direct recruitment after getting clearance from the Screening

Committee constituted for the purpose. To this, the applicant has filed additional rejoinder quoting the judgment of the Apex Court in R.K. Sabarwal's case. According to him the principle of reservation for the posts of SC/ST should apply to the posts and not vacancies as per the Apex Court judgment. The departmental quota had risen as evidenced from A-11 and the contention of the respondents that there was no vacancy of Sorting Assistants under SC quota for departmental candidates is totally erroneous. He also contended that as per the Department of Personnel and Training OM dated 3.10.2000 he is entitled to be considered for promotion even if he has failed in one subject and this has been again duly clarified by the Department of Telecom. letter dated 30.11.1992.

5 We have heard learned counsel for both sides. Two questions have been raised by the applicant in the O.A namely (i) whether the vacancies as on 1.1.2000 had been correctly estimated under the departmental quota; and (ii) whether the applicant was eligible for consideration under the instructions relating to relaxed standards, even if he has failed in one paper. Since the second issue is relevant only if the existence of a reserved vacancy is confirmed, we shall deal with the question of vacancies first. As directed by us the respondents have produced the Reservation Roster maintained by them for the category of Sorting Assistants. It is particularly maintained as per the orders contained in DGP&T letter dated 21.8.2001 according to which the vacancy based rosters were replaced by post based rosters. The roster produced before us is only pertaining to the Departmental officials namely the posts which are to be filled by "promotion". As on 31.12.2000 the number of posts are shown as 95 whereas the roster points are kept at 111. The next entry as on 1.1.2002 shows that there are 95 posts and the posts sanctioned was 90. These entries have been revised based on certain observations by the

Director of Postal Circles and in the revised the number of posts are shown as 484, the departmental quota points as 106 and it is indicated that 378 posts were covered ^{under} direct recruitment. The total number of posts filled are 90. As on 1.1.2003 the total number of posts filled were 86 against 110 posts. As on 1.1.2004 the total posts filled got reduced to 79 on account of abolition of 21 posts and the departmental quota is shown as 95. For the subsequent year on the same lines total strength has been maintained and the strength of departmental posts filled has been reduced finally to 75 as on 1.1.2005.

6 The vacancy based rosters which were in vogue prior to 1997 came to be revised by a post based roster on the basis of the judgment of the Constitutional Bench of the Hon'ble Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab which held that reservation of jobs of SC/ST/OBC should apply to posts and not to vacancies. The Court further held that the vacancy based roster cannot operate after the representation of persons belonging to reserved categories in a cadre reaches the prescribed percentage and vacancies related to retirement/promotion, etc. belonging to general and reserved categories are to be filled up by appointment from the respective categories only so that the prescribed percentage is maintained. The Department of Personnel and Training by OM No. 36012/96-Estt.(Res) dated 2.7.1997 issued elaborate instructions for implementing the judgment of the Hon'ble Supreme Court and bringing the maintenance of reservation in line with the law. The principle of preparing the roster was elaborated in the said OM. The relevant portions are extracted below:

Principles for making and operating post based roster.

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2 The model rosters have been drawn up keeping in mind two fundamental principles- the reservation for the entitled categories is to

be kept within the prescribed percentage of reservation and the total reservation should in no case exceed 50% of the cadre.

3 There should be separate rosters for direct recruitment and for promotions where reservation in promotion applies.

4 The number of points in each roster shall be equal to the number of posts in a cadre.

5 While cadre is generally to be construed as the number of posts in a particular grade, for the purpose of preparation of roster, it shall comprise posts required to be filled by a particular mode of recruitment in terms of the applicable Recruitment Rules. To illustrate, in a cadre comprising 200 posts, where the Recruitment Rules prescribe a ratio of 50:50 for direct recruitment and promotions, the roster for direct recruitment shall have 100 points and that for promotion shall have 100 points – thus making a total of 200.

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9 Whenever there is any increase or decrease in the cadre strength, the roster shall be correspondingly expanded or contracted. The same will also apply whenever there is a change in Recruitment Rules which affects the proportion of posts to be filled by a particular mode of recruitment.

10 The roster is to be operated on the principle of replacement and not as a 'running account' as hitherto. In other words, the points at which reservation for different categories applies are fixed as per the roster and vacancies caused by retirement, etc., of persons occupying those points shall be filled by appointment of persons of the respective categories.

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Initial Operation

1 At the point of initial operation of the roster, it will be necessary to determine the actual representation of the incumbents belonging to different categories in a cadre vis-a-vis the points earmarked for each category viz, SC/ST/OBC and General in the roster. This may be done by plotting the appointments made against each point of roster starting with the earliest appointee. Thus, if the earlier appointee in the cadre happens to be a candidate belonging to the Scheduled castes, against point No. 1 of the roster, the remark "utilised by SC" shall be enter. If the next appointee is a General category candidate, the remark "untised by General category" shall be made against point No. 2: and so on and so forth till all appointments are adjusted in the respective rosters. In making these adjustments, SC/ST/OBC candidates on merit, in direct recruitment, shall be treated as General category candidates.

2 After completing the adjustments as indicated above, a tally should be made to determine the actual percentages of representation of appointees belonging to the different categories in the cadre. If there is an excess representation of any of the reserved categories, or if the total representation of the reserved categories exceeds 50% it shall be adjusted in the future recruitment. Vacancies arising from retirement, etc. of candidates belonging to such categories shall be filled by appointment of candidates belonging to the categories to which the relevant roster points, against which the excess occur, belong.

3 Since recruitment is generally, vacancy based, it may happen that the actual number of promotees and direct recruits in the cadre does not correspond to the number of posts earmarked in the respective reservation roster. For the purpose of calculations of representation of reserved category in a cadre, total of promotees and direct recruits may be taken. Rectification of the representation as per prescribed percentage by the prescribed mode of recruitment at the earliest possible should however be the goal.

7 Viewed against above principles embodied in the said OM, the roster submitted by the department suffers from various lacunae. It is stated on the first page of the roster that it has been prepared in accordance with the above instructions which had been communicated by the DG P&T letter dated 21.8.1997. The first principle laid down is that in a cadre comprising specific number of posts and where the Recruitment Rules prescribed the ratio for direct recruits and promotees the roster should comprise of the number of posts required to be filled up by a particular mode of recruitment. In this case admittedly the number of posts as on 1.1.2001 was 471. This seems to be the position at the time of initiation of the roster also. Therefore if the Roster produced before us is only for the promotion quota it should have been posted with 235 posts since the Recruitment Rules prescribed a ratio of 50:50 for direct recruitment and promotees whereas the roster shows only 111 points. If 235 points had been allotted in the roster, the SC vacancies would have been more than 30 as contended by the applicant. The respondents' stand is that the actual number of posts being 111, in that there was an excess representation of SC i.e. against 15 posts earmarked there are 28 SC persons in position. The question of excess representation has to be determined on the total number of posts. It is evident from para 3 of instructions relating to initial operation quoted above that for the purpose of calculation of representation of reserved category in the cadre the total number of direct recruits and promotees may be taken. Since the roster pertaining to direct recruits is not available with us we cannot categorically

say that there was any excess or not in the SC reservation quota. However, the point remains that the posting of the roster points was not in accordance with the OM referred to above. We also find that many general candidates are shown against SC point and vice versa. The applicant is contending that there were 4 retirement vacancies of SC candidates as per para 5 of the OA, which position is confirmed from the roster as per the remarks in column 6 thereof. But these persons are found to be shown against unreserved vacancies and not against SC vacancies and there is no entry "as utilised by S.C." as was required to be done. Had they been shown against SC vacancies according to the principle of roster, these vacancies could have been filled by persons of respective category i.e. SC only as the roster is to be operated on the principle of replacement and not as a running account as contended by the applicant. The respondents also contended that they could not fill up the number of operating vacancies as number of persons from the lower feeder cadres were not appearing in the departmental examination and even if they appeared they were not qualifying in the test. Therefore these vacancies had to be released for direct recruitment. This can be the possible explanation for the large number of direct recruits in the cadre and corresponding reduction in the number of promotees. But it cannot have any impact on the actual reservation points fixed in the roster. The roster point can undergo a change only if there is increase or decrease in the total number of strength and in that event the roster will be either expanded or contracted. These doubts and clarifications in respect of maintenance of post-wise revised reservation roster were clarified in the CAG circular dated 23.1.1998. Doubt 9(e) ^{been} ~~is~~ clarified that in such a situation only temporary diversion of reserved vacancies falling in promotion quota to direct recruitment quota in the case of non-availability of eligible SC/ST persons in the feeder cadre would be applicable. The DOPT OM NO. 14017/30/89-Estt.(RR) dated

10.7.1990 also makes it amply clear that such diversion should be temporary and reserved vacancies falling subsequently in the direct recruitment quota will be provided to the promotees. It is not clear from the statement of the respondents how many such reserved vacancies were diverted from the promotion category to the Direct Recruit quota. The reply statement is silent on these vital aspects. In fact they contend that there was excess representation of SCs in the promotion quota which also must be redetermined as excess representation has to be determined on the total strength of the cadre. Considering all the above aspects and clarifications and instructions issued by the DOPT, we find that the respondents have not carried out a thorough exercise of assessment of the vacancies in the promotion quota and the maintenance of the roster leaves much to be desired. Only if a proper assessment is made can the contention of the applicant that a reserved vacancy was available for him as on 1.1.2001 can be determined.

8 The next question which has been raised by the applicant is that the respondents have not extended the benefit of the instructions at Annexure A-16 and A-17 dated 23.12.1970 and 4.5.1981 respectively and which were further confirmed in Department of Personnel and Training OM dated 3rd October, 2000 regarding prescription of lower limit of marks in the evaluation of marks in the examination. When all these circulars are read together what emerges is that as per the instructions issued in the OM dated 23.12.1970, relaxation of assessment in the matter of promotion for candidates belonging to SC/ST by way of lower qualifying marks was provided. Later this came to be withdrawn by DOPT letter dated 22.7.1997 on the basis of the Hon'ble Supreme Court's judgment in the case of Vinod Kumar Vs. Union of India(JT 1996(8) SC 643). Thereafter the matter had been reviewed and Constitution (Eighty Second Amendment) Act, 2000

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was passed adding an enabling proviso to Article 335 in pursuance of which DOPT vide OM dated 3.10.2000 decided to restore the concessions with immediate effect resulting in the withdrawal of the OM dated 22.7.1986 with effect from the date of the OM. Therefore, these concessions became applicable for SC/ST candidates in matters of promotion to be made on or after 3rd October, 2000. Para 2 of the DG(P&T) New Delhi letter No. 26-2/81 SPB-I dated 4.5.1981 elaborates the procedure for implementing these concessions and is extracted under:

"2 The matter has been further examined by the Posts and Telegraphs Board. It is observed that the basic objective in such cases is to decide whether Scheduled Castes and Scheduled Tribes candidates who take departmental examinations are fit (at least "not unfit") to hold the post for which they are competing rather than going only by their percentage of marks. Accordingly the following decisions have been taken:-

(i) No special action is called for where adequate number of SC/ST candidates qualify for the reserved posts.

(ii) In examinations where the required number of candidates do not qualify even according to the relaxed standards, the cases of failed candidates should be reviewed on the basis of confidential report, the overall performance in the examination, etc., by a Committee of Senior Officers so as to assess their suitability/unsuitability. The Committee will consist of the Head of the Circle and a Director of Postal Services/Telecom Director in the district nominated by the Head of the Circle in respect of recruitment to group 'C' posts. In the case of Civil Wing, the concerned Superintending Engineer may be included in the Committee in stead of a Director. As regards Group-D posts, the committee will consist of the Director in-charge of the Region concerned and a Senior Time Scale Officer as may be nominated by the Head of the Circle. In the case of Civil Wing, the concerned Superintending Engineer and a Senior time scale Officer, nominated by the Head of the Circle will form the committee.

(iii) In the case of candidates considered not unfit for promotion, grace marks should be added to bring up to the qualifying standard. There will be no limit to giving grace marks to the candidates who are not otherwise unsuitable. Grace marks in more than one paper will be permissible. Inter se position of these candidates will be determined by their aggregate marks. In order, however, to maintain parity among the recipient of grace marks for the purpose of determining inter se seniority the maximum number of the grace marks that are required to be given to any candidate will be given to all other candidates who need some grace marks. For example, if the maximum grace marks given is 10 and two other candidates need three and four grace marks each, they will also be given a total of ten marks each.

(iv) Candidates who qualify according to the minimum percentage laid down for the examination will get seniority en

bloc above all those who require grace marks, irrespective of the aggregate marks of two groups. In other words a candidate having higher aggregate marks but requiring even one grace mark will be placed below one who has got lower aggregate marks but has secured minimum qualifying marks in each paper.

(v)Results of those who qualify in normal course will not be withheld pending decision on SC/ST candidates who fail to qualify by securing the minimum number of qualifying marks in each paper.. The result of all the candidates who need and are given grace marks will be declared as supplementary result."

9 These instructions enable such candidates who have secured about 20% marks, to be considered and they are also eligible for grace marks in more than one paper. The applicant having secured 31% marks in paper-III will therefore become eligible for further relaxation of standards and grace marks under these instructions. However, the question of extending the relaxation standards arise in case of a reserved vacancy only and therefore whether such a reserved vacancy was available as on 1.1.2001 the crucial date for eligibility for examination held on 22.4.2000 has to be determined. Of course it is also stated by the respondents that he had appeared in the later examination also. If that be the case, the concession shall also be extended to the later examination provided it was a reserved vacancy. The question of the existence of reserved vacancy can be ascertained by the respondents only after reassessment of the cadre strength and revising the initial roster strictly on the basis of the instructions for operation of the roster also taking into account the roster maintained for direct recruitment in accordance with the stipulation in OM dated 2.7.1997 referred to in para 6 above.

10. The respondents shall take up this exercise and complete the same within a period of four months and if at the end of the exercise, vacancies assessed under SC category became available as on the eligibility date, the applicant shall be considered against those vacancies keeping in view

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also the instructions in Annexure A-16 and A-17.

11 The OA is disposed of with the above direction. No costs.

Dated 9.1.2006



K.V. SACHIDANANDAN
JUDICIAL MEMBER

Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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