

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.267/95

Friday, this the 12th day of July, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

B Mohanan Pillai, Driver,
Mail Motor Service,
Kollam.

....Applicant

By Advocate Shri OV Radhakrishnan.

vs

1. Senior Superintendent of Post Offices,
Kollam Division, Kollam.
2. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.
3. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi.
4. PC Baby, Postal Assistant,
Kottarakara Head Post Office,
Kottarakara.
5. S Yesoda, Postal Assistant,
Thycaud P.O.

....Respondents

R.1-3 by Shri S Radhakrishnan, Addl Central Govt Standing Counsel.

R.4&5 by Advocate Shri G Sasidharan Chempazhanthiyil.

The application having been heard on 5th July, 1996,
the Tribunal delivered the following on 12th July, 96:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant is a Driver in the Mail Motor Service under the
Senior Superintendent of Post Offices, Kollam Division. Applicant

contd.

states that recruitment to the post of Postal Assistant and Sorting Assistant in offices other than Foreign Post Organisation is 50% by direct recruitment and 50% by promotion through Departmental Promotion Examination (DPE). By A-5 dated 12.5.92, a DPE was proposed to be held on 23.8.92 and by A-6 dated 16.7.92, the number of vacancies to be filled by the DPE was notified as two, both reserved—one each for Scheduled Castes and Scheduled Tribes (SC/ST). Applicant does not belong to the reserved category. However, applicant appeared for the examination. His grievance is that the vacancies available have not been correctly calculated, allocated or filled up, that all the vacancies of Postal Assistants for the year 1992 were filled up by reserved category candidates alone and prays for a direction to respondents to promote applicant with consequential benefits. Applicant approached the Tribunal in OA 205/93 voicing the same grievance and the Tribunal directed that his grievance may be considered by the Chief Post Master General. The Chief Post Master General considered the representation of the applicant and passed A-14 order dated 29.9.94 rejecting the claim of applicant. Applicant challenges A-14. His case is that fifteen vacancies of Postal Assistants had arisen in Kollam Division in the year 1992, of which three were filled by Rule 38 transfers against direct recruitment quota and seven earmarked for promotion. However, only two candidates were promoted against the seven vacancies. Applicant contends that respondents 4 & 5 who were appointed had actually qualified in the examination in an earlier year and rules do not permit any waiting list under which persons who qualify in earlier years can be appointed to vacancies in later years. Applicant further contends that the fact that surplus candidates from other Divisions were accommodated in Kollam Division in the earlier year clearly showed that there was no excess recruitment in that year in the Division and, therefore, the question of excess recruitment in the earlier year being adjusted against

contd.

vacancies in 1992 should not arise. Even assuming that the vacancies to be filled up in 1992 were only two, both should not be allotted to reserved categories, since that would result in reservation in excess of 50% of the vacancies available in a year. Applicant, therefore, states that one of the vacancies of 1992 should be available for accommodating him.

2. Respondents Department state that in April, 1990, seventeen posts of Postal Assistant were sanctioned for absorbing the directly recruited candidates waiting in the Reserved Trained Pool (RTP). Subsequent to that two DPEs were held—one on 5.8.90 and the other on 23.8.92 for vacancies of 1991 and 1992 respectively which were assessed at twelve and two respectively. The vacancy position in 1991 of twelve was arrived at by including 50% of the newly sanctioned posts, namely eight. Out of the twelve posts, nine posts were filled up. It was later on clarified that the seventeen posts sanctioned did not have a component of 50% available to promotees and were exclusively meant for direct recruits (RTP). It, therefore, turned out that five candidates were in excess. Out of these, three were absorbed in unforeseen vacancies which arose and remaining two had to be carried forward and adjusted against vacancies in 1992. In the year 1992, a total of fifteen vacancies arose, out of which nine vacancies were for direct recruitment and six for promotion. Respondents Department state that the 50% ratio in recruitment rules apply to new posts which are created and vacancies which arose subsequently are to be filled by persons who belong to the category of persons who originally occupied the vacant post. Out of these six vacancies for departmental quota, five were absorbed by persons who have been selected in earlier years and one was absorbed by a Rule 38 transfer. There were, therefore, only two carried forward vacancies reserved for SC and ST for the examination in 1992. Applicant who had appeared in the examination

contd.

could not be considered against reserved vacancies since he did not belong to a reserved category and he did not also secure 60% which is the minimum required for him to be considered as a surplus qualified candidate for appointment in other Divisions, where there may be unfilled vacancies. Besides, there is another candidate who has more marks than the applicant and even if there was an extra vacancy in the unreserved quota, applicant would not be eligible to be promoted against that vacancy.

3. We will first deal with the contention that reservation being in excess of 50% of vacancies, it would be illegal in terms of several decisions of the Supreme Court. As stated by respondents Department, the number of vacancies for 1992 was fifteen. Out of these, it was proposed to fill up only two vacancies by means of the examination and those were the vacancies which were carried forward and were reserved for SC and ST. It cannot be said that two vacancies reserved for SC/ST out of fifteen vacancies are excessive. We do not see any merit in this contention.

4. The contention of applicant that persons who had appeared for the earlier examination could not be put on a waiting list and appointed to vacancies which arose in subsequent years, would not apply in this case. Here, what we notice is that on a misapprehension certain vacancies which ought to have gone to direct recruitment had been shown against promotional channel and persons also were selected against those vacancies. Since those vacancies were subsequently to be diverted to the direct recruitment quota, persons who had already been selected had to be accommodated in subsequent vacancies which arose in the promotional quota. This is not a case of waiting list and vacancies in excess of the notified vacancies being filled up from the waiting list. Persons who had already

contd.

been selected against vacancies which were later on diverted from promotional quota to direct recruitment quota, should not be denied appointments. We see no irregularity in the method of arriving at vacancies by adjusting such persons who had been selected in the earlier examinations and appointed against vacancies which arose in 1992. The contention of applicant that out of fifteen vacancies in 1992, nine cannot be filled by outsiders, cannot be accepted since, as stated by respondents Department, the ratio would be applied against new posts and vacancies which arose subsequently are filled up from the same category as the persons who had earlier occupied that post. Applicant, who does not belong to a SC/ST, cannot obviously be appointed against vacancies reserved for SC/ST. As stated by respondents Department, he has to secure the minimum requirement for consideration as a surplus qualifying candidate to be appointed in the vacancies in other Divisions.

5. When applicant had approached the Tribunal on an earlier occasion, the Tribunal stated:

"We do not think that it is the function of this Tribunal to assess the number of vacancies and select people for those vacancies..."

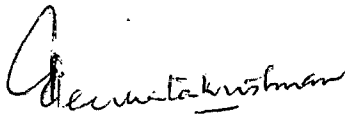
We do not see any patent error in the assessment of the number of vacancies which would warrant interference in a judicial review. Applicant was well aware of the number of vacancies for which the examination was conducted at the time he appeared for the examination, though he would try to make a fine distinction saying that when he had applied for the examination, the number of vacancies were not notified. This is mere hair-splitting and if he had not accepted the number of vacancies as notified by A-6 dated 16.7.92, he should have raised the issue at that time before

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appearing for the examination on 23.8.92. Even assuming the number of vacancies assessed were not correct, once they were notified for a particular examination, it will not be proper to select candidates in excess of the notified vacancies and the proper course would be to hold a supplementary examination for vacancies which remained unfilled. Support for such a view can be found in Ashok Kumar and Others vs Chairman, Banking Service Recruitment Board and Others, (1996) 32 ATC 235.

5. In the light of the discussion above, we cannot accept the contentions of applicant. The application is dismissed. No costs.

Dated the 12th July, 1996.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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