

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 218/2011

Monday, this the 23rd day of January, 2012.

CORAM

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

**I.B.Srikumar, S/o I.Balan,
GDSMD, Ayyappankavu.P.O.
Nadathara, Thrissur-680 751.**

....Applicant

(By Advocate Mr Shafik.M.A.)

v.

- 1. Union of India represented by the
the Postmaster General,
Central Region, Ernakulam.**
- 2. The Senior Superintendent of Post Offices,
Thrissur Division, Thrissur.Respondents**

(By Advocate Mr Millu Dandapani, ACGSC)

**This application having been finally heard on 18.01.2012, the Tribunal on
23.01.2012 delivered the following:**

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The facts of this case are as under:-

- (a) Recruitment Rules to the post of Postman provide for 50% of the
vacancies to be filled up under Departmental quota from amongst
Group D officials on the basis of examination results and 50% by
way of direct recruitment from GDS (25% by way of merit in the
examination and 25% by way of seniority). Again, when the**

departmental quota is not filled up, the same is diverted to the 25% GDS Merit quota.

(b) For the recruitment year 2010, there were in all 15 vacancies as under:-

- (i) Departmental quota including two backlog vacancies: 9
- (ii) GDS Merit quota : 3
- (iii) G.D.S. Seniority quota : 3

(c) The distribution of vacancies other than GDS Seniority quota, as Reserved and Unreserved is as under:-

Departmental Quota: UR – 6 + OH – 1 + PH – 1 + ST – 1
GDS Merit quota: UR – 1 + OBC – 1 + Sports Quota – 1

(d) For the above 12 vacancies, examination was conducted on 29-08-2010 after issue of Annexure A-1 notification. No departmental candidate could qualify in the examination as a result of which all the twelve vacancies were to be through Direct Recruitment from amongst the GDS under the merit quota.

(e) Respondents have accordingly prepared a merit list and vide Annexure A-3 in which they have rescheduled the vacancies as OBC – 5 + UR 6 + Sports Quota – 1. Under UR, marks obtained by the first six candidates are respectively as under:-

URs – 1 and 2: 145 marks; 3-6: 142 marks.
OBCs- 1: 140 marks; 2: 136 marks; 3 and 4: 135 marks and 5 – 130 marks.
(Sports quota has not been filled up.)



(f) The applicant, who is a general candidate and who has secured 142 marks (see Annexure A-5) was not figuring in the select list. As such, he had penned Annexure A-6 representation dated 05-03-2011 to the PMG to consider his case for inclusion in the select list. As there was no response to the same, this OA has been filed with the following reliefs sought:-

- (i) To call for the records relating to Annexure A-1 to A-5 and to declare that the applicant is entitled to be appointed as Postman as per the results of the examination conducted on 29.8.2010 with effect from the date on which the others are appointed;
- (ii) To issue appropriate direction or order to revise the select list and to appoint the applicant also as Postman in Thrissur Division, immediately on the basis of the marks obtained in the examination conducted on 29.8.2010 with effect from the date on which the others have been appointed and to grant him all consequential benefits with effect from the date of his entitlement.

2. Respondents have contested the OA. They have contended that when no departmental candidate could be selected under the departmental quota, the vacancies were diverted to the Direct Recruitment and the ratio of Reserved and unreserved candidates underwent a change. Allocating 50% of the twelve vacancies, i.e six vacancies for Unreserved candidates, the balance had been earmarked for reserved vacancies, and thus, one vacancy, as per the PMG's Office letter dated 26-08-2010 went for sports quota, while the remaining five had been filled up by OBC as there had been a shortfall in the said category. As regards the selection under the

Unreserved quota, out of those who had secured equal marks (142), as per the provisions contained in Annexure R-3, those who were senior in the grade of GDS had been appointed.

3. The applicant filed the rejoinder, in which he had questioned earmarking of only 6 vacancies to the UR, whereas, when the departmental quota vacancies consisted of 6 and GDS Merit quota consisted 1 vacancy for UR candidates totalling 7 vacancies. Such a change in the game plan at the middle of the selection scheme is violative of the law laid down by the Apex Court in the case of K. Manjusree vs State of A.P. (AIR 2008 SC 1470).

4. In their additional reply, the respondents have reiterated their contentions as contained in their reply with reference to allocation of vacancies to unreserved and reserved candidates and also about the method followed in selecting the candidate when equal marks were scored (i.e. on the basis of seniority).

5. At the time of hearing of the case on 28-10-2011, after perusing the records, the Tribunal had stated as under:-

"On perusal of the records it is found that one of the candidates under reserved category T.M. Divya actually belongs to OBC. It is not exactly known whether the vacancies filled up were by way of strictly following the roster or whether all the unreserved categories were filled first and reserved categories thereafter. If as per roster points the vacancy for OBCs comes first, then that has to be filled up in which event notwithstanding the fact that Divya T.M. might have secured the maximum marks she has to be adjusted against OBC category only. This information

is not available with us. Again in so far as sports quota is concerned it is not exactly known what is the stage of filling up the vacancy. 11 out of 12 posts have been filled up and the one meant for sports quota is kept unfilled. It was suggested that this time the sports quota may be diverted to unreserved category so that without disturbing the select list and the appointment made on the basis of the select list the applicant who has also secured the highest marks may be accommodated. This can be achieved by diverting the sports quota to general unreserved quota and the next available vacancy for unreserved candidate can be filled by sports quota in the year 2011.

Counsel for the respondents is directed to obtain instructions and details regarding the following:-

a) Chronological sequence of vacancies arising and their position in the roster points.

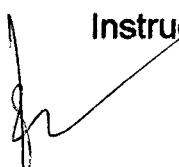
b) Whether sports quota vacancy can be temporarily lent to filling up by general category candidates, keeping in view the fact that one of the un-reserved candidate has secured marks at par with the selected un-reserved candidate.

Let the records be filed before the next date of hearing duly authenticated and supported by an affidavit."

6. In pursuance to the above direction, in the additional affidavit, the respondents have reflected that the vacancies that arose in chronological sequence of events are as under:-

UR, UR, UR, SC, UR, UR, UR, UR, SC, SC, SC, UR, UR, UR and OBC.

7. Again, it has been stated, "If more than one candidate with the same mark is available against a vacancy, then the candidate who is found senior **on the basis of date of birth** would be selected as per the existing Instructions on the subject." (emphasis supplied)



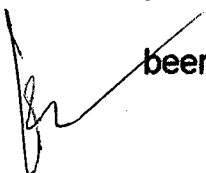
8. On the question of diversion of Sports Quota to UR quota, it has been stated that vacancies cannot be filled by the general category candidates.

9. Counsel for the applicant argued as under:-

(a) The vacancies as per the additional affidavit submitted by the respondents indicate as many as 10 UR vacancies, four SC vacancies and only one OBC vacancies. The vacancies that were reflected in the notification included as many as seven UR vacancies. Under such circumstances, there is no justification in curtailing the vacancies under UR quota to six.

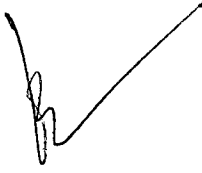
(b) When more than one secured the same marks, then even according to the respondents, vide their additional affidavit, selection should be based on the age and not seniority in the feeder grade. (It has also been submitted that in so far as GDS are concerned, they do not constitute feeder grade but are direct recruits only). Had the above method been followed, then it is the applicant who ought to have been selected and not the candidate (Ms Divya, an OBC candidate).

(c) If sports quota could not be temporarily diverted, then on the same yardstick, vacancies for handicapped quota etc., too could not have been diverted, whereas, the vacancies have been diverted for OBC.



10. Counsel for the respondents submitted that if the applicant is to succeed and is to be appointed as Postman, then, the last candidate i.e. Divya may have to be dislodged from the post. The applicant has not impleaded the said individual. Again, the respondents have by diverting certain vacancies to OBC had only ensured that the deficiencies in OBC quota get made good while at the same time, the total reservation does not exceed 50%.


11. Arguments were heard and documents perused. The error committed by the respondents is obvious. After the coming into existence of post based roster vide order dated 02-07-1997 of the DOPT, the reservation roster ought to have been updated as per the instructions contained therein and thereafter, vacancies arising out of retirement etc., should be based on 'apple to apple' (i.e. vacancy caused against UR quota should be filled up by UR only and that cause by OBC shall be filled up by OBC only etc.,). This has not been followed. In any event, the respondents could have stuck to the number as per notification, in which event, 7 vacancies would have gone to UR and without any difficulties, the applicant could have been accommodated. This too has not been done. Again, when more than one individual had scored the same marks, the one who is elder in age should have been selected and this too has been given a go bye. It is due to the above, that the applicant was not selected and unintended benefit went to some other candidate. It was to rectify the mistake that the respondents were advised to indicate whether the one vacancy which remained unfilled under the sports quota, could be diverted



temporarily to Unreserved category and the applicant appointed. Respondents have stated that it is not possible. If such a diversion is not possible, then how the other vacancies could be diverted to OBC has not been explained.

12. Non impleadment of the private respondent cannot be held to be fatal to the case as no relief is sought against the said individual by the applicant. In fact, the applicant has been claiming that there ought to have been seven UR vacancies in which event, all those who had secured 142 marks could have been easily accommodated. It is only when the contention of the respondents that there are only six UR vacancies is accepted that the question would come whether the sixth vacancy should go to the applicant or the other individual.

13. In view of the fact that the applicant has secured 142 marks and further he being elder in age (which fact has not been denied by the respondents), one UR vacancy ought to have been filled up by selecting him. Thus, he is entitled to be appointed by virtue of his merit position. We declare so. However, the Tribunal is of the considered view that the appointment of the applicant be without disturbing the selection of other candidates. For this purpose, the respondents have to create one supernumerary post to accommodate the last candidate who had been already appointed. In the alternative, the respondents could well divert the sports quota vacancy to UR candidate and the next available UR vacancy could well be allotted to the sports quota. This is in no way a deviation as



the interchange of vacancies is only temporary and in so far as sports quota is concerned, the same need not be pertaining to any particular year.

14. In view of the above, the **OA succeeds**. Respondents are directed to accommodate the applicant by appointing him as Postman maintaining his seniority on the basis of marks and as regards the other candidate (who had been appointed in the place of the applicant), they may resort to creation of supernumerary vacancy or diversion of sports quota as stated above. The appointment of the applicant shall be made within a period of two months from the date of receipt of certified copy of this order. The first respondent shall ensure adherence of the time calendared. No costs.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr K.B.S. RAJAN
JUDICIAL MEMBER

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