

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 375 of 2013

Original Application No. 376 of 2013

Original Application No. 377 of 2013

Monday, this the 31st day of August, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member

Hon'ble Mrs. P. Gopinath, Administrative Member

1. Original Application No. 375 of 2013 -

1. Sreelatha K., W/o. Krishnadas, aged 46 years,
Assistant, Passport Office, Kozhikode, residing at
Elayedath House, Vengeri PO, Kozhikode - 673 010.
2. Mini P., W/o. Sivadasan K., aged 45 years,
Assistant, Passport Office, Kozhikode, residing at
Kunnath House, Post Beypore, Kozhikode District, Pin-673 015.
3. Vijayan K., S/o. K. Raghavan Nair, aged 48 years,
Assistant, Passport Office, Kozhikode, residing at Kandiyoth House,
Nanmida Post, Kozhikode - 673 613.
4. Geethamani T.P., W/o. Krishnanunni, aged 49 years,
Assistant, Passport Office, Kozhikode, residing at Vignesh,
Pilassery, Edakkadu Post, Kozhikode - 673 005.
5. Venugopal E.M., S/o. E.M. Narayanan Nair, aged 43 years,
Assistant, Passport Office, Kozhikode, residing at
Edavanameethal House, Nut Street Post, Vadakara,
Kozhikode - 673 104. **Applicants**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by Secretary,
Ministry of External Affairs, New Delhi - 110 001.
2. Joint Secretary (CPV) and Chief Passport Officer,
Ministry of External Affairs, New Delhi - 110 001.
3. The Regional Passport Officer,
Regional Passport Office, Kozhikode-695 024.

4. G. Appavoo, Assistant, Regional Passport Office,
First Floor, Water Tank Building, West Buliward Road,
Tiruchirappalli, Tamil Nadu – 620 008.
5. K.I. Ayyappankutty, Assistant, Regional Passport Office,
Kochi, Kerala, Pin – 682 036.
6. T. Thenmozhi, Assistant, Passport Office,
Shastri Bhavan, 26, Haddows Road, Chennai,
Tamil Nadu – 600 006.
7. R. Radhika, Assistant, Passport Office, SNSM Building,
Karalkada Jn., Kaithamukku, Trivandrum – 695 024.
8. G. Velumani, Assistant, Passport Office,
Shastri Bhavan, 26, Haddows Road, Chennai,
Tamil Nadu – 600 006.
9. Beenakumari S., Assistant, Passport Office,
SNSM Building, Karalkada Jn., Kaithamukku,
Trivandrum – 695 024.
10. J. Chandrasekaran, Assistant, Passport Office,
Shastri Bhavan, 26, Haddows Road, Chennai,
Tamil Nadu – 600 006.
11. V. Thulasi, Assistant, Regional Passport Office,
First Floor, Water Tank Building, West Buliward Road,
Tiruchirappalli, Tamil Nadu – 620 008. Respondents

[By Advocate : Mr. N. Anilkumar, Sr. PCGC @ [R1-3]

2. Original Application No. 376 of 2013 -

K. Muraleedharan Pillai, Assistant,
Regional Passport Office, Cochin – 682 036. Applicant

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Joint Secretary (PSP), Govt. of India,
Ministry of External Affairs, CPV Division,
New Delhi – 110 001.
2. Deputy Secretary (PVA), Govt. of India,
Ministry of External Affairs, CPV Cadre Cell,
New Delhi – 110 001.

3. Regional Passport Officer, Regional Passport Office,
Cochin – 682 036.
4. Deputy Passport Officer (Cadre),
Ministry of External Affairs, Govt. of India,
New Delhi – 110 001.
5. Assistant Passport Officer (Cadre),
Ministry of External Affairs, Govt. of India,
New Delhi – 110 001. Respondents

[By Advocate : Mr. N. Anilkumar, Sr. PCGC ®]

3. Original Application No. 377 of 2013 -

1. K.C. Bindu, Assistant, Regional Passport Office, Kochi.
2. Sheeba Reghu, Assistant, Regional Passport Office, Kochi.
3. Sobhana Varghese, Assistant, Regional Passport Office, Kochi.
4. Omana Pradeep, Assistant, Regional Passport Office, Kochi.
5. K.R. Sheeba, Assistant, Regional Passport Office, Kochi.
6. Rema Babu, Assistant, Regional Passport Office,
Kochi. Applicants

(By Advocate : Mr. P. Ramakrishnan & Mrs. Preethi Ramakrishnan)

V e r s u s

1. Union of India, represented by Secretary,
Ministry of External Affairs, New Delhi – 110 001.
2. Joint Secretary (CPV) & Chief Passport Officer,
Ministry of External Affairs, New Delhi – 110 001.
3. The Regional Passport Officer,
Panampilly Nagar, Kochi-682 020. Respondents

[By Advocate : Mr. N. Anilkumar, Sr. PCGC ® [R1-3]

These applications having been heard on 6.8.2015, the Tribunal on

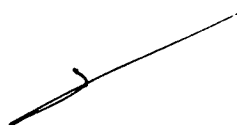
31.08.2015 delivered the following:

ORDER

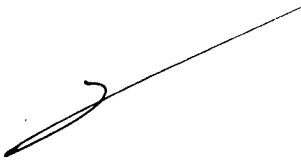
Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

The applicants in these cases being aggrieved by the order passed by the respondents excluding the names of the applicants from the select list of Assistants have approached this Tribunal for a declaration that they are eligible to be included in the select list of Assistants and to direct the respondents to continue them as Assistants based on their merits in preference to those who have got lesser marks than the applicants.

2. The applicants commenced their service as daily rated clerks. They were regularized during 1995-97. Their daily rated service is counted as qualifying service for promotion. The applicants were promoted as Upper Division Clerks prior to 26.9.2008. the upper division clerks with 16 years service (as LDC and UDC) can aspire for promotion as Assistants. 25% of the vacancies are to be filled up by LDCE based on merit. The balance 75% is to be filled based on seniority in the cadre of UDC. A notification was issued notifying the examination for 113 vacancies. No vacancies for SC/ST was notified as can be seen from Annexure A1 notification. The applicants were fully qualified for promotion as Assistants. The applicants earlier approached this Tribunal and as per a common order it was held by this Tribunal that the applicants were entitled to be considered for promotion as Assistants and to appear in the Limited Departmental Competitive Examination. As some of the applicants were not earlier permitted to appear in the examination this Tribunal directed that a supplementary examination may be conducted for them. But the supplementary examination was not




immediately conducted. A ranked list was of 112 candidates was published from among those who appeared in the 1st examination as can be seen from Annexure A2. Based on Annexure A2 the applicants were promoted as Assistants with effect from 12.12.2008. After that there was a revision of seniority of UDC caused due to certain litigations. 35 individuals were assigned seniority much higher than the one they were originally given (vide Annexure A3). Based on Annexure A3 candidates were given promotion as Assistants with effect from the date of promotion of their juniors in the 75% seniority quota vide Annexure A4. Meanwhile supplementary examination was notified on 12.1.2010. The results were published and a combined ranked list of the two examination was published wherein the applicants did not figure among the first 112, vide Annexure A5. Aggrieved by the same the applicants and others filed OA No. 43/2011 before this Tribunal. This Tribunal directed that those who were ineligible for appearing in the 1st examination and those who were given promotion in seniority quota be removed from the ranked list and a fresh list be published vide Annexure A6 order. The applicants challenged Annexure A6 by filing a Writ Petition before the High Court but that was dismissed. The revised ranked list pursuant to Annexure A6 was published vide Annexure A7. Some of the applicants did not figure in Annexure A7 and they challenged the said ranked list in OA No. 639/2011 and as per the interim order they were allowed to continue to work as Assistants. Annexure A8 is the true copy of the mark list of the candidates who appeared for the LDCE examination on 23.11.2008 and 21.3.2010. The OA was finally disposed of




directing the respondents to hear all the affected parties and to take a decision on the matter. It was directed that till such a decision is taken the order of stay against the reversion be allowed to be continued vide Annexure A9. Detailed representations were given by the applicants. A fresh combined list was published vide Annexure A11 in which none of the applicants are included. The persons shown from rank No.96 to 104 are persons who are below the applicants in the ranking as can be seen from Annexure A8 but they were inducted on the ground that they were reserved category candidates. The respondents contend that Annexure A11 combined ranked list was issued based on the order passed in OA No. 43/2011. That is an incorrect statement. Again the applicants and similarly placed persons approached this Tribunal by filing OA No. 353/2012. On the strength of the interim orders passed in that OA the applicants could continue as Assistants.

3. After the OA was filed respondents issued a corrigendum superseding Annexure A11, as per which some of the applicants in OA 353/2012 were included in the revised corrected list but other applicants were not included. Annexure A12 is that corrigendum dated 12.7.2012. Annexure A12 was challenged by the applicants. In OA 353/2012 and connected cases it was held by the Tribunal that application of reservation without including it in the notification was illegal and that the representations that may be submitted by the applicants should be considered in view of the findings entered by the Tribunal and till such consideration and revision the applicants should be allowed to continue as Assistants vide Annexure A13 order in OA 353/2012 and connected cases. Accordingly, representations



were submitted vide Annexure A14 and other representations. Thereafter a new list containing names of only 104 candidates were published in which the names of the applicants were excluded. The reservation for SC/ST was applied and those with much lesser marks than the applicants were included in the list vide Annexure A15. It was communicated to the office of the 3rd respondent on 19.4.2013 and on the same date the 3rd respondent issued orders of reversion and the same was communicated to the applicants as per office order dated 19.4.2013 vide Annexure A16. On the same date they were served with an order rejecting the representation vide Annexure A17. The orders of reversion were issued without notice to the applicants and without hearing them. Before ordering removal from the select list the applicants were not heard. Annexure A1 notification or the notification pertaining to the supplementary examination did not contain any stipulation with regard to reservation and so such a condition cannot be later introduced to induct persons lower in rank to the applicants and others who appeared in the select list. The action so taken by the respondents is arbitrary and unfair. The earlier order passed by the Tribunal has become final inter-partes and therefore, the respondents cannot ignore the orders passed by the Tribunal and apply the reservation so as to exclude the applicants. When the application for reservation is held to be illegal some of the notified vacancies cannot be kept aside for reserved category of candidates of subsequent years. If all the notified vacancies are filled up there will be no reason for reverting the applicants. Thus, it is clear that the action taken by the respondents is the result of non-application of mind. The names of the

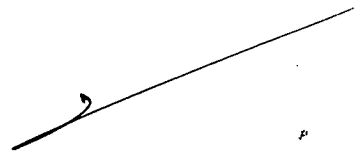


applicants were excluded for the alleged purpose of reservation to the 25% quota for Limited Departmental Competitive Examination. There is no rule or instruction providing for such reservation.


4. The notification never contemplated any kind of reservation for appointment to the 25% quota of Assistants and as such the subsequent introduction of reservation is illegal and unfair. It would prejudice the rights of other SC/ST candidates who have not been notified of the existence of reserved vacancies and who could not appear for the examination. Moreover, the notification was not challenged by any person. The appointments made pursuant to the notification were also not challenged by any candidate belonging to SC/ST group. Therefore, introducing reservation for the first time, after several years, is totally uncalled for. Hence, the applicants sought for quashment of the orders issued by the respondents, to the extent they exclude the names of the applicants and to declare that the applicants are eligible to be included in the select list of Assistants. They further seek a direction to be issued to the respondents to allow the applicants to continue as Assistants based on their merit reflected in the select list in preference to those who have lesser marks.

5. The respondents filed reply statement contending as follows:-


5.1. Under the Passport Seva Project new vacancies in the grade of Assistants had become available for promotion from the post of UDC to Assistants. As per the notification dated 3.3.2004 (Annexure A18) 75% of the total vacancies were to be filled through promotion and 25% through



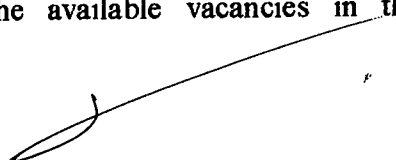
Limited Departmental Examination (LDE). In the notification it was specifically stated that nothing in those rules shall effect reservation, relaxation of age limit and other concessions to be provided for the Scheduled Caste, Scheduled Tribe, Other Backward Classes, Ex-servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in that regard. Annexure A1 circular was issued under the extant CPO (Group-C Post) Recruitment Rules, 2004 for conduct of limited departmental examination for promotion from UDC to the post of Assistants. For the recruitment years April, 2008 to March, 2009, 338 vacancies were to be filled through promotion and another 112 vacancies being 25% were to be filled through LDE. The LDE examination result was published on 9.1.2009 in respect of UD Clerks having 16 years of combined regular service. That select list included 69 candidates as against 112 vacancies. The result of the remaining successful UD Clerks was kept in abeyance till the final decision of this Tribunal. Another group of UDCs approached this Tribunal at that time contending that the service for the purpose of admission to the examination should be counted from the date of recruitment as casual labourer rather than from the date of their regularization as LDCs. This Tribunal directed that those applicants be also admitted to the examination pending the final outcome of the OA. The examination was held on due date and the select list for promotion of Assistants based on merit was issued to those candidates who were eligible according to the criteria published in the notice for examination. Subsequently this Tribunal directed that those persons who were admitted to the examination held on 23.11.2008 and who appeared for



examination on the strength of the interim order of this Tribunal and which was made provisional be treated as absolute and promotion be granted on the basis of the results in that examination. Accordingly a revised list for promotion to the post of Assistant was issued on 28.8.2009. Following the same, some representations from some of the officials were received to the effect that their names were omitted and that candidates who were not even eligible for appearing in LDE were included. Considering all those representations the errors were rectified and Annexure A2 list was published. Subsequently in compliance of the order dated 8.4.2011 of this Tribunal a revised combined ranked list Annexure A7 was published. In the meanwhile some of the UD Clerks who were denied permission for appearing in the LDE approached different courts demanding that a separate LDE be held for them. Further, some of the LD Clerks who were promoted to UDCs with effect from 27.11.2008 i.e. after the LDE had been held on 23.11.2008 also approached different Courts for the same relief. This Tribunal directed the Ministry to conduct another LDE examination for 112 posts for the employees who completed combined 16 years of service in the LDC and UDC from the date of their initial appointment as on 26.9.2008. Based on the same a second LDE was held on 21.3.2010. The result of the same was not declared pursuant to the directions of this Tribunal. While so this Tribunal in Annexure A6 order held that all those persons who had requisite qualification as on the cutoff date; namely, 26.9.2008 and who appeared for the competitive examination are entitled to be included in the combined ranked list based on the marks obtained by them in the examination. It was also held that those who did not satisfy the service



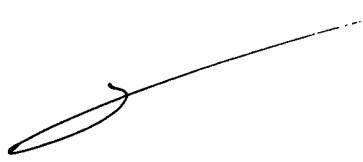
eligibility conditions as on the cut off date cannot be included in the ranked list merely for the reason that they have appeared in the examination on the basis of an interim order or otherwise. But it was made clear that those who had obtained the final judgment in their favour regarding eligibility to appear in the examination or to be included in the ranked list will not be affected by the order. The respondents were also given liberty to revert anybody in case he is found to be ineligible to be promoted based on the combined ranked list. Based on the same another revised combined list was published. Again some representations were received from some of the officials to the effect that the names of the officials who were promoted in the 75% quota are included in the select list. The OAs of those applicants, whose names were included were subsequently dismissed. Considering those representations including that of the applicants and in supersession of the earlier list the Ministry issued a corrected and revised list as corrigendum dated 12.7.2012 and 18.7.2012. While preparing the same the respondents also took into account the additional vacancies created by removal of those names who were initially included in the 25% quota and who were later promoted against the 75% quota. After 112 vacancies as per rules, 16 officials of SC reserved category and 8 officials of ST candidates are to be promoted. The Ministry did not have any official of ST category, 8 posts of ST category have been kept for reserved category for the next LDE. The applicants have obtained total marks of 70, 60, 60, 64, 62, etc. To fill up the available vacancies in the LDE category the Ministry has been able to cover those candidates who have up to 70 marks only. Only 2 of them can be promoted as per the available vacancies in the LDE category.



Accordingly, other applicants and other persons who secured 70 marks could not be included in the select list. The reservation in promotions for SC/ST candidates in the service/post under Central Government through Limited Departmental Competitive Examinations in Group-B, C and D shall be 15% in case of Scheduled Caste and 7½% in case of Scheduled Tribe, which can be seen from Annexure R1 OM. The order passed in OAs Nos. 353/12, 388/12, 389/12 and 678/12 directed the reservation of the applicants to be kept in abeyance pending revision of seniority list after considering the objections raised by the applicants by the Joint Secretary (CPV) and Chief Passport Officer. Accordingly, Joint Secretary (PSP) and Chief Passport Officer examined the representations of the applicants individually and decision was taken on the matter as per rules and the same was communicated to them. Therefore, the respondents contend that all the applications are liable to be dismissed.

6. We have heard the learned counsel appearing on both sides and have also gone through the Annexures produced by the parties.


7. Annexure A9 order is the order passed by this Tribunal in OA No. 639/2011 dated 13.1.2012 which was filed by applicants 4 & 5 in this case. That OA was filed aggrieved by the removal of their names from the ranked list of UDCs for promotion as Assistants in the 25% merit quota and also aggrieved by the reversion as ordered in consequence of the same. The supplementary examination conducted earlier on 23.11.2008 for the purpose of promotion of Assistant was also considered. By that time some of the



applicants who were promoted in the 25% quota were promoted to the 75% quota and so it was said their names can be removed so that more names can be accommodated in the 25% quota. The applicants therein contended that had the judgment passed by this Tribunal been implemented there could not have been any reversion in the 25% quota as they had already been accommodated in the 75% quota. The order passed by the Tribunal in OA No. 613/2011 on OA 8.11.2011 was also taken into account. It was held that if the applicants had any objection regarding the combined seniority list they can file representations before the 2nd respondent who after considering those objections, the combined seniority list shall be finalized. It was further held that if there are interested parties who will be materially affected they should also be heard in the matter before taking a final decision.

8. Annexure A13 is the common order passed by this Tribunal on 28.1.2013 in OAs Nos. 353/12, 388/12, 389/12 and 678/12. In Annexure A13 this Tribunal took note of the earlier order passed by it on 8.4.2011 in OA 43/2011, 68/2011 and 86/2011 where it was held:

“9. In the result we hold:-


- i) All those persons who had requisite qualification as on cut off date viz. 26.9.2008 and who have appeared in the competitive examination are entitled to be included in the combined rank list based on the marks obtained by them in the examination.
 - ii) Those who did not satisfy the service eligibility conditions as on the cut off date cannot be included in the rank list merely for the reason that they have appeared in the examination on the basis of an interim order or otherwise.
 - iii) Since some of the candidates who have been included in the combined rank list having been promoted retrospectively within the 75% quota they cannot be included in the combined rank list to fill up the 25% quota based on the examination. In such circumstances these vacancies will also be available to be filled up from the 25% quota.
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10. We make it clear that those who have obtained final judgment in their favour regarding their eligibility to appear in the Examination or to be included in the rank list will not be affected by this order.

11. In view of what is stated above, we direct that the Annexure A-8 rank list is to be revised based on the above principles and to facilitate the respondents to do so we set aside the same. The revised combined rank list and the promotions thereafter shall be effected by the respondents within two months from the date of receipt of a copy of this order. It will be open to the respondents to revert anybody in case he is found to be ineligible to be promoted based on the combined rank list."

9. It was pursuant to the directions issued by this Tribunal in those Original Applications revised list dated 1.7.2011 was issued. It was also noted that the respondents have issued a corrected revised list dated 12.7.2012 and 18.7.2012. While preparing that list the respondents followed the principles of reservation. That was under challenge in OAs Nos. 353/12, 388/12, 389/12 and 678/12. It was contended that reservation was not specified in the notification held on 23.11.2008 and 21.3.2010 and that in the absence of such a provision in the notification it is not open to the respondents to introduce reservation in the combined seniority list. It was further contended that it is not permissible for the candidates belonging to the reserved category to apply against unreserved category and the application for reservation which was not provided for in the notification was illegal. If provision was made in the notification similarly placed other SC/ST candidates could have appeared for the examination and that if there is any shortfall or backlog in filling up the post reserved for SC/ST candidates the respondents could have issued notification for filling up of such vacancies as per rules. In paragraph 9 of the combined order in OAs Nos. 353/12, 388/12, 389/12 and 678/12 it was held as under:

"9. In the facts and circumstances of these cases we hold that application of reservation in the impugned orders is illegal. We notice that



sufficient representation to protect the interests of SC candidates included in the impugned orders is available on record as in OA No. 353 of 2012 Shir Ayyappankutty has entered appearance as 5th respondent. Therefore, the question of not having arrayed in the party list those who are affected does not arise."

Finally the OAs were disposed of on the following lines:

"The applicants in OA Nos. 353, 388 & 389 of 2012 are directed to file fresh representations against the impugned orders to Joint Secretary (CPV) & Chief Passport Officer, Ministry of External Affairs, New Delhi within a period of one month from the date of receipt of a copy of this order. The Chief Passport Officer, Ministry of External Affairs should consider the objections and decide the same on merits as per rules and in the light of the findings given in this OA and dispose of the representations and revise the select list if needed, within a further period of two months. Reversion of applicants in OA 353/12, OA 388/12 and OA 389/12 was stayed by order dated 9.5.2012 or 22.5.2012 as the case may be. As such the applicants will continue as Assistants till the seniority list is revised as above."

OA No. 678/2012 was dismissed and all other Original Applications were disposed of in terms of what have been stated above.


10. The applicant K. Muraleedharan in this case was the applicant in OA 86/2011. That OA was considered along with OA 43/2011 and 68/2011. Annexure A5 is the common order passed in that case. In that case it was held that the appointment to the post of Assistant by way of promotion is to be made in the ratio 75:25 based on seniority and competitive examination respectively. It was also observed that some of the candidates who had earlier figured in the ranked list based on the examination held have been subsequently promoted against the 75% quota with respective dates; that is, prior to the date of examination. Thus, it has been found that they have to be deleted from the ranked list and in their place an equal number of persons in the waiting list have to be included based on the combined ranked list. Thus

as per Annexure A5 the aforesaid OA and two other OAs were disposed of by this Tribunal in terms of what is stated below:

"11. In view of what is stated above, we direct that the Annexure A-8 rank list is to be revised based on the above principles and to facilitate the respondents to do so we set aside the same. The revised combined rank list and the promotions thereafter shall be effected by the respondents within two months from the date of receipt of a copy of this order. It will be open to the respondents to revert anybody in case he is found to be ineligible to be promoted based on the combined rank list."

11. Annexure A8 mentioned therein was the combined seniority list mentioned earlier in respect of which the applicant contended that the said list contains names of ineligible candidates and that the applicants were excluded. That order was passed on 8.4.2011. The applicant in OA No. 376/2013 who was the applicant in OA 86/2011 again filed OA 389/2012. As stated earlier OA No. 389/2012 was disposed of along with OAs Nos.353/12 and 388/12. In all those three Original Applications the directions as quoted earlier vide paragraph 9 were issued by this Tribunal which directed the applicants to file representations against the orders impugned therein as per which the applicants therein were ordered to be reverted.

12. OA 377 of 2013 has been filed by six applicants seeking similar reliefs as claimed in the other two applications. They were some of the applicants in OA 68/2011. That OA was disposed of along with OA 43/2011 and other cases, the relevant portion of which was already extracted earlier. As stated earlier in the combined order the Annexure A8 ranked list mentioned therein; that is, the revised ranked list, was directed to be revised in the light of the directions contained in the common order

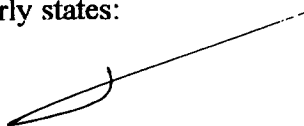


(Annexure A4 in OA No. 377/2013) and to effect promotions thereafter.

One sentence occurring in that order that it would be open to the respondents to revert anybody in case he is found to be ineligible to be promoted based on the combined ranked list was projected by the respondents to contend that the order so far it relates to some of the applicants which caused their reversion cannot be questioned. But it is pointed out by the learned counsel for the applicants that the reversion mentioned therein was possible only if the candidate is found ineligible to be promoted based on the combined ranked list and not otherwise. Those applicants were some of the applicants in OA No. 388/2012 which was disposed of along with other applications as per Annexure A10 in OA No. 377 of 2012. The relief portion granted in that OA has already been extracted earlier.

13. The learned counsel for respondents would vehemently submit that it was only to maintain the reservation quota that out of 112 vacancies 16 vacancies were kept apart to the SC candidates and so the respondents cannot be found fault with since that is the constitutional mandate. But the applicants would contend that the respondents did not specify in the notification.

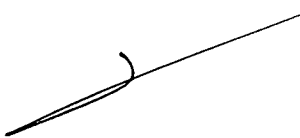
14. It is also vehemently argued by the learned counsel for the respondents, that the recruitment notification was issued based on Annexure. A18 Recruitment Rules dated 3.3.2004. Clause 7 therein which relates to savings, clearly states:



"Nothing in these rules shall affect reservation, relaxation of age limit and other concessions to be provided for the Scheduled Castes & Scheduled Tribes (S.Cs & S.Ts), Other Backward Classes (OBCs), Ex-Servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard."

Therefore, the learned counsel submits that in view of the saving clause as extracted above, even though in the notification or in the prior portion of Annexure.A8 Recruitment Rules it was not specifically stated with regard to the reservation to be provided, in view of the saving clause it is clear that the recruitment notification is subject to clause 7 of Annexure.A18. The employers like the present respondents and all other persons are bound by the constitutional mandate contained in Article 16 1 (A) of the Constitution. With regard to Group C posts there can be no doubt that the reservation quota has to be maintained.

15. Relying on Clause 7 it is argued by the learned counsel for the respondents that since there is an exception to the effect that the rules shall not affect reservation relaxation of age limit and other concession to be provided for S.Cs and S.Ts since it becomes part of the notification also by virtue of the fact that it was as per the rules the recruitment notification was issued, the applicants cannot successfully contend that as the recruitment notification did not say anything about the reservation, the vacancy cannot be earmarked for filling up SC candidates. It is contended by the respondents that Annexure.A1 was issued based on the notification of revised Recruitment Rules of 2004 especially the clause regarding the reservation to S.Cs/S.Ts and therefore, it is contended that the averments



raised by the applicant that the circular did not contemplate any kind of reservation is totally baseless. We find force in that submission. It is also argued that the plea raised by the applicants that the application of reservation would be prejudicial to those S.C/S.T candidates is also devoid of any merit since all eligible candidates including SC/ST candidates were allowed to appear for the LDCE and therefore, the question of leaving out any other SC candidates does not arise at all. All those SC candidates eligible for examination did appear for the examination as such their rights in any way will not be prejudiced.

16. As per Annexure. R-1 dated 25.4.1989 issued by the Department of Personnel & Training (DOP&T) (OM NO.36012/17/80-Estt(SCT)) it was decided in partial modification of the earlier OM that the reservation in posts by promotion under the existing scheme as indicated therein should be made applicable to all grades and services in which the element of direct recruitment, if any, does not exceed 75%. Here the direct recruitment is only for 25% and as such the reservation in posts by promotion is applicable. The learned counsel for the respondents would also submit that there is a constitutional mandate as provided under Articles 16(4), 16(4)(A) and 16 (4)(B) of the Constitution of India which make it mandatory for reservation of promotion to any class or classes of posts in the services under the State in favour of the S.Cs and S.Ts. It is also argued that under Article 16 (4) (B) there is a mandate that the respondents should consider any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with the provision for reservation under Clause 4(A)

or Clause 4 (B) of Article 16.

17. It is important to note that in the earlier two round of litigations the respondents did not raise plea of reservation. It was not contended that, despite the fact that no reservation clause was mentioned in the relevant recruitment notification still in view of the specific clause contained in Clause 7 of Recruitment Rules the reservation is to be made applicable to SC/ST candidates. Not only that in Annexure A-13, the common order passed in OA 353/2012, 388/2012, 389/2012 it was held by this Tribunal that the application for reservation in the impugned order is illegal. It was also held that sufficient representation was there to protect the interest of SC candidates included in the impugned orders. Therefore, when there is a binding decision of this Tribunal contained vide Annexure.A13 it is not open to the respondents now to contend that in view of the reservation clause, 16 posts were to be excluded (from the total number of vacancies) for filling up of those posts by S.C candidates. As per Annexure A-13 it was specifically directed by this Tribunal to dispose of the representation of the applicants and to revise the select list. In view of the finding already recorded by the Tribunal as has been quoted earlier, that application of reservation in respect of the appointment covered by the impugned order is illegal, the parties thereto are estopped from contending otherwise. Not only that when there is a direction issued by a coordinate Bench of this Tribunal, in relation to the very subject matter of this case, this Tribunal is bound to follow the same. Therefore, though there may be justification in the contention raised by the respondents that the required number of vacancy earmarked for the SC

candidates are to be filled up we must hold that the direction already issued by this Tribunal should hold good. But, we make it clear that as has been mentioned in Clause 4(A), 4(B) of Article 16 of the Constitution, the respondents can fill up the unfilled vacancies reserved for the SC/ST candidates in any succeeding year or years by appropriate methods.

18. In the result with the observation as mentioned above, these O.As are allowed quashing the impugned order to the extent they exclude the names of the applicants and it is declared that the applicants are eligible to be included in the select list of Assistants. The respondents are directed to pass orders allowing the applicants to continue as Assistants based on their merit reflected in the select list (Annexure. A8) in preference to those who have got lesser marks than the applicants. Appropriate order shall be issued within two months from the date of receipt of a copy of this order. No order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

"SA"