

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00664/2017

Wednesday, this the 31st day of July, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN,

...ADMINISTRATIVE MEMBER

HON'BLE MR.ASHISH KALIA,

...JUDICIAL MEMBER

1. Shri R.Rajeev,
S/o Rajayyan,
Aged 36 years,
Postal Assistant,
Amaravila PO,
Thiruvananthapuram 695 122,
residing at Jeev Nivas,
Railway Station Road,
Inchivila, Parassala PO,
Thiruvananthapuram – 695 502.

2. Shri Venugopalan O.R.,
S/o Ravindran,
Aged 47 years,
Postal Assistant,
Sub Post Master,
Calicut Airport,
Malappuram 673, 647,
residing at Olikkara House,
Calicut University PO,
Malappuram, 673 635.

...Applicants

(By Advocate Mr.M.R.Hariraj)

V e r s u s

1. The Union of India,
represented by the Secretary,
Department of Posts,
Ministry of Communication,
New Delhi – 110 001.
2. The Director General of Posts,

.2.

Dak Bhavan,
New Delhi – 110 001.

3. The Chief Post Master General,
Kerala Circle,
Thiruvananthapuram – 695 033. ...Respondents

(By Advocate Mr. N.Anil Kumar, SCGSC for Respondents)

This application having been heard on 26th July, 2019, the Tribunal on
31st July, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.664/2017 is filed by Rajeev R and Venugopalan O.R., Postal Assistant and Sub Post Master respectively, against the refusal of the respondents to consider them for appointment to the cadre of Postmaster Grade I, applying the reservation applicable to the Person with Disabilities.

The relief sought in the OA are as follows:

i. To declare that the applicants are entitled to be given promotion to the vacancies reserved for persons with disabilities in the vacancy year 2013 and to direct the respondents to consider the applicants for such promotion and to grant them promotion from the date on which the said promotion was given to personnel who qualified in the examination conducted on 30.06.2013 with all consequential benefits including arrears of pay and allowances with interest.

ii. alternatively, to declare that the applicants are entitled to be given promotion to the carried forward vacancies reserved for persons with disabilities in the year 2014, based on their merit in the examination conducted on 20.07.2014 and to direct the respondents to consider the applicants for such promotion and grant them promotion with effect from the date on which promotion was granted to personnel who qualified in

.3.

the examination conducted on 20.07.2014 with all consequential benefits including arrears of pay and allowances with interest;

iii. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

iv. To grant the costs of this Original Application.

2. The applicants are physically disabled candidates who are orthopedically handicapped. They are working under the respondents and are qualified for the post of Postmaster Grade I as per the notification dated 09.09.2010 of Ministry of Communication and Information Technology (Annexure A1).

3. The two applicants had appeared for Limited Departmental Competitive Examination for promotion to the cadre of Postmaster Grade I conducted on 30.06.2013 and were among the three successful candidates among Persons with Disabilities, a copy of the order dated 26.02.2015 is at Annexure A2. The LDCE conducted on 30.06.2013 sought to fill 87 vacancies in the cadre of Postmaster Grade I and vacancies at roster points 1, 34 and 67 were meant to be filled by physically disabled candidates. As no appointment from this category was made, one among them by name, Shri P.Rajesh, who was a qualified candidate as per Annexure A7, approached the Chief Commissioner of Persons with Disabilities. In response to the notice of the Chief Commissioner, the 3rd Respondent intimated that all the three candidates in Annexure A2 can be appointed by promotion (Annexure A3). The Chief Commissioner through Annexure A4 advised that the complainant therein be

.4.

deputed for training.

4. At this stage, the 2nd Respondent had a rethink and appears to have taken objection as to why all three need to be appointed when direction in Annexure A4 was only for one person. A copy of the letter dated 17.06.2015 in this context is at Annexure A5. In response to this communication a stand was adopted by the respondents that the vacancies reserved for physically disabled candidates are to be divided among the Visually Handicapped, Orthopedically Handicapped and Hearing Handicapped with one vacancy each for each category. However, since no other candidate was available in any category, it was suggested that the vacancies can be filled by the applicants (Annexure A6).

5. As nothing was done in the case of the applicants even after Shri Rajesh was given appointment as per Annexure A7, they were constrained to approach the Chief Commissioner for Persons with Disabilities. In response to the said complaint, the respondents submitted that two vacancies reserved for Visually Handicapped and Hearing Handicapped are liable to be carried forward. Accepting this view, the Chief Commissioner issued order dated 29.03.2017 (Annexure A9).

6. The various provisions for filling up the vacancies of categories of physically disabled are clearly spelt out in OM 36035/3/2004-Estt(Res) dated

.5.

29.12.2005, a copy of this is at Annexure A10. There is no ambiguity in proceeding with the appointment. Yet the respondents are dragging their feet.

7. In the subsequent year also an examination was conducted, this time on 20.07.2014 and the applicants were the only two candidates with physical disability who qualified. The list of candidates is at Annexure A11. It is maintained that the contention that vacancies in the year 2013 being earmarked for Visually Handicapped is unsustainable, as the job of Postmaster and Sub Postmaster is identified in Group C at Sl.No.181 and 182 for the purpose of reservation for Persons with Disabilities. Annexure to notification dated 15.03.2007 refers.

8. Annexure A10 provides for carrying forward of vacancies only if the promotions are based on a selection. The promotion in this case is based on an LDCE and not on selection. The candidates who are qualified in LDCE are **appointed** based on respective merit. As such, there is no justification to carry forward the vacancies of one year to the subsequent year. The applicants are entitled to appointment as Postmaster Grade I in the vacancy year, 2013 itself and in any case they cannot be denied appointment based on the 2014 vacancies.

9. The respondents have filed a reply statement in which lot of emphasis is

.6.

put on the orders of the Chief Commissioner for Persons with Disabilities and his ruling to appoint only Shri Rajesh. The admission made as per Annexure A3 that the applicants in the OA can also be appointed is stated to have been a result of an error. Further an interpretation is taken on Annexure A10 that if any vacancy cannot be filled, it has to be carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year. The two unfilled vacancies for the examination held on 30.06.2013, being for VH and HH, is to be carried forward to the next year and reserved for those categories. The orders of the Chief Commissioner for Persons with Disabilities is quoted as below in order to strengthen the argument of the respondents.

“In the light of the facts mentioned above, Limited Departmental Competitive Examination (LDCE) was conducted by the respondent for promotion to the cadre of Postmaster Grade-I on 30.06.2013 to fill up 3 reserved vacancies one each earmarked for OH, HH and VH persons with disabilities. Three candidates, namely Shri Rajesh P. and the complainants, all persons with locomotor disability (OH) qualified the exam and 1 vacancy earmarked for OH category was filled up with Shri Rajesh P. Accordingly, the roster Point No.1 was filled up. Rest of the 2 vacancies which were earmarked for HH and VH categories at the roster point 34 and 67 could not be filled up with the complainants as they belong to OH category and the backlog vacancies were carried forward to the next year.”

11. Heard Shri R.Hariraj, learned Counsel for the applicant and Shri N.Anilkumar, learned SCGSC. All pleadings were examined. The issue relates to the eligibility of the applicants to be accommodated in the vacancies reserved for persons with disabilities as per roster. It is admitted by both sides that roster points 1, 34 and 67 are to be filled applying

reservation concerned. At this stage, two provisions in OM No.36035/3/2004-Estt(Res) of Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training dated 29.12.2005 are most relevant.

“16. INTER SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT:

(a) Reservation for each of the three categories of persons with disabilities shall be made separately. But if the nature of vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be interchanged among the three categories with the approval of the Ministry of Social Justice & Empowerment and reservation may be determined and vacancies filled accordingly.

(b) If any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year.

(c) In the subsequent recruitment year the 'backlog reserved vacancy' shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled by interchange among the three categories of disabilities. In case no suitable person with disability is available for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability.”

12. The applicants have a definite case for being appointed to the reserved post in the year 2014 as there were no suitable persons with disability belonging to their category or other categories who are offered through the examination conducted in 2013.

13. It is also to be considered whether Proviso 18 is applicable in the case.

The provision reads as follows:

“18. CONSIDERATION ZONE, INTERSE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF PROMOTION.

(a) While filling up the reserved vacancies by promotion by selection, the disabled candidates who are within the normal zone of consideration shall be considered for promotion. Where adequate number of disabled candidates of the appropriate category of handicap are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the persons with disabilities falling within the extended zone may be considered. In the event of non availability of candidates even in the extended zone, the reservation can be exchanged so that post can be filled by a person with other category of disability, if possible. If it is not possible to fill up the post by reservation, the post may be filled by a person other than a person with disability and the reservation shall be carried forward for upto three subsequent recruitment years, whereafter it shall lapse.

(b) In posts filled by promotion by non-selection, the eligible candidates with disabilities shall be considered for promotion against the reserved vacancies and in case no eligible candidate of the appropriate category of disability is available, the vacancy can be exchanged with other categories of disabilities identified for it. If it is not possible to fill up the post by reservation even by exchange, the reservation shall be carried forward for upto three subsequent recruitment years whereafter it shall lapse.”

By the analogy explained in Proviso 18, the applicants appear to be eligible for the selection conducted in 2013 as well. However, as the candidates have come through an LDCE, they can only be considered as direct recruits and hence can be covered under Proviso 16.

14. In view of the above, we direct that the applicants are entitled to be given promotion to the carried forward vacancies of Persons with Disabilities in the year 2014 based on their merit shown in the examination conducted on 20.07.2014. They are to be granted promotion with effect from the date of promotion granted to the personnel who qualified in the 2014 examination with all consequential benefits including arrears of pay and

.9.

allowances. Orders in this regard are to be issued within two months from the date of receipt of this order. OA is disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00664/2017

- 1. Annexure A1:** True copy of the Department of Posts Senior Postmaster (Gr.B, Gazetted), Postmaster (Grade III & II Group B Non Gazetted) and Postmaster Grade I Group C Non Gazetted) Recruitment rules, 2010 (hereafter called the Rules).
- 2. Annexure A2:** True copy of the order ST/3-1/PM Grade I dated 26.02.2015.
- 3. Annexure A3:** True copy of the letter ST/3-1/PM Grade I dated 24.03.2015.
- 4. Annexure A4:** True copy of the order dated 01.06.2015, in Case No.2166/1024/2014 on the files of the Chief Commissioner for Persons with Disabilities.
- 5. Annexure A5:** True copy of the letter No.34013/09/2013 DE dated 17.06.2015.
- 6. Annexure A6:** True copy of the letter No.ST/3-1/PM Grade I dated 03.07.2015.
- 7. Annexure A7:** True copy of the Order No.A-34013/09/2013 DE dated 29.07.2015.
- 8. Annexure A8:** True copy of the letter No.ST/3-1/PM Grade I dated 02.02.2016.
- 9. Annexure A9:** True copy of the order dated 29.03.2017 in Case No.5513/1021/2015/R91 of the Chief Commissioner for Persons with Disabilities.
- 10. Annexure A10:** True copy of the OM 36035/3/2004-Estt(Res) dated 29.12.2005.
- 11. Annexure A11:** True copy of the list of candidates who have appeared in the LDCE of 20.07.2014.
- 12. Annexure R1:** True copy of the complaint dated 09.11.2015 filed by the applicants before the Hon'ble Court of CCPwD.
- 13. Annexure R2:** True copy of the letter No.5513/1021/2015 dated 01.01.2016.
- 14. Annexure R3:** True copy of the rejoinder dated 10.02.2016.
- 15. Annexure R4:** True copy of the Notice for Hearing dated 12.07.2016.
- 16. Annexure R5:** True copy of the submission dated 17.08.2016.
- 17. Annexure R6:** True copy of the Record of Proceedings dated 05.10.2016.

.11.

18. Annexure R7: True copy of the detailed point-wise reply submitted by the respondents vide letter dated 08.11.2016.

19. Annexure R8: True copy of the written submission dated 29.11.2016 submitted to the Hon'ble Court of CCPwD.

20. Annexure R9: True copy of the Notification No.16-70/2004-DD dated 29.07.2013 of the Ministry of Social Justice of Empowerment.
