

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00229/2015

Date of Order: This, the 12th day of October 2018

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. N. NEIHSIAL, ADMINISTRATIVE MEMBER**

1. Sri Prakash Chetry Son of Kharga Bahadur Chetry, resident of village – Morisuti, P.O.- Rangachakua, in the District Sonitpur, Assam.
2. Sri Prasanta Sarma, S/o Biren Sarma, resident of village- Barampur, in the District of Darrang, Assam.

...Applicants

By Advocates: Mr. U. K. Nair, Sr. Advocate, Ms. N. Shyamal, Mr. A. Chetry and Mr. M.P. Sarma

-Versus-

1. The Union of India, represented by the Secretary to the Govt. Of India, Ministry of Communications & Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi- 110001.
2. The Chief Post Master General, Department of Posts, Assam Circle, Panbazar, Guwahati- 781001.
3. The Director Postal Services (HQ), Office of the Chief Postmaster General, Assam Circle, Guwahati- 781001.

4. The Assistant Director (Staff),
Office of the Chief Post Master
General, Department of Posts,
Assam Circle, Panbazar,
Guwahati- 781001.

... Respondents.

By Advocate: Ms. M. Bhattacharjee, Addl. CGSC

ORDER

N. NEIHSIAL, MEMBER (A):

Being aggrieved with the action of the respondents, the applicants have preferred the instant petition under 19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:

“8.1 To set aside and quash the selection process initiated in pursuance to the communication dated 11.06.2014 (Annexure-2) with further direction to the respondent authorities to conduct the connected selection afresh after proper assessment of the vacancies coming with the purview of the Limited Departmental Competitive Examination for the year 2014, in terms of the specification as mandated vide the communication dated 20.09.1990 (Annexure-6).

8.2 Alternatively, to direct the respondent authorities to reassess the vacancies coming within the purview of the Limited Departmental Competitive Examination held for the 66.66% Departmental quota for the year 2014 for the cadre of Inspector of Post Offices and upon correct assessment of the vacancies in terms of the communication dated 20.09.1990 (Annexure-6) to promote the applicants to the cadre of Inspector of

Post Offices with retrospective effect with all consequential benefits of seniority pay etc.

- 8.3 Cost of the application.
- 8.4 Any other relief/ reliefs that the applicant in the facts and circumstances of the case would be entitled to."

2. Mr. U.K. Nair, Sr. counsel assisted by Ms. N. Shyamal, learned counsel appearing on behalf of the applicants submit that both the applicants are presently serving as Postal Assistant and on being eligible, participated in the LDCE for the year 2014 for promotion to the post of Inspector of Post Offices against 66.66% quota. The number of vacancies available under this promotion quota was not notified. It was submitted by Mr. Nair that both the applicants qualified in the said examination and figured at sl. Nos. 4 & 5 in the merit list. Although there are apparently 9 vacancies, however, on 23.11.2014, vacancies were shown as 3 under promotion quota and as such, applicants are not accommodated. According to Mr. Nair, actual cadre strength of Inspector of Post Offices in Assam Circle is shown as 58. However, as per Govt. of India, it is 60. And as per calculation, vacancy position is 5. Even then applicants could not be accommodated. Because of the wrong calculation of vacancies, the applicants have been deprived of their promotion to the cadre of Inspector of Post

Offices. As such, non-accommodating the applicants against the actual vacancies is not sustainable under the law.

3. On the other hand, Ms. M. Bhattacharjee, learned Addl. CGSC appearing on behalf of the respondents submits that the respondents have conducted the Limited Departmental Competitive Examination for the post of Indian Posts Officer (IPO LDCE) for filling up of 3 vacant post of Departmental quota (66.66%). Both the applicants appeared in the said Examination. However, both scored less marks and being lower in merit, they could not be absorbed in limited 3 numbers of vacancies. According to Ms. Bhattacharjee, the department has nothing to do with the candidates as a person, only merit is the criteria for selection. Both the applicants could not come within the purview of consideration due to their performance and not for any fault of the respondents. The applicants being Departmental employees should be fully aware of this before showing any mark of agitation.

4. Ms. Bhattacharjee further submits that during 2013, 8 (eight) IPOs were officiating as ASPOs, on adhoc basis; since 8 ASPOs were officiating as Gr. 'B' on adhoc basis and all of them could be reverted at any time on joining of regular

officers (Gr. 'B'). Moreover, one ASP was on deputation to PTC. So these are not at all clear vacancies and filling up them through examination would have been a grave mistake and the total number of IPOs would have gone beyond sanctioned strength which is not permissible under the law. The applicants without going to the depth of the vacancy position has brought baseless allegation against the respondents in spite of having full knowledge by virtue of being regular employee of the department.

5. The case has been repeatedly taken by this court from 01.07.2015 to 11.06.2018. Since the issue relates to the number of available vacancies for promotion, the departmental officials dealing with subject matters were advised to clarify and assist the court in sorting out the issue particularly their method of the calculation of 9 vacancies. In this context Shri Bishnu Mohan Das Mohapatra, Assistant Director (Staff), Assam Circle, Guwahati appeared on 13.09.2017 and Sri Debabrat Khanikar, Assistant Director (L), Office of the CPMG, Assam Circle, Guwahati on 16.02.2018, who had filed Additional Affidavit. Both the officials were unable to explain and satisfy the court as regards the method of the calculation of vacancies etc.

6. We have heard the learned counsel for the parties, exhaustively perused the pleadings and material placed before us. On going through the entire papers and records submitted by the respondents, the court has come to its own conclusion by calculating the vacancy as on 01.01.2014. It is observed that all along respondent authority by own submissions consistently and vehemently maintained that the vacancy available for the departmental promotion under 66.66% quota was 3 and DR was 2. Accordingly, 1 to 3 candidates on the basis of their merit in the departmental examination have been promoted. However, in the latest additional affidavit filed by the respondents on 14.08.2018, they have admitted in writing that the previous submission of the calculation of vacancies was wrong and actual vacancy for the year 2014 for which departmental examination was conducted would be 4 instead of 3 as repeatedly maintained by them in their previous submissions. This increased of additional one vacancy i.e. from 3 to 4 is by their own submission.

7. In this connection, it may also be highlighted that the authorized strength of Assam Circle for the Post of Inspector

of Post Offices had been indicated by Ministry of Communications and IT, Department of Posts vide their letter No. 11-16/2015-PE-I dated 12.03.2015 as 60. (Annexure-I S. No. 2).

8. The respondents in their submission, have contended that the break-up of 60 is 58 for Assam Circle and 02 for PTC Guwahati. This is the view of the Chief Postmaster General, Assam Circle vide their letter No. Est/24-32/99 dated 05.08.2014. The respondents also maintain that as per Para 7 of their written statement dated 11.01.2016, the 02 posts in the PTC Guwahati are separate and re-deployed post. In this connection, they quoted the Govt. of India's letter No. 43-07/2014-PE-II PART-I dated 20.01.2015. But nothing is mentioned about the mode of recruitment for these two posts in PTC Guwahati.

9. In this context, it may be appreciated that in the Govt. of India that no post is created/reserved for redeployed/retired officials. In fact, redeployed/retired officials may be accommodated against the sanctioned post for limited period for specific assignments. Therefore, the available sanctioned strength of IPOs would be 60 as already indicated by the Govt. of India in their letter No. 11-16/2015-PE-I dated

12.03.2015. As such, the actual vacancies available for the post of IPOs as on 01.01.2014 would be:-

(1)	Actual vacancies as calculated by the respondent authorities against total of 58	06
(2)	The 02 posts available in PTC Guwahati	02
	Total	= 08

10. Since the total vacancy has come to 08 and 66.66% is 5.33 and out of 06, 03 have been promoted as per merit list of the Departmental Examination conducted in 2014, the present applicants namely Sri Prakash Chetry and Sri Prasanta Sarma who secured 4th and 5th position can very well be accommodated within departmental promotion quota.

11. Keeping in view of the above position, the court is of the considered view that natural justice and fairness has been denied to these two applicants i.e. present applicants for a period of four years due to lack of proper attention being paid at appropriate level in regard to the calculation of vacancies etc. The respondent authorities also have not, as highlighted in the foregoing paras adequately responded to the directions given by this Tribunal from time to time.

12. Notwithstanding the above, it is hereby decided and directed that the two applicants namely Sri Prakash Chetry and Sri Prasanta Sarma be given appointment by promoting them

immediately on receipt of this order to the post of Inspector of Post Offices, Assam Circle from the dates their colleagues have been promoted with all consequential benefits.

13. O.A. stands disposed of accordingly. No order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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