

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.141/2003 and 193/2003.

Thursday this the 5th day of June 2003.

CORAM:

HON'BLE MR.T.N.T NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

O.A.141/03:

George Mathai,
Gramin Dak Sevak Mail Deliverer,
Kandanad P.O.

Applicant

(By Advocate Shri P.C.Sebastian)

Vs.

1. The Senior Superintendent of Post Offices, Ernakulam, Division, Kochi-682011.
2. The Post Master General, Central Region, Kochi-682 016.
3. The Chief Postmaster General, Kerala Circle, Trivandrum.
4. The Union of India represented by its Secretary, Ministry of Communications, Department of Posts, New Delhi-110 001. Respondents

(By Advocate Shri K.R.Rajkumar, ACGSC)

O.A.193/03:

M.S.Sindhu,
W/o Sreekumar,
Gramin Dak Sevak Stamp Vendor,
Thoppumpady P.O.

Applicant

(By Advocate Shri P.C.Sebastian)

Vs.

1. The Senior Superintendent of Post Offices, Ernakulam, Division, Kochi-682011.
2. The Post Master General, Central Region, Kochi-682 016.
3. The Chief Postmaster General, Kerala Circle, Trivandrum.

4. The Union of India represented by its Secretary,
Ministry of Communications,
Department of Posts,
New Delhi-110 001. Respondents

(By Advocate Shri N.M.James, ACGSC)

The applications having been heard on 5th June, 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER

Both these O.As. turn on a common issue:

A-4 communication dated 14.1.03 containing the result of the examination for promotion to the cadre of Postman held in November, 2002 without taking into account the unfilled vacancies in the departmental quota to be added to the GDS merit quota, has adversely affected the chances of the two applicants' chances of Selection for appointment as Postman. Since the sole point for consideration in both the O.As. is common as stated above, both these O.As. are taken up for common disposal.

2. The brief facts are: Shri George Mathai, the applicant in O.A.141/03 who is working as GDS Mail Deliverer, Kandanad P.O., and Ms.M.S.Sindhu, applicant in O.A.193/03 is working as GDS Stamp Vendor, Thoppumpadi, both under the Ernakulam Division, applied for the 25% merit quota examination for promotion to the cadre of Postman held in the Ernakulam Division in November, 2002 in response to A-1 notification. A-1 notification contained a summary of the relevant Recruitment Rules and selection for promotion to the post of Postman is to be done in the following manner as per the existing rules as narrated in A-1.

3. SELECTION (A) FOR POSTMAN.

9.

(1) 50% of the vacancies in the cadre of Postman/Village Postman 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 GDS 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-GDS. This 50% of vacancies will be further divided into two halves and will be filled up in the following manner.

(a) 25% of vacancies of Postman shall be filled -up amongst those with a minimum of 15 years of service and who are within the prescribed age limit on the basis of their seniority GDS to be considered under this 25% seniority quota should have a minimum educational qualification of 8th standard pass. No examination is prescribed for filing-up the seniority quota. The selection should be made by a selection committee as prscribed in the Recruitment rules;

Note:-

Unfilled vacancies under the 25% seniority quota will be added to the GDS merit quota and that quota will be increased to that extent.

(b) The remaining 25% of the vacancies will be filled in from amongst GDS who have put in 5 years of regular satisfactory service and who are within the age limit, on the basis of merit in the examination."

It is not disputed that as per A-2 communication the vacancies arising under the departmental quota was 15 and for outsider (GDS) quota were 15 and 3 respectively. The examination held on 29.9.2002 in pursuance of A-1 was, however, cancelled and a fresh schedule of examination was announced as per which the examination was to be held on 24.11.2002. By A-3 communication 1.11.2002, all the candidates who had applied earlier as per A-1 were to be issued with fresh Hall Tickets with no liability to remit fresh examination fee. A-3, inter alia contained the following information at Clause 4:

"4. Regarding unfilled departmental quota vacancies to be added to GDS Merit quota decision will be taken only when approved by the Directorate."

The examination was held as scheduled and the results were announced in due course. A-4 communication containing the

9/

results of the examination would show that only 2 candidates were qualified under the departmental quota as against 15 vacancies announced thereby giving rise to 13 unfilled vacancies under that category. As far as the GDS quota is concerned, two candidates qualified under the 25% seniority quota which was based on the length of service while only one qualified under the 25% merit quota. It is to be noted here that both the applicants herein come within the 25% GDS merit quota and therefore, they could aspire for promotion only under that quota. As stated earlier, the applicants' case is that, had the 13 unfilled vacancies of departmental quota been added as laid down under the Recruitment Rules and reiterated in A-1, they also would have found a place in the Select List by virtue of their good performance in the merit quota examination. The applicant in O.A.141/03 got 112 marks out of 150 and the applicant in O.A.193/03 got 125 marks out of 150. The applicants would therefore, submit that the discretion reserved in favour of the Directorate of Posts with regard to adding the unfilled departmental quota vacancies to the GDS merit quota is contrary to the rule and it is unsustainable. Therefore, the applicants seek the following reliefs.

- i) to call for the files leading to the issue of Annexure A-4 result and declare Annexure A-4 to be illegal in so far as it has not added the unfilled vacancies in the departmental quota, to the merit quota of GDS and not declared applicant to have been selected against one such vacancies.
- ii) to declare that applicant is entitled to be recruited to the cadre of Postman in the merit quota of GDS against one of the vacancies remaining unfilled in the quota for departmental candidates.
- iii) to direct the Ist respondent to select applicant as Postman in the merit quota of GDS against one of the vacancies remaining unfilled in the quota for departmental candidates, in terms of Annexure A-1.

9

3. In their reply statement, the respondents have opposed the O.A. by stating that the applicants were already aware that a decision with regard to the unfilled departmental quota vacancies to be added to the GDS merit quota, would be taken only when approved by the Postal Directorate and that therefore, the remaining 13 vacancies based on merit could be considered after a decision obtained from the Screening Committee. According to the respondents, after taking a final decision, a supplementary list of selected candidates would be issued, if found necessary. It is maintained therefore that the O.As. at this stage are premature. It is also stated in the reply statement that it is for the administrative authority to fill up or not to fill up the existing vacancies and that the administration cannot be compelled to fill up the posts before it takes a decision after considering the relevant facts.

4. In the rejoinder the applicants have reiterated their claim and highlighted the fact that since the rule position has not been controverted by the respondents, they would have no authority to modify the statutory provisions by their own orders.

5. We have gone through the pleadings and other material placed on record and have also considered the arguments put forward by Shri P.C.Sebastian, learned counsel for the applicant and Shri N.M.James, learned ACGSC appearing for the respondents. Shri Sebastian would take us through the rule position which, according to him, is reiterated in A-1 notification. It is pointed out that although the applicants had made their applications for the merit quota examination under A-1

2.

notification, the examination held on 29.9.2002 in pursuance thereof was cancelled, and the candidates who had applied under A-1 were issued with fresh hall tickets and allowed to take fresh examination under A-3. However, in A-3 a note was added to the effect that, a decision with regard to adding unfilled departmental quota vacancies to the GDS merit quota would be taken only after getting the approval from the Directorate. According to the counsel since the said A-3 did not necessarily cause any prejudice to the applicants at the relevant point of time, as they were under the bonafide impression that, on the basis of the examination and after determining the resultant unfilled vacancies, if any, would be added, they took the examinations bonafide believing that the rules laid down would be followed. Relying on the decision of the Hon'ble Supreme Court in State of Gujarat Vs. Shantilal Mangaldas and others reported in AIR 1969 (SC) 634, the learned counsel for the applicants has forcefully contended that an authority appointed to do a particular thing in a particular manner under the statute cannot deviate from doing so and accordingly, the authority ought to have done only in that manner. He would, therefore, plead that the respondents be directed to cancel the A-4 results and direct them to rework the results by adding the unfilled vacancies relatable to the departmental seniority quota.

6. Shri N.M.James, learned ACGSC has pointed out that, the applicants have not made out ^{any} case of their supercession or non-consideration of their merit. Filling up the vacancies in accordance with the need of the department should be left with the departmental authorities and in this view of the matter, the

Q.

results published by the respondents as per A-4, cannot be faulted. With regard to the discretion retained by the Directorate in the matter of deciding whether or not the unfilled vacancies in the departmental quota to be added to the GDS merit quota, the learned ACGSC would state that the applicants were already notified about the matter as per A-3. They were fully aware that the Directorate would take a decision as to how the modalities of adding the unfilled vacancies would be worked out. Learned counsel would therefore urge that the applicants are trying to prejudge the issue and hence the O.As. are not maintainable as they are premature.

7. On a consideration of the factual and legal aspects of the case, we find that the respondents are not justified in stating that they would retain the liberty to take a decision whether or not to add the unfilled vacancies attributable to the departmental quota to the GDS merit quota. This is not a matter falling within their discretion. It is a requirement of the rule that unfilled vacancies, if any, pertaining to the 50% departmental quota, should necessarily be added to the GDS merit quota. It is admitted by the respondents in para 5 of their reply statement that, there were 15 vacancies in the departmental quota and that out of the 15 only 2 could be filled on the basis of the results announced. It is also admitted that, 13 vacancies remaining unfilled out of the departmental quota are to be added to the outsider quota under the Recruitment Rules. The respondents had no alternative under the existing rules but to add these 13 vacancies to the GDS merit quota and give a chance to the meritorious candidates in the merit quota examination. Whether or not the applicants in these O.As. would

2.

straight away get the benefit, is a matter to be seen on the basis of the competitive merit. This has to be examined with reference to their performance in the examination held. Prima facie it would appear that the two applicants herein who have scored more than 80% marks in the merit quota examination, could nurse a legitimate expectation of being considered under the enhanced merit quota, because of the statutory requirement of adding the unfilled vacancies under the departmental quota to the merit quota. It is well settled that a provision that is clearly laid down under rule cannot be taken away by an executive order unless discretionary powers are also provided in such rules. If such a discretion is given, that exercise of discretion should be a proper exercise according to rules. But no such discretion is provided according to our knowledge. It is pertinent to mention that all the candidates who had applied in response to A-1 were allowed to take the fresh examination on the renotified date. A-3 is not even a notification. It is only a letter. It cannot replace the rule or the basic notification i.e. A-1.

8. In the light of what is stated above, we dispose of the O.A.s.. with the following directions/orders.

1. A-4 in so far as it does not reflect ~~the~~ consideration of the unfilled vacancies arising out of the departmental quota to be added to the merit quota is illegal and unsustainable and hence is set aside to that extent.
2. Respondents are directed to rework the results by adding the unfilled vacancies relatable to departmental quota to

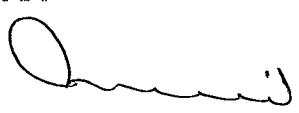
2

the GDS merit quota, review the selection on the basis of the performance of the candidates including the applicants herein and pass appropriate orders after taking into account the actual vacancy position on the basis of a proper application of the existing rules in that regard as early as possible and, at any rate, within a period of four months from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 5th June, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

rv