CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 232 of 2010

MONDAY, this the 14th day of February, 2011.

CORAM:

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

1 Anu P. Baby
W/o. Prasad Philip
GDS Branch Postmaster
Puthumala (P.O)
Residing at Mannil House
Karikkalloor (P.O)

2 John Thomas
S/o. P.G. John
GDS Branch Postmaster
Kodumon East (P.O)
Residing at Kochayyath Puthen Veedu
Aickad, Kodumon (P.O) : 691 555 .... Applicants

(By Advocate Mr. P.C. Sebastian)

Versus

1. The Chief Postmaster General
Kerala Circle
Thiruvananthapuram.

2. The Superintendent of Post Offices
Pathanamthitta Division
Pathanamthitta – 689 645

3. The Union of India
Represented by Secretary to
Government of India
Ministry of Communications
Department of Posts, New Delhi

4. Smt. Shy Vachanapalan
GDS Branch Postmaster
Kottamonpara (P.O)
Now working as Postman
Kumbalampokia (P.O)

5. Smt. Rejitha R
GDS Branch Postmaster
Mannamnagar (P.O)
Now working as Postman
Nedumon (P.O)

6 E.P. Sivarajan
GDS Mail Deliverer
Vilakkupara (P.O)
Postman ... Respondents.

(By Advocate Mr. M.K. Aboobacker, ACGSC for R1-3)
(By Advocate Mr. M.R. Hariraj for R4-5)

The application having been heard on 18.1.2011, the Tribunal on 14-02-11 delivered the following:

ORDER

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

The applicants are Gramin Dak Sevaks (GDS) who appeared in the departmental examination for recruitment to the cadre of Postman for filling up of 2007 vacancies held on 18.10.2009 in Pathanamthitta Division. There were 7 vacancies in the departmental quota and 1 vacancy in the merit quota of GDS. Only one candidate was qualified in the departmental quota. The remaining 6 vacancies in the departmental quota were transferred to the GDS merit quota as per the Recruitment Rules. But the private respondents 4 to 6 who secured lesser marks than the applicants were selected and appointed as Postmen for the reason that they belong to the OBC category and entitled to the benefit of reservation. The applicants challenge the selection and appointment of the private respondents 4 to 6.

2. The applicants contended that the selection and appointment of the private respondents as Postmen under GDS merit quota overlooking the

higher marks obtained by the applicants, are illegal arbitrary and discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India. The private respondents 4 to 6 have been selected solely for the reason that they belong to the OBC category and have been extended the benefit of reservation. It is settled position of law that the OBC category has the benefit of reservation only in direct recruitment and not in promotion. The method of recruitment of GDS to the cadre of Postman by departmental examination is by way of promotion only as held by this Tribunal in its Annexure A-6 order in O.A. No. 858/2006. The selection in the merit quota is based on merit in the examination decided on the basis of the marks. Therefore, the applicants deserve to be appointed against the merit quota. There is no justification for transferring the unreserved vacancies to the OBC category.

3. The official respondents opposed the O.A. In their reply statement, it was stated that both of the applicants scored 137 and 135 marks respectively which are above the first OBC candidate. But the applicants could not be selected as these three posts were reserved for the OBC category. The respondents have only acted in consonance with the extant Recruitment Rules. The very same procedure which the respondents had done pursuant to the conduct of examination for 2003, 2004 and 2006 vacancies, was done for the 2007 examination also. Annexure A-6 order of this Tribunal has not yet become final. The Full Bench of this Tribunal in its order dated 21.02.2000 in OA Nos. 807/1999 and 1286/1997 had held the appointment from GDS to Postman as direct recruitment and not promotion. However, this Tribunal in Annexure A-6

order held that the aforesaid Full Bench decision had no relevance to that case as the Full Bench had only considered the question of filling of the 25% GDS seniority quota whereas the issue agitated in OA 858/2006 related to the remaining 25% GDS merit quota. The said order Annexure A-6 has been taken in appeal by the respondents in W.P. No. 36443/2007 which still pending before the Hon'ble High Court of Kerala. The respondents are also in agreement with the applicants over the settled position that the OBC category has the benefit of reservation only in direct recruitment and not in promotion.

4. In the reply statement filed by the party respondents 4 and 5, it was submitted that though the appointment of GDS as Postman is not direct recruitment that does not mean that the the reservation to the OBC category is excluded. The reservation to OBC category is available for appointment of GDS to the cadre of Postman under DG Posts letter No.17-132/94-ED & Trg. dated 05.10.1994 and letter No. 44-18/94-SPB-I dated 01.06.1995. The aforesaid letter No. ***44-18/94-SPB-I dated 01.06.1995*** is reproduced below:

> "Subject : Reservation for OBCs in recruitment from ED Agents as Postman/Mailguard.
>
> I am directed to refer to the above abject and to state that the above issue had been under consideration for quite some time. It has now been decided to provide reservation for OBCs in case of recruitment of ED Agents as Postman/Mailguard as is being done in the case of SCs/STs. Further necessary action may be taken accordingly."

The OBC category is entitled to reservation due to specific orders. The observations to the contrary in Annexure A6 are without noticing the specific orders governing the filed and are per incurium and thus are not

binding precedent. Therefore, the O.A is liable to be dismissed.

5. We have heard Mr. P.C. Sebastian, learned counsel for the applicant, Mr. M.K. Aboobacker, ACGSC for respondents 1 to 3 and Mr. Hariraj for respondents 4 and 5.

6. The question to be decided is whether the method of recruitment of GDS to the cadre of Postman through departmental examination is merit based selection on promotion or not. This issue has been extensively dealt with in the order of this Tribunal in O.A. No. 436/2010. The relevant part of the aforesaid order is extracted as under:

> "5. The point for adjudication in this O.A. is whether the method of recruitment of GDS to the cadre of Postman through departmental examination is merit based selection on promotion or not. This issue was dealt with at length by this Tribunal in its order dated 18.07.2007 in O.A. No. 858/2006. The relevant part of the said order is reproduced as under :
>
> > "14 The second point of law that has been taken is relating to the Full Bench decision of this Tribunal in O.A. 807/99 and 1286/97. In this Full Bench decision the Bench has considered the following points:
> >
> > (i) Whether the appointment of extra Departmental Agents as Postman in the 25% seniority quota is by way of direct recruitment or promotion?
> >
> > (ii) Whether the qualification prescribed for direct recruitment to the post of Postman is applicable to the appointment of Extra Departmental Agents on the post of Postman in the 25% seniority quota?
> >
> > (iii) Whether the letter dated 17.5.95 of the Director General (Posts) prescribing a minimum educational qualification of 8th standard pass for Extra Departmental Agents for appointment as Postman in the 25% seniority

quota a is valid and enforceable?

15 Though there was dissent by one Member, as per the majority view, the points were settled as follows:

Point No. 1:- Appointment of ED Agents as Postmen in 25% seniority quota is by way of direct recruitment only

Point No. 2: The qualification prescribed for direct recruitment to the post of Postman is applicable to the appointment of ED Agents on the post of Postmen in 25% seniority quota

Point No. 3: the letter dated 17.5.95 of the Director General of Posts prescribing a minimum educational qualification of 8th Standard pass for ED Agents for appointment as Postmen in 25% seniority quota is valid and enforceable.

16 With reference to the applicability of the decision the rule position extracted below has to be seen:

Col. 11:- Method of recruitment-

(1) 50% by promotion failing which by ED Agents on the basis of their merit in the Departmental Examination

(2) 50% of 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.

(3) If the vacancies remained unfilled by EDAs of the recruiting Division, such vacancies may be filled by the EDAs of the Postal Division falling in the zone of Regional Directors.

(4) If the vacancies unfilled by EDAs remain unfilled by the EDAs of the recruiting units such vacancies may be filled by EDAs of the Postal Divisions located at the same station. Vacancies remaining unfilled will be thrown open to EDAs in the Region.

(5) Any vacancy remaining unfilled may be filled up by direct recruitment through the nominees of the Employment Exchange.

Col. 12:- In cases of promotion-

(1) Promotion from Group-D officials who have put in three years of regular and satisfactory service on the closing date for receipt of applications through a Departmental Examination

(2) EDAs through a departmental examination

(3) Direct recruitment through a departmental examination.

17 It is evident that point No. 1 under consideration of the Full Bench related to appointment of ED Agents as Postman against 25% seniority quota. The question in this OA is regarding the remaining 25% of the GDS quota which is operated on the basis of merit in the departmental examination i.e. Col. 11(2)(ii) of the Rules and the decision of the Full Bench relates to the quota in Col. 11(2)(i). Therefore the Full Bench order cannot be said to have omnibus application to all the provisions of the Rules since it has decided only the question of filling up of the 25% seniority quota. It is a moot point that when the filling up of the seniority quota itself is held to be direct recruitment whether the filling up the balance 25% on merit can be viewed as promotion. We are not going in to that aspect. For deciding the applicability of the Full Bench decision to this case, this distinction can certainly be drawn that the point now under challenge in this O.A. has not been covered by the Full Bench decision and hence is distinguishable.

18 The learned Senior Counsel drew our attention to the order of this Tribunal in O.A. 704/06 in which again the claim of the applicants was to the 25% seniority quota of GDS and the main question was whether the approval of the Screening

Committee is required for filling up the vacancies and it was held that Screening Committee procedure was not applicable to the promotion quota. Hence, this order has also no relevance here.

19 Having dealt with the legal propositions advanced by the learned Senior counsel which are not directly applicable to the present case, we proceed to examine the Columns 11 and 12 of the Recruitment Rules for promotion to the Postman/Mail Guards as it stands now. The rules have been extracted above. A reading of Columns 11 and 12 put together is required to understand the proper spirit of the rule. To our mind Col. 11 which prescribes the method of recruitment sub clause (1) to (4) being the manner of filling up the vacancies by promotion and also by means of a selection on the basis of seniority and merit in a departmental examination. Sub clause (5) which provides for filling up of any vacancy remaining unfilled after going through all other processes mentioned above, would be by direct recruitment which has to be done purely by inviting applications from the Employment Exchange. Therefore in our view, it has to be construed that all selections made from within the department either from Group-D personnel or from the ED Agents who are also a class of servants under the Postal Department covered by sub clauses (1) to (4), would have to be construed as promotion and filling up of vacancies purely by outsiders through employment exchange can only be construed as direct recruitment. This view is further confirmed by the wordings in column 12 where the cases of promotion have been further categorized in three categories which include promotion from Group-D failing which from ED Agents through departmental examination by seniority as well as merit. Here the second category is relatable to sub clause 2(ii) of Col. 11 and the third category is relatable to sub clause 2(ii) of Col. 11 all of which are clubbed under the heading "promotion" only. We are also informed that the departmental examination referred to in the Col. 11 and 12 of the Rules is a common one. This is also supported by a reading of Rule 7 prescribing the age limit where again a higher age limit has been prescribed for ED Agents considering them as departmental personnel. In the light of such a reading of the Recruitment Rules keeping the entire scheme of promotion in view, we are inclined to hold that the method of recruitment of ED Agents through the departmental examination has to be construed as merit based selection on promotion only.

20 Having arrived at the above finding that the selection of ED Agents under merit quota is not by way of direct recruitment we come to the further interpretation of the 'Note' prescribed in Annexure A-4 viz. that the unfilled vacancies will be added to GDS merit quota and that quota will be increased to that extent and the implications thereof. The respondents had notified more than 6 vacancies under the departmental quota and 1 UR vacancy by Annexure A-5. Out of the 6 vacancies 1 was reserved for PH. When the unfilled vacancies are added to the GDS merit quota, the nature/category of the vacancies should not undergo a change if the method of recruitment remained the same. It is the contention of the respondents that when the recruitment to the post is from GDSs in the event of failure to fill up the vacancies by departmental candidates by promotion, the recruitment changes its nature and becomes direct recruitment, the decision in the Full Bench order and thereby fresh reservation points in the direct recruitment roster would become applicable for such recruitment. Therefore, they had added the 6 vacancies to the 1 vacancy already notified and the total quota of Direct Recruit vacancies were taken as 7, out of which 1 vacancy was for PH and another 1 for Ex-serviceman and the post under merit quota was filled up by unreserved candidate and out of the remaining 4, 2 were filled up by UR and 1 by OBC as there were backlog of OBC candidates in the direct recruitment quota.

21 If the method of recruitment is determined as not by direct recruitment there can be no reservation for OBCs as contended by the applicants. There is no reservation for Ex-servicemen also under promotion quota. We find that apart from stating that OBC candidates were appointed under the backlog quota, the respondents have not come out clearly on the issue of roster points and how they have distinguished the 7th Roster point which position should be available to them if they are maintaining separate rosters for the merit quota of GDS under direct recruitment. According to their own instruction in Annexure A-5, if the vacancy reserved for PH in the Departmental quota remains unfilled, it should be transferred to GDS quota to be filled up by PH candidate only. By the same rationale the vacancies identified as unreserved when they are filled up by adding the GDS quota cannot be converted to any other category and the nature of

the vacancies should remain the same as unreserved. Even if the respondents genuinely construed the filling up of the unfilled vacancies as belonging to direct recruitment quota, this exercise could not have been done without notifying the revised vacancy position as per the points in the roster and Annexure A-5 should have been modified to that extent as otherwise it results in an imbalance in the rosters and all those who participated in the examination should have been made aware of the same.

22 Therefore considering the provisions of the Rules above position and the legal position as discussed earlier, we are of the view that the filling up of the unfilled vacancies the departmental quota cannot be termed to be direct recruitment and it should have been done against under the same categories as notified in Annexure A-5 and in accordance with the position in the rank list at Annexure A-9. Once the process is considered to be under the 'Promotion' method, reservation for OBCs/Ex-servicemen are not to be followed. Setting apart 1 vacancy for Ex-servicemen, we find is not in accordance with the rules. It is also not logical and practicable to implement the quota for the Ex-servicemen in the GDS quota unless it had been strictly implemented in the first instance at the time of recruitment as GDS. We do not find any provision in the GDS Rules prescribing any quota for Ex-servicemen at the time of recruitment except a general guideline that it if it is possible ex-servicemen may be preferred if other things are equal. When there is no reservation in the lower posts where direct recruitment take place, the probability of finding suitable of the ex-servicemen in the higher post is very unlikely. Therefore any direction as averred by the respondents that the vacancies should be reserved for ex-servicemen and further interpretation being given by the respondents that they should be kept unfilled is not in order. In fact we have already held that no reservation for ex-servicemen was provided for in promotion in the Recruitment Rules. Therefore, the respondents will have to release the 1 vacancy set apart for ex-servicemen quota also when finalising the selection. The respondents shall undertake a revised exercise on the above lines and notify the selection to the 6 unfilled vacancies carried over from the Departmental quota by modifying Annexure A-6 suitably. Unless this exercise is done we cannot come to any conclusion whether respondents 4 & 5 would come within the ambit of selection. Respondents shall complete this exercise

within three weeks of date of receipt of this order. Till the selection process is completed and the modified order is issued all the appointments made in Annexure A-6 shall be continued.

23 The OA is disposed of as above. No costs."

(emphasis supplied)

6. The decision of the Full Bench in O.A. Nos. 807/1999 and 1286/1997 has also been considered by this Tribunal in O.A. No. 858/2006. In our considered view, the decision of this Tribunal in O.A. No. 858/2006 squarely covers the instant O.A. The decision of the Full Bench is clearly distinguishable and the method of recruitment of GDS to the cadre of Postman on the basis of merit which is the crucial point in the instant O.A has not been covered by the Full Bench decision as was held in O.A. No. 858/2006. If the Recruitment Rules for Postman/Mail Guard are read keeping the entire scheme of promotion in view then the method of recruitment of GDS to the cadre of Postman through departmental examination is to be treated as merit based selection on promotion only. Admittedly, the reservation for the OBC category does not apply to promotion. Therefore, reservation for the OBC category will not apply to the recruitment of GDS to the cadre of Postman in the instant O.A. Consequently, the nature of the unfilled unreserved vacancies in the departmental quota when added to the merit quot of GDS will remain the same as unreserved. Therefore, there is no justification for transferring the unreserved vacancies to the OBC category. That being so, the appointment of the party respondents 4 to 7 is against unreserved vacancies. This appointment is legally untenable because the claim of the applicants for appointment against unreserved vacancies, on account of their having higher merit than the party respondents cannot be ignored.

7. Though the order of this Tribunal in O.A. No. 858/2006 is challenged before the Hon'ble High Court of Kerala that by itself is not a reason not to follow the same. As held by the Hon'ble Punjab and Haryana High Court in **Roshan Jagdish Lal Duggal and Others vs. The Punjab State Electricity Board, Patiala and Others**, 1984 (2) SLR 731, the admission of an appeal against the order of the High Court and the suspension of its operation during the pendency of the appeal does not have the effect of rendering it *non est* till the disposal of the appeal.

> 8. In the result, the O.A. is allowed. Annexure A-3 order dated 15.02.2010 issued by the 2nd respondent relating to selection and appointment of the party respondents 4 to 7 as Postmen is quashed and set aside. The respondents are directed to adhere to the order of merit of the candidates based on the marks obtained by them in the Postman examination held on 20.12.2009 in the GDS merit quota and to appoint them as Postmen with effect from the date of their entitlement with all consequential benefits including arrears of pay and allowances within a period of 3 months from the date of receipt of a copy of this order."

7. It is settled position of law as is admitted by the respondents, that the reservation will not apply to OBC category in promotion. Therefore, the direction given by the DG Posts in the letter relied upon by the party respondents 4 and 5 should be seen as pertaining to direct recruitment only. As this case fully covers by the decisions of this Tribunal in OA Nos. 858/2006 and 436/2010, this O.A. is allowed. Accordingly, we order as under.

8. Annexure A-5 order dated 14.12.2009 issued by the 2nd respondent relating to selection and appointment of the party respondents 4 to 6 as Postmen is quashed and set aside. The respondents are directed to adhere to the order of merit of the candidates based on the marks obtained by them in the Postman examination held on 18.10.2009 in the GDS merit quota and to appoint them as Postmen with effect from the date of their entitlement with all consequential benefits including arrears of pay and allowances within a period of 3 months from the date of receipt of a copy of this order.

9. No order as to costs.

(Dated, the 14th February, 2011)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.