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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 312 OF 1992

Venketesh Krishnarao Poojary ... Applicant

Versus

Union Of India through
Chief Postmaster General,
Maharashtra Circle,
Bombay - 400 001. ... Respondent.

ORIGINAL APPLICATION NO.: 315 OF 1992

Vijay Krishnarao Taley ... Applicant

Versus

Union Of India through
Chief Postmaster General,
Maharashtra Circle,
Bombay - 400 001. ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri S. P. Kulkarni,
Counsel for the Applicant.
2. Shri S. S. Karkera proxy
for Shri P. M. Pradhan,
Counsel for the Respondent.

JUDGEMENT :

DATED : 8.2.95

¶ Per.: Shri B. S. Hegde, Member (J) ¶

1. The issue raised in O.A. No. 312/92 and 315/92 is one and the same, therefore, both the O.A.s are heard together and a common order is passed for both these cases.

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2. In O.A. No. 312/92, the applicant was working as a Sorting Assistant in the R.M.S. Wing with effect from 16.10.1975 in the scale of Rs. 975-1600. He was confirmed as Sorting Assistant on 01.03.1978. As the R.M.S. wing came under Pune Division/restructuring, certain number of persons were declared as surplus including the applicant, in the year 1985-86 and the department decided to redeploy such surplus Sorting Assistants to other units in the department. The department also permitted redeployment to the Administrative cadre like L.D.C. and accordingly, the applicant alongwith others, were transferred as L.D.C. in the scale of Rs. 260-400 (pre-revised) in the office of the Respondents under certain conditions. It is contended that the applicant was transferred under Rule 38 of P & T Manual Vol. IV as L.D.C. in the P & T Office and joined the P & T Office on 07.01.1986. The applicant is entitled to take up Departmental Competitive Examination for promotion to the post of U.D.C. under certain conditions. Accordingly, he was allowed to appear in the examination held on 03.04.1987 by competing through 30% quota meant for the L.D.Cs. However, his name is not listed in the select list. Again, another examination was held on 29.12.1987. The applicant appeared in that examination under 30% quota. In the result published, he did not figure in. Another examination was held on 29.11.1988 under 50% quota. Again he did not figure in.

3. Accordingly, the main contentions of the applicants in these O.A.s is that, they are being

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discriminated with one Shri V. R. Bhoye, who also came alongwith them on transfer under Rule 38, P & T Manual. He was selected through the L.D.C. quota. The applicants could not get their rating in merit, whereas, Shri V.R. Bhoye, belonging to S/T Community was selected through reserve quota. Therefore, they submit that they have appeared for the 30% quota but the respondents did not consider them and promote them to the post of U.D.C. The applicants have completed five years of service on 07.01.1991 and the next examination was held on 30.08.1991. The results were declared at page 19, annexure-C. However, the results of the applicants was that, they were allowed to appear only as a 'Provisional' candidate. As against this, they made representations to the competent authority. Pursuant to the representations, the Respondents cancelled the provisional permission granted to the applicants vide its letter dated 04.02.1991 (exhibit A-1). Being aggrieved by the same, the applicants have challenged the said Cancellation Order and seek directions that the Respondents be directed to publish the results of the examination held on 30.08.1991 and to declare the merit list including the applicants, of the same examination, etc., etc.

4. The respondents in their reply have denied the contentions of the applicants, that they have been discriminated with that of Shri V. R. Bhoye. However, on account of the changes effected in the R.M.S. Wing, some Sorting Assistants have been declared as surplus. In order to accomodate them, the Directorate has issued the order that as the junior officials of RMS or those who

seek transfer under Rule 38 should be transferred to Circle Office as L.D.C. Accordingly, the applicants alongwith others voluntarily opted for the post of L.D.C. in Circle Office on 07.01.1986.

5. Indian Posts and Telegraphs (Clerks in Circle and Administrative Offices) Recruitment Rules, 1970 to the schedule stipulates that promotion to U.D.C. cadre wholly by promotion of staff in the offices as indicated below :-

- a. Post and Telegraph Circle Offices :-
- i. 20% from amongst Lower Division Clerks on the basis of seniority-cum-fitness.
 - ii. 30% from amongst Lower Division Clerks through a competitive test.
 - iii. 50% from amongst timescale clerk in Post and Telegraphs subordinate offices through a competitive test.

The contention of the applicants is that, this ratio has been issued by the Ministry Of Communications order vide dated 20.09.1989 (Amendment Rules, 1989), stating that 100% by promotion as indicated below :-

- i. 20% from amongst Lower Division Clerks on seniority-cum-fitness basis.
- ii. 40% from amongst Lower Division Clerks through a competitive examination.
- iii. 40% from amongst Postal Assistants and Sorting Assts. in Post Offices and Railway Mail Service Offices through a competitive examination.

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The contention of the applicants is that, they have been allowed to appear against the 40% of the time scale Clerks only twice and as per rule, they were allowed to appear thrice. Though, they appeared three times before 1991, one examination that they appeared was against 30% quota, therefore, they were not disqualified for the third time, which they did not allow. Assuming that they are permitted to appear under 30% quota, unless they complete 5 years of service in the grade of L.D.C., they are not allowed to appear for the same under the rules. Therefore, it is not open to the applicants to take advantage that they were allowed by the respondents to appear under 30% quota and again come out with a contention that they should be allowed to appear after completion of 5 years of service, which they complete in the year 1991, for the promotion post of U.D.C. As per the recruitment rules, U.D.C., CO/Admn. Offices the PA/SA working in Postal and RMS having five years continuous service in clerical cadre are eligible to apply for three times while L.D.C. of Circle Office/Administrative Office having 5 years service can appear for any number of times. Since the service eligibility is decided on the basis of transfer/service quota and since they have exhausted all the permissible three chances, they have not been allowed to compete with others in the U.D.C. Circle Office Examination held on 06.06.1989. So far as Shri Bhoje is concerned, he belongs to S/T category. Though he was transferred under Rule 38 like the applicants, under the relaxed quota and as he has passed the examination, he was appointed under 30% quota. Therefore, the applicants' case cannot be equated with that of Shri Bhoje and the question of

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discrimination does not arise, as Shri Bhoye stands on a different footing.

6. We have heard the Learned Counsel for the parties and perused the pleadings. During the course of hearing, the Learned Counsel for the Respondents, Shri Karkera, draws our attention that since the applicants have completed 16 years of service and in view of the scheme prepared by the Respondents vide dated 10.08.1993 which has been implemented on 26.06.1993 that time bound one Promotion Scheme and Biennial Cadre Review (2nd Promotion) to Group 'C' staff of administrative office in the Department of Posts was implemented with the condition that all recruitment to L.D.C., U.D.C. and 1/3rd. LSG promotion quota stands abolished on introduction of this scheme. Consequently, all examinations scheduled to be held after introduction of the above scheme for recruitment to LDC, UDC and 1/3rd. LSG promotion quota were cancelled. Since both the applicants have been promoted as LSG, the issue raised in this O.As. have become infructuous and the same does not survive. It is clear from the applications itself that the applicants are not challenging any definite order of the respondents, thereby, their interest have been prejudiced, whereas by virtue of time bound one Promotion Scheme, they have been benefitted and they have been placed in higher pedestal. Further, since they have not passed the Departmental Competitive Examination at the relevant time, they do not have any right to any particular post. They can only claim to be considered for the post of U.D.C., if they

otherwise eligible to be considered. The Learned Counsel for the applicant was decent enough to concede to a certain extent and it is true that the O.A.s have become infructuous but however, since they had no option but to opt for the Surplus Cell Scheme, their interest should not be prejudiced by not allowing them to appear in the relevant Departmental Competitive Examination. We are satisfied that the reliefs claimed by the applicants is rather vague, since they have already been promoted to the higher grade by virtue of time bound One Promotion Scheme. We are of the view that no injustice has been caused to the applicants and accordingly, the O.A.s are liable to be dismissed. In the circumstances, we feel there is no merit in the O.As. and the same are dismissed. No order as to costs.

(M. R. KOLHATKAR)
MEMBER (A).

(B. S. HEGDE)
MEMBER (J).