

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00849/2015

Friday, this the 26th day of July, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

C. Muraleedharan Pillai, S/o. Late Chellappan Pillai,
 aged 50 years, GDS MD, Padinjattakkara BO, thevalakkara,
 residing at Thungumthara Vadakkathil, Kovoov, Arinelloor PO,
 Kollam – 690 538. **Applicant**

(By Advocate : Mr. V. Sajith Kumar)

V e r s u s

1. Union of India, represented by the Secretary to Government,
 Department of Posts, Ministry of Communications, Government of
 India, New Delhi – 110 011.
2. The Chief Postmaster General, Kerala Circle, Trivandrum-695 033.
3. The Senior Superintendent of Post Offices, Kollam Postal Division,
 Kollam – 691 001.
4. D. Mallika, Group – D/MTS, Kollam Postal Division, Kollam,
 Pin – 691 001. **Respondents**

[By Advocate : Mr. Brijesh A.S., ACGSC (R1-3)]

This application having been heard on 18.07.2019 the Tribunal on
 26.07.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“(i) To declare that the appointment of the 4th respondent against a general vacancy is highly illegal and unjust and the failure of the 3rd respondent in not following separate roster for each modes of appointments to MTS and thus providing excess reservation to a particular category is illegal and unconstitutional.

- (ii) To direct the respondents to maintain separate roster for each mode of appointments to MTS from the year 2011 and appoint the applicant as MTS based on seniority in a general vacancy after accommodating the 4th respondent in the backlog OBC vacancy and to grant him all consequential benefits.
- (iii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (iv) Grant the cost of this Original Application.”

2. The applicant being the senior most GDS is aggrieved by the denial of appointment as Group-D employee by following erroneous roster points for reservation and by not filling up two backlog vacancies taking into account the total cadre strength which can be determined against the appointment took place except for the period 2002-2010. Further the consideration of respondent No. 4 a OBC candidate against general vacancy is against the the roster rules.

3. The brief facts of the case are that the respondents maintained a common reservation roster which was furnished to the applicant through Right to Information Act instead of maintaining separate roster against each mode of promotion. There are four modes of appointment to the MTS category. According to the applicant against 26 vacancies only 6 OBC candidates were accommodated as on 31.12.2014 and first vacancy in the year 2015 requires to be given to the OBC category candidate. Presently there are 6 vacancies by the retirement of 6 employees from the above 26. The first vacancy of the year 2015 should go in favour of an OBC candidate. As per the Recruitment Rules, the first vacancy is for promotion

under seniority. The second vacancy is for appointment through competitive examination. The third vacancy is for casual labours and the fourth vacancy is Army Postal Service. The fifth vacancy will again go for seniority. The list of approved vacancies was released under RTI Act. Applicant made representation against this. It is further submitted that two vacancies are available for seniority quota in the present year. Though the first vacancy is meant for OBC category, the respondents wrongly accommodated an OBC candidate against general vacancy. Aggrieved the applicant has filed the present OA.

4. Notices were issued to the respondents. They entered appearance through Shri Brijesh A.S., ACGSC for respondents Nos. 1-3 who had filed a reply statement contending that applicant was engaged as GDS MD on 28.9.1990. The respondents took steps to fill six vacancies for the year 2015-2016 according to the Recruitment Rules of 2015. The breakup of the vacancies are: GDS seniority quota – 2 (OBC-1 and UR-1), GDS examination quota 2 (UR-2) and casual labour with temporary status quota – 1 and GDS to APS quota -1. For filling up of 25% vacancies in the cadre of MTS on the basis of selection cum seniority five GDS under UR category and 5 GDS under OBC category came under the zone of consideration. The first GDS who came in the zone of consideration under UR category at serial No. 127 of the divisional seniority list of GDS, expressed his unwillingness. Accordingly, the departmental selection committee convened on 28.9.2015 recommended the 4th respondent for provisional appointment to the cadre of MTS after perusing the relevant records like seniority list,

special reports, willingness, etc. Respondent No. 4 is the second senior most in the divisional seniority list and upon declination of the first GDS she became eligible to be considered for appointment to the cadre of MTS. The applicant is placed at serial No. 211 and is junior to the 4th respondent. Further the 4th respondent belongs to OBC category and she was appointed to the cadre of MTS solely by virtue of her seniority under UR category. Further in the OBC category the senior most GDS expressed his unwillingness and since respondent No. 4 was selected under UR category on the basis of her seniority, the next person Shri Prasannakumar P who was at serial No. 182 in the seniority list was provisionally selected subject to the production of latest non-creamy layer certificate. The new reservation roster was maintained reflecting the change in procedure for reservation for filling up the vacancies from 2002 to 2009 only and thereafter the original and prevailing representation roster was followed. The present establishment strength of the cadre of MTS is 36 plus 4 and the roster is duly maintained as per the reservation formula of 27% for OBC, 10% for SC and 1% for ST. Respondents pray for dismissing the OA.

5. Heard Shri V. Sajith Kumar, learned counsel for the applicant and Shri Brijesh A.S, learned ACGSC appearing for respondents Nos. 1-3. Perused the record.

6. The question raised by the applicant in this Original Application is whether respondent No. 4's appointment against UR vacancy against the reservation roster rule is correct or not ? And if yes then what would be its

repercussions ?

7. The applicant who is working as GDS MD belongs to general category and is aggrieved by the filing up of the vacancy for general category by an OBC candidate who happens to be his senior. As per the reply statement filled by the respondents there were six vacancies, out of which for seniority quota only two vacancies (1UR plus 1 OBC) were there. The senior most general candidate Shri G. Thulaseedharan Nair who is at serial No. 127 was offered the post but he was not willing to take the same. Thus, the post was given to the next person after him i.e. the 4th respondent who is at serial No. 179 and the applicant is only at serial No. 211 and comes after her. Therefore, the respondents have offered respondent No. 4 the post of general category because under seniority quota she is senior to the applicant, though she belongs to the OBC category.

8. The other vacancy which was reserved for OBC was given to Shri Prasannakumar P. who too has not been appointed because of the non-production of the non-creamy layer certificate. So according to the applicant two backlog vacancies for OBC are also there as per Annexure A5/3. The contention of the applicant that the 4th respondent should have been considered against the OBC post which was unfilled even in previous years backlog of two vacancies apart from 2015-2016, and the post which was for unreserved candidate should be given to him is having some force because if the two backlog vacancies are already there then respondent No. 4 should have been offered appointment against reserved post for OBC

instead of considering her against vacancy of unreserved candidate.

9. We are of the considered view that the respondents have not adhered strictly to the reservation roster meant for the post in question and made appointment in excess for SC category and unfilled two backlog vacancies of OBC category. Despite the fact that the first vacancy is for unreserved candidate it was offered to a reserved category candidate of OBC which is contrary to the law and unsustainable and is liable to be interfered with. We, therefore, direct the respondents to strictly make appointments as per the reservation roster by filling reserved vacancy by a reserved candidate and unreserved vacancies by unreserved candidates. The respondents are further directed to consider the applicant against unreserved vacancy. This order should be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.

10. The Original Application is allowed as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00849/2015

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the judgment in WP(C) 34512/2009 dated 23.12.2009 of the Hon'ble High Court.
- Annexure A2** - True copy of the circular dated 8.7.2010 issued by the Chief Post Master General, Kerala Circle.
- Annexure A3** - True copy of the 2010 Recruitment Rules issued by notification dated 12.12.2010 issued on behalf of the 1st respondent.
- Annexure A4** - True copy of the revised Recruitment Rules issued by notification dated 14.5.2015.
- Annexure A5** - True copy of the relevant pages of the special reservation roster of Group-D as on 31.12.2014 of Kollam Postal Division.
- Annexure A6** - True copy of the relevant pages of GDS seniority list of Kollam Postal Division.
- Annexure A7** - True copy of the letter No. BB/44/Exam/2015 dated 18.6.2015 issued by the 3rd respondent.
- Annexure A8** - True copy of the representation dated 1.10.2015 submitted by the applicant to the 3rd respondent.
- Annexure A9** - True copy of the appointment memo No. Bb/44/Rectt/2015 dated 28.9.2015 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-X-