

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 636/97

Date of Order : 8.1.98

BETWEEN :

- 1. Sk.Mahaboob Subhani
- 2. S.Nageswara Rao
- 3. V.Rami Reddy
- 4. T.ValmEEK Rao
- 5. S.Hanumantha Rao
- 6. Y.Ankamma Rao
- 7. V.V.K.B.N.Acharyulu

.. Applicants.

AND

- 1. The Postmaster General,
A.P.Eastern Circle,
Vijayawada-2,
at Visakhapatnam.
- 2. The Sr.Supt. of Post Offices,
Guntur Division, Guntur.
- 3. T.Samuel
- 4. G.Brahmaiah
- 5. K.V.Mbhan Rao
- 6. R.Mariadas

.. Respondents.

Counsel for the Applicants

.. Mr.K.Sudhakra Reddy

Counsel for the Respondents

.. Mr.V.Bhimanna

.. Mr.D.Subrahmanyam
for R-3 to R-6

CORAM :

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

O R D E R

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.K.Sudhakara Reddy, learned counsel for the applicant though not present today had argued his case yesterday. Heard Mr.V.Bhimanna, learned standing counsel for the official respondents. Mr.D.Subrahmanyam, for the private respondents.

2. There are seven applicants in this OA. They are ED Agents. A notification was issued for filling up the post of Postman vide notification No.B.III/3/96/Exam dated 18.3.97 (A-1). The applicants in this OA are aspirants for the post of Postman against the departmental quota to be filled. They are to be considered in the seniority quota of the outsiders quota for promotion to the post of Postman. As per the notification referred to above the seniority quota under the category of outsiders quota 4 posts are to be filled. The notification states that out of 4 posts 3 posts will be filled by OBC and 1 post by SC. The applicants in this OA are all OCs. ^{Being} ~~Having~~ aggrieved that none of the posts in the seniority quota has been allotted to OC they have filed this OA for reconciling the issue of the notification and to allot the posts in accordance with the law for the OC candidates also against the seniority quota for promotion to the post of Postman.

3. This OA is filed for a declaration that the impugned letter No.B.III/3/96/Exam dated 18.3.97 (A-1) is illegal as 100% reservation has been done for promotion to the post of Postman against the seniority quota under the sub-head outsiders quota and for a consequential direction to consider them also for the post of Postman even though they did not belong to the reserved community either SC/ST/OBC.

4. The main contention of the applicants in this OA is that 100% reservation cannot be done and hence the issue of the notification itself is irregular and violation^{ve} of constitutional provisions.

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5. An interim order was passed on 9.5.97 wherein it was directed that "there is no bar in conducting the examination and also no bar for issuing the results in accordance with the rules as far as the departmental quota and merit quota of outsiders quota are concerned. But the results of the seniority quota against outsiders quota should not be finalised until further orders in this OA. The seniority quota against the departmental quota should not be filled".

6. The posts of Postmen are filled by the departmental candidates for whom certain posts are earmarked. The departmental candidates are regular Group-D staff working in the department. The post of Postman is also filled by earmarking the posts against the outsiders quota. The outsiders' quota is meant for the regular ED staff working in the department. Once again the outsiders quota is bifurcated under 2 headings. The ED staff can be promoted either on promotion which is called seniority quota and on the basis of merit called merit quota. The impugned notification dt. 18.3.97 shows that 4 posts of Postmen in the seniority quota of outsiders quota are to be filled 3 by OBCs and 1 by SC, i.e. 100% reservation and none of the OC candidates in the seniority quota can aspire to become postman. As the applicants are aspirants for the post of Postmen against the seniority quota and as they belong to OC community they have challenged the notification on the ground that the reservation cannot be 100% and it should be restricted only to 50%.

7. The Apex Court in Sabarwal's case had held that reservation is only on the basis of the strength of a category and not on vacancy. Hence if enough reservation percentage i.e. 15% for SC and 7½ for ST exists in the cadre then the roster deemed to have been frozen and the vacancies arising thereafter should not be filled giving any preference to the reserved community. Though

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the Apex Court in Sabarwal's case deals only with the reservation for SC and ST candidates that judgement is equally applicable for reservation by the OBCs also as a principle has ^{been} laid down in that judgement. But this judgement is not directly connected to this case as no mention has been made in the OA affidavit that reserved candidates to the required extent is already available in that cadre.

8. When the Mandal Commission controversy arose a case was filed by one Sri Indra Sahani in the Apex Court. In that case the Apex Court had held that the reservation cannot exceed the 50% mark. As the SC and ST candidates are to be filled to the extent of 22½%, the OBCs can be given only 27% reservation thereby limiting reservation percentage less than 50% i.e. 49½%. That judgement gives the answer to the question whether reservation can be made exceeding 50%.

9. Apart from the above judgements, the case can easily be decided on the basis of the facts available on record in this case.

10. The facts can easily be seen from the roster register, extract of which has been enclosed to the reply. The roster register is an important and reliable document in regard to the filling up of reservation points. The respondents submitted that there are 2 roster registers for filling up the post of Postman. The first roster register is meant for showing the recruitment to the post of Postmen by departmental candidates under departmental quota. The second roster register is maintained for showing the reservation against outsiders quota which comprises of seniority quota and merit quota. There are no 2 separate registers of seniority and merit quota and both are merged in the one register. We are not concerned with the roster register for the departmental candidates in this connection.

We are concerned with the roster register under outsiders quota.

11. The extract of special roster for postman outsiders quota has been enclosed as Annexure-8 to the reply. In this the SC points are 1, 1, 13, 19, 25, 31, 37 etc. ST points are 2, 23, 39, etc. OBC points are 5, 9, 11, 15, 17, 21, 27, 29, 33, 35, etc.

12. It is seen from the roster register that vacancies upto 29th point had already been filled. Up to that point the number of SCs filled as per roster is the 4. The number of STs filled in that roster upto that point is 2 and the number of OBCs filled upto that point in the roster is 8. Upto the filling up of the 29 vacancies reservation is only 8 posts for OBCs as per the register. Hence 8 OBCs had already been filled. The SCs have to be filled only for 5 posts. 4 points are filled and one backlog vacancy is there as far as SC is concerned. There is no backlog for ST. If the 4 posts are to be filled by departmental quota under outsiders (seniority) quota then the roster point to be filled are 30, 31, 32 and 33. As per the roster point No.31 has to be filled by SC, point No.33 has to be filled by OBC and point No.30 and 32 are by OC. Thus if the 4 roster points are to be filled i.e. 30, 31, 32 and 33 the respondents can fill up the same by 2 OC candidates, 1 SC candidate and 1 OBC candidate since there is already 1 backlog of SC. Thus the above analysis reveals that the posts to be filled now are 2 OC, 1 OBC and 1 SC. We do not want to express any thing further in regard to filling up of reserved vacancies. We are leaving it to the Department. But we make it clear that if the roster point 30 to 33 (both points inclusive) are to be filled there should be minimum of 2 OCs for empanelment in the post of Postman.

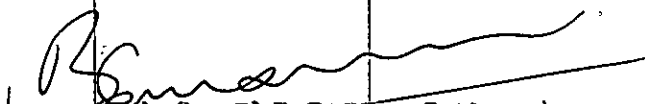
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13. The learned counsel for the private respondents submitted that the 9 posts earmarked for departmental quota has not been filled and that those posts are transferred to the outsiders quota there by the total number to be filled worksout to 17 posts. Normally posts earmarked for seniority quota under outsiders quota have to be filled first and if that has to be filled then the roster points to be filled by the seniority quota starts from 16 and the points to be filled are 16, 17, 18 and 19. Even considering that the first 4 posts are to be filled starting from 16 there is no doubt that 2 OCs have to be filled and only 1 OBC have to be filled as the reservation for OBCs upto 15th point had already been fulfilled. As regards SC also there is no backlog upto 15. Hence even admitting that it has to be filled only from 16 to 19 (both points inclusive) even then 2 OCs are necessarily to be empanelled as per roster points. After perusing the roster register, we are left with no other alternative^{-ive} except to observe that 2 of the vacancies earmarked for seniority quota of outsiders quota should be filled by the^{un-}reserved candidates in accordance with the rules.

14. In view of what is stated above we direct the respondents to fill up ~~the~~ 2 posts of the Postmen against the seniority quota under outsiders quota by OC candidate and the rest may be filled in accordance with the rules of reservation.

15. With the above direction the OA is disposed of and the respondents are directed to complete the selection proceedings in accordance with the direction as given above. No costs.

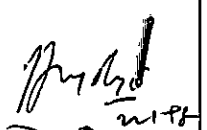

 B.S. JAI PARAMESHWAR)
 Member (Judl.)


 (R. RANGARAJAN)
 Member (Admn.)

8/1/98

Dated : 8th January, 1998

(Dictated in Open Court)


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Copy to:

1. The Postmaster General, A.P. Eastern Circle, Vijayawada-2 at Visakhapatnam.
2. The Senior Superintendent of Post Offices, Guntur Division, Guntur.
3. One copy to Mr. K. Sudhakara Reddy, Advocate, CAT, Hyderabad.
4. One copy to Mr. D. Subrahmanyam, for R.3 to R.6.
5. One copy to Mr. V. Bhimanna, Addl. CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

YLKR

12/2/98

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED: 8/1/98

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in

C.A.NO. 636/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
भेद्य/DESPATCH
29 JAN 1998
हैदराबाद न्यायपीठ
HYDERABAD BENCH