CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 201 of 2011
with
Original Application No. 38 of 2011

Tuesday, this the 20th day of September, 2011

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 201/2011

Sushin C,
aged 22 years,
S/o. Soman C,
Chingam House, Koodali P.O.,
Kannur : 670 592 ... Applicant.

(By Advocate Mr. P.K. Ravi Shanker)

versus

1. Union of India, represented by its Secretary, Department of Posts, New Delhi

2. Chief Postmaster General, Kerala Circle, Trivandrum : 695 033

3. Superintendent of Post Offices, Kannur Division, Kannur : 670 001

4. Alphy Jose, Meprakorottu House, Kozhichal, Cherupuzha Post, Kannur District : 670 511

5. Manjusha P.T., Weaves Street, Vellur P.O., Payyannur : 670 346 ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1-3 and Mr. Sajeevan Kurukuttiyullathil for R-5)

2. O.A. No. 38/2011

Binoy M.K.,
aged 20 years,
S/o. Bhaskaran P,
Poyil House, Ezhilode P.O.,
Kannur : 670 309 ... Applicant.

(By Advocate Mr. P.K. Ravi Shanker)

v e r s u s

1. Union of India, represented by its Secretary, Department of Posts, New Delhi

2. Chief Postmaster General, Kerala Circle, Trivandrum : 695 033

3. Superintendent of Post Offices, Kaasargod Division, Kannur : 670 001

4. Alphy Jose, Meprakorottu House, Kozhichal, Cherupuzha Post, Kannur District : 670 301 ... Respondents.

(By Advocate Mr. Pradeep Krishna, ACGSC for R1-3)

These applications having been heard on 12.09.2011, the Tribunal on 20.09.11 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

As common facts and issues arise in these two O.As, they were heard together and are disposed of by this common order.

2. The applicants have filed these O.As mainly for a direction to the 3rd respondent that the selection of candidates due to non-availability of two unreserved candidates in Annexure A-4 shall be made by adjusting 1st and

2nd rank holders in the list of OBC candidates and the resultant vacancies shall be filled up by selecting OBC candidates included in the waiting list.

3. The 2nd respondent had notified advertisement for recruitment to the post of Postal Assistants/Sorting Assistants for 29 vacancies (in Kannur Postal Division) vide letter dated 19.08.2010. Shortlisted candidates on the basis of the marks in the Higher Secondary examination, were subjected to computer test and aptitude test. On the basis of the final merit, the Departmental Promotion Committee selected 15 UR candidates, 07 OBC candidates, 01 SC candidate, 04 Ex-Servicemen and 01 candidate each from PH(OH) and PH(HH) categories on 18.11.2010 and waiting lists were also prepared. All the candidates in the selection list ware called for verification of documents. Due to death and non-appearance at the verification, 02 vacancies arose in the UR category. The person listed at Sl.No. 1 of the UR waiting list did not turn up for verification. Therefore, the candidates at Sl. Nos. 2 and 3 in the UR waiting list were called for verification and were selected. Aggrieved, the applicants have filed these O.As.

4. The applicants contended that if a candidate belonging to a reserved category comes within the general category on account of his merit, he should be adjusted against the general quota and not against the reserved quota. 5 candidates belonging to the OBC category were included in the list of general category candidates in the instant case. When 02 UR candidates in the select list were not available, the 3rd respondent deviated from the above principle. While operating the waiting list, the above mentioned principle in the matter of reservation cannot be ignored.

5. The respondents resisted the O.A. In their reply statement, they submitted that when a candidate of the UR category did not turn up for verification of documents, the first candidate from the waiting list of the UR category had to be selected and there is no illegality or arbitrariness in doing so. The quota reserved for the OBC category was fully filled up. The waiting list was prepared by the DPC. The 3rd respondent did not have any power to alter the DPC proceedings. As per the recruitment procedure, the candidates in the waiting list have to be considered if the selected candidates do not respond or refuse to accept the offer.

6. We have heard Mr. Ravi Shanker, learned counsel for the applicants and Mr. Sunil Jacob Jose, learned SCGSC and Mr. Pradeep Krishna, ACGSC appearing for the official respondents and Mr. Sajeevan Kurukuttiyullathil for R-5 in OA No. 201/11 and perused the records.

7. Both the applicants belong to the OBC category. The applicant in O.A. No. 38/2011 is listed at Sl. No. 7 in the OBC waiting list and the applicant in O.A. No. 201/2011 is listed at Sl. No. 2 in the OBC waiting list. It is settled law that if a candidate belonging to the reserved category finds a place in the general quota by dint of his merit, he is to be adjusted in the general quota and not against the reserved quota. The respondents have followed this principle by placing 5 candidates belonging to OBC category in the general category select list. The contention of the applicants is that the same principle was not applied while filling up the vacancies which arose due to non-availability of 02 unreserved candidates. When the law is settled regarding preparation of select list strictly in accordance with merit irrespective of the

categories to which the candidates belong it may appear reasonable that if any vacancy arises in the general list, the same principle should be followed. In the instant case, 02 vacancies arose in the UR category. The respondents filled up the vacancies by calling candidates from the UR waiting list. As the 1st candidate in the waiting list of UR category did not turn up, the 2nd and 3rd candidates having 84.47 marks and 84.33 marks respectively were selected for appointment. Prima facie, the 1st candidate in the OBC select list having secured 84.73 marks and more meritorious than the aforementioned candidates in the UR waiting list could have been moved to the UR select list and the resultant vacancy in the OBC select list should have been filled up by the candidate at Sl. No. 1 in the waiting list for the OBC category. But the applicants who are at Sl. Nos. 2 and 7 in the OBC waiting list stand no chance to get selected. As no injustice is done to them, they have no locus standi to file the instant O.As.

8. It is the DPC which has drawn up the selection list and waiting list for each category. The 3rd respondent has put the lists in operation quite legally. He has no power to effect any change in the lists prepared by the DPC. If any change is to be made, then a review DPC meeting will have to be held. The process of recruitment attains finality with the preparation of select list and waiting list, if any. Movement from one category to another category after finalisation of the select list is not desirable in the interest of administration.

9. The size of the select list is limited to the number of vacancies notified for recruitment. Mere inclusion in the select list does not confer an enforceable right for appointment. A waiting list is prepared to meet the

contingency of any selected candidate failing to respond to the offer of appointment. In the instant case, it is not clear whether any limit on the size of the wailing list is notified or not. The right of a wait list candidate is much less than that of the select list candidate. It is open to the administration to not to have any waiting list at all in addition to the select list for the purpose of recruitment and to carry forward the unfilled vacancies, if any.

10. In the instant case, the 3rd respondent has followed the rules and procedures. He has not committed any illegality or irregularity. The extension of the principle of meritorious reserved candidate finding his place in the UR category to the waiting list after finalising the select list is bound to raise a host of administrative problems. The select list will have to be modified by the DPC, every time a meritorious reserved candidate has to move into the UR category or suitable guidelines will have to be issued. The period of validity of select list / waiting list will have to be considered. There can be other issues too. The issue of extension of the aforesaid principle to the waiting list is left open as the applicants in these O.As cannot get any benefit therefrom. As such, it is not necessary that this Tribunal should interfere in the cases under consideration in the interest of justice to the applicants or unsettle the settled position. Therefore, the O.As are dismissed with no order as to costs.

(Dated, 20th September, 2011)

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.