

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.345/07

...Thursday... this the ..7th day of ..February.. 2008

C O R A M :

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

1. P.H.Rasiya,
W/o.Jabbar,
Gramin Dak Sevak Mail Packer, Kattoor PO.
Residing at Ponnampidi House,
Karuvannur PO, Iringalakuda – 680 711.
2. K.R.Mini,
W/o.Jayajith.K.A.,
Postman, Kodungalloor PO.
Residing at Karayil House,
Lakamalleswaram West,
Kodungalloor PO – 680 664.

...Applicants

(By Advocate Mr.P.C.Sebastian)

Versus

1. The Superintendent of Post Offices,
Iringalakuda Division, Irinjalakuda.
2. The Post Master General,
Central Region, Kochi – 682 018.
3. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
4. Union of India represented
by the Secretary to Government of India,
Ministry of Communications & I.T.,
Department of Posts, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 11th January 2008 the
Tribunal on ...7th..February..... 2008 delivered the following :-

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ORDER

HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN

The applicants are GDSs working in Irinjalakuda Division of the Postal Department and they are aggrieved by the fact that the 1st respondent has conducted a fresh examination for recruitment to the cadre of Postal Assistant in the said Division on 20.5.2007 without prior notification against the standing instructions and the spirit of Annexure A-5 order of this Tribunal to the prejudice of the applicants.

2. Briefly the facts are stated as follows :- the 1st applicant is working as GDS MP, Kattoor with effect from 25.10.2000 and the 2nd applicant was GDS SV, Kodungalloor with effect from 25.1.1999 and is presently working as Postman from the year 2006. Both of them belong to OBC category. They appeared for the examination for recruitment to the cadre of Postal Assistant held by the 1st respondent on 29.5.2005 for filling up the unfilled vacancies in the Departmental quota earmarked for the Gramin Dak Sevaks as per the notification dated 12.4.2005 (Annexure A-1). As per the method of recruitment prescribed in the rules, 50% of the vacancies are to be filled by direct recruitment and 50% by promotion of lower grade officials such as Group D and Postman through a Limited Departmental Competitive Examinations failing which the unfilled vacancies shall be offered to Gramin Dak Sevaks of the Recruiting Divisions and if vacancies remain unutilised by the GDS they shall be filled by direct recruitment. The minimum educational qualification is 10+2 standard and within the prescribed age limit and only those

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GDS shall be eligible for being considered who have secured marks not below the marks secured by the last direct recruit of the relevant category. The aggregate marks for selection is 100 consisting of 40% weightage of percentage of marks secured in 10+2 class, 50% weightage of marks secured in an aptitude test and ten marks for computer test including typing skill. The aptitude test is common for the candidates of different quotas including the direct recruits. The 1st applicant secured 77.80 and the 2nd applicant 72 marks out of 100 in the departmental exam held on 29.5.2005. The applicants lost the selection since as per the vacancies announced for GDS quota there was only one vacancy for the unreserved and 5 for ST and none for SC or OBC. In the result only one candidate from among the GDS candidate got selected under unreserved quota.

3. Aggrieved by the non selection the applicants had filed O.A.200/06 and O.A.242/06 seeking identical reliefs. The respondents in their reply statement to the O.As admitted that there was a mistake in the computation of the unfilled vacancies of 2003 in the departmental quota earmarked for the GDS and submitted before this Tribunal that they would redo the selection process. In view of this undertaking of the respondents the Tribunal disposed of the applications by a common order recording the same (Annexure A-5). Since no action was forthcoming on the parts of the respondents, the 1st applicant filed MA 365/07 seeking direction to the respondents to comply with the order of this Tribunal. The said M.A is pending for the reply of the respondents. While so, the applicants were

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informed orally to collect the hall ticket for the departmental test held on 20.5.2007 and on the next day the 1st applicant was informed that the examination for recruitment to the unfilled vacancies of GDS quota for the year 2003 is being held on 20.5.2007. The present application is filed against this decision of the respondents. It is contended that holding of such an examination for the re-selection is in gross violation of the rules governing the conduct of departmental examination under which at least three months notice is to be issued prior to the holding of the examination. The departmental examination was conducted on 20.5.2007 allowing other ineligible persons to appear for examination causing irreparable loss to the applicants who could not appear in the said examination as it has been held along with the candidates for direct recruitment for the year 2005 when the applicants had already undergone the examination held on 29.5.2005 along with the direct recruitment of the year 2004.

4. In short, the applicants have contended that the holding of fresh examination for re-selection was unwarranted and against the undertaking given by the respondents before this Tribunal in the earlier O.A and it is also in contravention of the Recruitment Rules. The applicants have prayed for the following reliefs :-

1. Call for the files leading to Annexure A-6 and quash the selection proceedings held on the basis of Annexure A-6 in so far the same relates to GDS candidates for 2003 vacancies.
2. Declare that the proceedings conducted pursuant to Annexure A-6 are unjust and illegal and that the selection is to be redone on the basis of the departmental examination already held on 29.5.2005.

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3. Issue appropriate orders directions to the respondents to redo the selection process for filling the unfilled vacancies in the departmental quota for the year 2003 due to the Gramin Dak Sevak on the basis of the result of the examination held on 29.5.2005.

5. Respondents have filed reply statement and additional reply statement. It has been averred that the applicants were not permitted to appear for the examination for recruitment to the cadre of Postal Assistant for filling up the unfilled vacancies of LGOs offered to GDS (Departmental Quota) for the year 2003 as they were over aged considering that there existed no vacancy for OBC to claim age relaxation. However, they were later permitted to take the examination provisionally on 29.5.2005 in deference to orders in O.A.356/05 of C.A.T. The respondents had admitted in Court that an error has occurred in the computation of vacancies and therefore notification had been issued on 15.1.2007 recasting the vacancies showing 3 as earmarked for OBC. Even though the applicants did not apply, hall permits were issued to them on 18.5.2007 through the heads of their offices, but both of them refused to accept the hall permits and abstained from taking the examination and tests. It is true that the delivery of hall tickets was delayed as a decision had to be taken to hold the examination for filling up of the unfilled vacancies of LGOs offered to GDS for the year 2003 along with the examination for vacancies for the year 2005 and from the refusal of the hall tickets by the applicants, it is evident that they are avoiding to take the aptitude test. It is further averred that the undertaking given by the respondents to the Tribunal was that the selection would be redone. But no undertaking that it would be confined only to those candidates who had appeared in the

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earlier examination was given. It was necessary to offer opportunity for all similarly placed persons as the applicants. A common yardstick has to be followed for the selection giving opportunities to all the eligible candidates. If the applicants had appeared for the examination there could have been a ground for them to seek redressal for shortage of preparation time, but without appearing in the examination they cannot take the plea that there was no advance intimation.

6. In the rejoinder the applicants submitted that they were unaware of notification dated 15.1.2007 as submitted by the respondents and only a notification dated 3.1.2007 was circulated by the 1st respondent announcing the next departmental examination to be held on 29.4.2007 for the vacancies of the year 2007. The respondents have not produced the so called notification dated 15.1.2007. They have also controverted the averments of the respondents that the notification to conduct re-examination along with 2005 vacancies is in accordance with the statutory provision. As the statutory requirement is that the eligibility of GDS officials is to be decided with reference to the marks secured by the last direct recruit of the relevant category of the same year. It is pointed out that the examination held on 29.5.2005 has also not been cancelled by the respondents.

7. In the additional reply statement, the respondents have produced Annexure R-4 and Annexure R-5 notifications dated 15.1.2007 for the examination to be held for direct recruitment for 2005 vacancies and the

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unfilled vacancies of 2004 showing the vacancies as 9 of which 3 were earmarked for OBC. Applicants did not apply in response to above notification since it was meant for open recruitment. The respondents, therefore, decided to hold the examination for recruitment for selection to the post of Postal Assistant against unfilled vacancies of GDS quota for they year 2003 on 20.5.2007 along with the general examination in compliance to the order of this Tribunal in O.A.200/06. They also submitted that these vacancies set apart for open recruitment cannot be linked with unfilled departmental vacancies of 2003 offered to GDS like the applicants. Therefore 6 unfilled departmental quota vacancies of 2003 offered to GDS quota have been earmarked to the candidates who may qualify in the above examination held as per R-6 notice on 20.5.2007.

8. We have heard the counsel for the applicants Shri.P.C.Sebastian and Shri.Shaji.V.A for SCGSC. We have also gone through the records including the earlier O.As filed by the applicants and referred to in this O.A. This is 3rd round of litigation as far as the applicants are concerned on the same issue. The first O.A filed O.A.356/05 for permission to appear in the examination held on 29.5.2005 for recruitment to the unfilled vacancies of 2003 was permitted to be withdrawn by the applicants after they had been provisionally permitted to take the examination. O.A.242/06 and O.A.200/06 were filed by the applicants and the respondents issued another notification dated 21.2.2006 for filling up the unfilled vacancies along with direct recruitment vacancies of 2004. These O.As was disposed of by a common order dated 8.12.2006 (Annexure A-5) recording the

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undertaking of the respondents as contained in paragraph 6 of Annexure A-4 that the selection process will be redone as an error had occurred in computing the vacancies. The applicants are now constrained to file this O.A when the respondents have proposed to hold another examination for the same unfilled vacancies of the year 2003 along with the examination for the vacancies of 2005 and 2007.

9. Respondents have contested the O.A mainly on the following grounds :-

- (a) That the holding of the examination on 20.5.2007 as per Annexure A-6 was justified and is in accordance with the directions of this Tribunal in Annexure A-5 since an opportunity has to be given to all similarly placed persons as the applicants.
- (b) No undertaking had been given before the Tribunal that the selection would be confined only to those candidates who had appeared in the earlier examination. Undertaking was to the effect that the respondents wish to redo the selection.
- (c) The applicants have refused to receive the hall tickets from which it is evident that they were avoiding to take the aptitude test.
- (d) Having avoided the same, they cannot take the ground that there was shortage of preparation time.

10. While denying the above contentions, the respondents are, at the same time, conceded Annexure R-5 notification dated 15.1.2007, in which 9 vacancies have been shown against Irinjalakuda Division out of which 3 are for OBC, is a notification meant for open recruitment. Respondents have also admitted that they decided to hold the examination for recruitment for selection to the post of Postal Assistant against the unfilled vacancies of GDS quota for the year 2003 on 20.5.2007 along with the general examination in purported compliance of the order of this Tribunal in O.A.200/06.

11. The instructions regarding the filling up of the vacancies of Postman have been issued by the department from time to time and they have been notified in DG Posts letter dated 7th April 1989 and 3rd April 1991. Since these instructions are comprehensive and provide all the answers to the contentions raised by the respondents they are reproduced below as under :-

Filling up vacancies of Postmen/Village Postmen/Mail Guards. - With a view to rationalizing the existing system of recruitment to the cadre of Postmen/Village Postmen, the matter has been discussed with the Staff Side in the JCM (DC) and it has been decided that the existing method of filling up vacancies of Postmen/Village Postmen should be modified to the extent indicated below -

The existing method of recruitment to 50% of vacancies in the cadre of Postmen/Village Postmen by promotion of Group 'D' officials, who qualify in the test will continue.

The remaining 50% of the vacancies, which are for outsiders' quota and are filled in from amongst the ED Agents, should be further divided into two halves. One half of the 50% of the vacancies will be filled in from amongst ED Agents who have put in three years (now five years) regular service and

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are within the age-limit on the basis of merit in the examination. The remaining half of the 50% of the vacancies will be filled in, on the basis of length of service, from EDAs who have put in three years of regular service and are within the age-limit and who qualify in the examination. The number of ED Agents to be permitted to take the examination under this quota will be five times of the vacancies announced under this quota.

It is hereby clarified that there is no restriction on number of ED Agents to be permitted to take the examination under 25% merit quota for outsider vacancies. In other words, all eligible ED Agents may be allowed under this quota for appearing in the examination. As far as seniority quota, on the basis of length of service, is concerned, the position will remain unchanged.

[D.G., Posts, Letter No.44-2/21-SPB-I dated the 3rd April, 1991.]

If sufficient number of EDAs are not recruited from a Division, the vacancies shall be thrown open to all the EDAs of the Postal Divisions falling in the Zone of Regional Director instead of neighbouring divisions as provided in the instructions at present.

In Group 'A' Post Offices, if sufficient EDAs cannot be recruited from that office, the vacancies shall be thrown open to all the EDAs of the Postal Divisions located at the same station. If there are still some vacancies left, such vacancies will be thrown open to the ED Agents in the region.

The examination for filling up vacancies of Postmen/Village Postmen/Mail Guards from amongst Group 'D' officials and EDAs will be conducted with the syllabus as communicated in Directorate Letter No.10-6/86/PCC/SPB-I, dated 28.4.1988 (Annexure) and the examination will be common for both Group 'D' and EDAs. It will be conducted only once a year. The Regional Director will be responsible for ensuring final action to hold the examination. He may set the question papers either himself or he may ask any other Director of Postal Services in the Circle or nominate any other Group 'A' Officer in Senior Time-Scale for setting question papers. The Regional Director may nominate officers, who are working in another Region of the same Circle, in consultation with the other Regional Directors for valuation of answers papers. If there is only one Region in the Circle, the valuation should be done by officers other than the concerned Divisional Head.

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In the Application Form for appearing in the examination, the following column shall be prescribed in order to obtain option of the EDAs to work anywhere in the Region. "Whether the EDA is willing to work anywhere in the Region, if he qualifies in the examination. If so, he should mention three places of his choice."

The examination will be conducted under the supervision of the Divisional Head, who will also take all necessary action, like calling for applications, etc., for smooth conduct of the examination. After valuation, the answer papers will be sent to the concerned Divisional Heads or to the Senior Postmaster of Group 'A' Post Offices for tabulation of marks in respective units. Selection of candidates from the successful candidates will be made only for the number of vacancies announced, with respective break down (i) on the basis of length of service of EDAs and (ii) merit, in respect of vacancies announced for these two batches of the outsiders quota. After absorbing the required number of candidates as per announced vacancies in respective divisions, the Divisional Superintendent will send the statement of marks of the remaining qualified EDAs who could not be accommodated in the Division, to the Regional Director of Postal Services, indicating therein the choice of Divisions preferred by the respective EDA in his application. Thereupon, the Regional Office will allot the candidates on the basis of merit in the examination in the whole Region. The allotments will be to the Divisions/Group 'A' Post Offices which will have shortfall.

Before commencement of the examination, the Divisional Superintendent should announce the vacancies in the respective quota along with break down for the respective communities.

The list of EDAs (candidates) to be selected on the basis of length of service for one half of the outsiders quota should also be circulated in advance.

The unfilled vacancies of the quota for selection on the basis of length of service will be added to the merit quota.

As per existing orders, the unfilled vacancies of Departmental quota will be added to the quota for EDAs. In future, the unfilled vacancies of Departmental quota will be added to the one half of the quota meant for ED candidates on merit only.

From among the 50% of the vacancies reserved for outsiders, one half will be filled in from amongst EDAs on merit

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and another half will be filled in from amongst ED Agents on the basis of length of service. Therefore, one roster of 100-points will be maintained. The reserved points should also be divided equally between the quota of length of service and that on merit. The add figure should be added to the quota for those based on length of service. If that vacancy is not filled in on the basis of length of service, the vacancy will go to the quota meant for those selected on merit.

The candidates who will be selected on the basis of length of service will be en bloc senior to the candidates who are selected on merit.

If in a Circle there is no separate Region, the Circle should be treated as a Region for the purpose of above instructions.

The above instructions and the revised procedure will not be applicable in the case of recruitment to the cadre of Group 'D' but only for recruitment to Postmen/Village Postmen/Mail Guards. The other conditions prescribed for filling up vacancies and conducting of examination not mentioned in the amendments as above will remain unaffected.

These instructions will be applicable to all the examinations for filling up vacancies in the cadre of Postmen/Village Postmen/Mail Guards to be announced after the date of issue of this letter.

[D.G., Posts, Letter No.44-44/82-SPB-I, dated the 7th April, 1989.]

12. Reading of these instructions would show that the stand of the respondents is clearly untenable and that they have not been holding the examination regularly and the procedure followed for filling up of the vacancies is not entirely in accordance with the instructions. First of all, it has been stipulated that the examination would be common for both the method of recruitments i.e. promotion from Group 'D' and filling up from GDS. The examination will be conducted only once a year. From the records in this O.A as well as in the earlier O.As, we find that the



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respondents have been issuing notification for conducting the examination by promotion against the 50% vacancies for Group D and the backlog vacancies of the previous year whereas the scheme of the examination envisaged that there will be a single examination for vacancies of a particular year which is open to both Group D and EDAs and the unfilled vacancies of that recruitment year are to be filled up from those EDAs who qualify in the examination of that year subject again to the further condition that they should have secured marks not less than that obtained by the last direct recruit in that selection. Secondly, it is stipulated that before commencement of the examination the Divisional Superintendent should announce the vacancies in the respective quota along with break down for the respective communities. In many instances, this has not been followed. Hence the contention of the respondents that they had been holding the examination in accordance with the Recruitment Rules is not correct. Again, according to these instructions there is no restriction on the number of ED Agents to be permitted to take the examination under 25% merit quota for outsider vacancies. All eligible ED Agents can be allowed under this quota for appearing in the examination. Therefore the contention of the respondents that unless a fresh examination is held the principles of natural justice will be violated and similarly placed persons would be denied the opportunity to compete in the selection has no basis. In the year 2003 for which the examination was held on 29.5.2005 presumably along with the vacancies for the year 2004 all the EDAs eligible at that point of time would have taken the examination along with the applicants. Per contra allowing those EDAs who have become eligible 2 to 3 years

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later and considering them along with the applicants who had become eligible in the year 2003 itself would amount to violation of the principles of natural justice. Hon'ble Supreme Court has observed in (2007) 2 SCC (L&S) 721 in the case of Vijay Singh Charak Vs. Union of India & Ors. that the selection list can be prepared only for a particular year and only those who are eligible in that particular year alone can be considered for selection. Even if, the select list is not prepared in that year it will relate back to that particular year. There cannot be clubbing up of vacancies for several years and there cannot be a common select list for these years.

13. Another point to be considered is, according to the instructions referred to supra, the two separate rosters have to be maintained for promotion of Group D and under the quota for EDAs. One roster of 100 point has to be maintained for EDAs and 40 point roster has to be maintained for 50% vacancies for departmental officials in terms of D.G. Posts, letter No.45-3/91-SPB-I dated the 15th December 1992. Hence the respondents had made a mistake of clubbing the backlog vacancies under ST in the departmental quota with the unfilled vacancies of the year 2003 in the notification at Annexure A-1 which mistake was admitted by them in O.A.242/06 and it was recorded by the Tribunal that the respondents would redo the selection process. Hence, what was required was, only to recompute the vacancies as per the 100 point roster for the EDAs to which the unfilled vacancies would have to be assigned. Respondents have clearly admitted this in Paragraph 7 & 8 of the reply statement in O.A.242/06 which reads as under :-

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“ It is humbly submitted that break up of vacancies as 5 ST and 1 UR was wrong since it was with reference to the roster maintained for the purpose of promotions of LGOs as Postal Assistants. Since selection of GDS as P.As is another mode of recruitment, a separate roster should have been maintained, where the community wise break up will reflect differently. Rules do not provide for reservation for OBC in promotion whereas 27% reservation is due to OBC in direct recruitment.

It is humbly submitted that the unfilled vacancies of 2003 offered to GDS should have been apportioned as 5 for UR and 1 for OBC. The applicant or any other OBC candidate who appeared in the examination received equal or more mark than the last selected OBC candidate in the open notification should have been selected under GDS quota. In these circumstances it is proposed to redo the recruitment.”

14. Hence what was expected of the respondents was only to recompute these vacancies and then make the selection from the EDAs who had qualified in the examination. Redoing the recruitment would, therefore, not mean conducting the examination once again but only re-working the selection after notifying the revised break up of vacancies as stipulated in the instructions referred to above. In the light of these submissions made in the reply statement from time to time, we observe that the respondents appear to be shifting their stand from one O.A to another. Their contentions that no undertaking was given to select the candidates from the examination held on 29.5.2005 etc. are irrelevant. Respondents have to follow the instructions/provisions of the Recruitment Rules and cannot deviate from the same from one recruitment year to another.

15. From Paragraph 2 of the additional reply statement filed by the respondents it is clear to us that the respondents have done nothing after the undertaking given before this Tribunal in O.A.242/06 and O.A.200/06

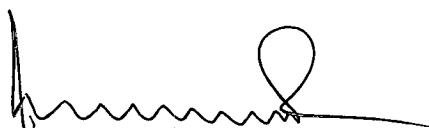
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and that they after notifying the examination for the year 2007 hurriedly took a decision to hold the examination for the unfilled vacancies of GDS quota for the year 2003 also along with this General examination and according to the respondents themselves this decision was finally made only on 18.5.2007 when the examination was proposed on 20.5.2007. Therefore without any advance intimation for notifying the vacancies they have issued Annexure A-6 dated 18.5.2007 directing the applicants to collect the hall tickets. The applicants were well within their right to refuse to take the hall tickets as they were already armed with the orders of this Tribunal in O.A.242/06 and O.A.200/06. This action of the respondents is clearly in violation of the rules and instructions and quite indefensible. In fact despite various notifications and statements filed, there is no indication as to how many unfilled vacancies are there of the year 2003 with reference to the examination held on 29.5.2005. This was the first step which should have been taken by the respondents after the order of this Tribunal in Annexure A-4. Unless the vacancies earmarked for various categories are known it is just not possible, even at this stage, to know whether there is any vacancy for OBC for the applicants in this OA. However, the statement made by the respondents themselves and quoted supra in O.A.242/06 that the vacancies should have been apportioned as 5 for UR and 1 for OBC gives rise to the presumption that there were 6 unfilled vacancies of which 1 should be earmarked for OBC. In any case it cannot be concluded definitely unless the rosters are looked into and it is for the respondents first to declare these unfilled vacancies and their break up category wise.

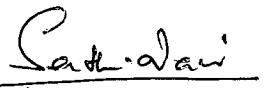
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16. In view of the above reasons as discussed above, we are of the considered view that the conducting of examination on 20.5.2007 for the unfilled vacancies of GDS quota for the year 2003 is clearly not warranted in the light of the instructions on the subject and we declare that any proceedings conducted pursuant to Annexure A-6 is illegal. Respondents are in keeping with the undertaking given by them as reflected in Annexure A-5 order of this Tribunal directed to recompute the vacancies in the GDS quota against the unfilled vacancies of the GDS quota for the year 2003 and to publish the select list on the basis of the result of the examination held on 29.5.2005 in which the applicants also participated, without conducting any fresh examination for the purpose. This exercise shall be completed within a period of one month from the date of receipt of a copy of this order. O.A is accordingly allowed. The respondents shall in future conduct the examination every year strictly in accordance with the rules and instructions.

(Dated this the7th... day of .February..... 2008)



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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