

In the High Court of Judicature at Madras

Reserved on: 22.7.2015 and Pronounced on: 29.7.2015

Coram:

The Hon'ble Mr.Justice V.Ramasubramanian
and
The Hon'ble Mr.Justice T.Mathivanan

Writ Petition No.6297 of 2015
and

M.P.No.1 of 2015

A.Veeraraghavan ... Petitioner

Versus

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.
2. Union of India rep. by
the Chief Postmaster General,
Tamil Nadu Circle, Chennai - 600 002.
3. Postmaster General,
Chennai City Region,
Chennai - 600 002.
4. The Superintendent of Post Offices,
Chengalpattu Postal Division,
Chengalpattu - 603 001.
5. Shri.D.Paulraj ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issue of a writ of certiorarified mandamus, calling for the records of the first respondent relating to the impugned order dated 31.12.2014 in OA No.1575 of 2012 and quash the same and direct the respondents 2 to 4 to promote and appoint the petitioner as Postman for the regular vacancy under 'UR' category for the vacancy year 2009 with effect from the date his junior i.e the fifth respondent has been promoted to the post along with back wages and other consequential monetary benefits as accrued thereon.

For Petitioner : Mr.M.S.Velusamy

For respondents 2-4 : Mr.Venkataswamy Babu CGSC.
O R D E R

V.RAMASUBRAMANIAN, J

The petitioner has come up with the above writ petition challenging an order of the Central Administrative Tribunal, rejecting his claim for consideration for promotion to the post of Postman, by granting relaxation in the upper age limit.

2. Heard Mr.M.S.Velusamy, learned counsel for the petitioner and Mr.Venkataswamy Babu, learned Central Government Standing Counsel appearing for the respondents 2 to 4.

3. The petitioner was selected and appointed as Extra Departmental Delivery Agent (EDDA) (Packer) way back in the year 1979. The petitioner belongs to the Scheduled Caste. The post of Extra Departmental Delivery Agent is now known as Gramin Dak Sevak.

4. The next avenue of promotion for Gramin Dak Sevaks is to the post of Postman. For promotion to the post of Postman, there are two channels. 50% of the vacancies in the post of Postman are to be filled up by way of promotion from among persons working in Group 'D' posts. Out of the remaining 50% of the vacancies, one half is to be filled up through a limited Departmental Competitive Examination and the other half is to be filled on the basis of seniority in the cadre of Gramin Dak Sevak.

5. The 4th respondent herein issued a notification dated 11.2.2010 inviting applications for promotion to the post of Postman, under the quota reserved to be filled up through Departmental Competitive Examination. The examination was held on 30.5.2010. Even before the examination, the third respondent notified the vacancies as follows:-

- (i) 5 vacancies to be filled up by way of promotion from among those holding Group-D posts out of which 2 were reserved for Scheduled Castes and the other 3 were unreserved.
- (ii) 3 vacancies reserved to be filled from among the persons working as Gramin Dak Sevaks, by way of Departmental Competitive Examination and
- (iii) 2 vacancies to be filled up on the basis of seniority.

6. The Departmental Promotion Committee constituted for selecting candidates for the two vacancies reserved to be filled up from among Gramin Dak Sevaks on the basis of seniority, met on 22.7.2010. Out of these two vacancies reserved to be filled up purely on the basis of seniority, one was reserved for OBCs and the other was unreserved. Among persons working as Gramin Dak Sevaks the petitioner herein happened to be the senior most, as seen from the seniority list released on 1.7.2007, wherein his name was found at Serial No.87. But unfortunately, he was not granted promotion under the 25% seniority quota, solely on the ground that he had completed

50 years of age as on the date of selection. The upper age limit for considering a person for promotion to the post of Postman as against an unreserved vacancy is 50. Therefore, the 4th respondent selected the 5th respondent herein for promotion, though the 5th respondent is admittedly junior to the writ petitioner. However, it is to be noted that the 5th respondent who also belongs to the Scheduled Caste, is below 50 years of age and hence considered on the basis of his seniority among those who had not completed 50 years of age.

7. Seeking relaxation of the upper age limit and seeking consideration of his claim for selection against the unreserved vacancy, the petitioner gave a representation. The representation was rejected by the third respondent by an order dated 19.11.2010. An appeal filed by the petitioner to the second respondent was also rejected on 28.2.2011. A further appeal filed by the petitioner to the first respondent was rejected on 8.8.2012. Therefore, the petitioner filed an application in O.A.No.1575 of 2012 on the file of the Central Administrative Tribunal, Madras Bench. This application was dismissed by the Tribunal by an order dated 31.12.2014, forcing the petitioner to come up with the above writ petition.

8. The main contention of the petitioner is that a candidate belonging to the reserved categories, is entitled to relaxation in the upper age limit and that such a relaxation cannot be denied merely because the vacancy against which he seeks to be considered is an unreserved vacancy. In support of his contention that even as against an unreserved vacancy, a candidate belonging to the Scheduled Caste is entitled to relaxation in the upper age limit, the learned counsel for the petitioner relied upon the decision of the Supreme Court in Jitendra Kumar Singh v. State of U.P. [(2010) 2 SLJ 1131]. But the Tribunal distinguished the said decision on the ground that it arose out of a case where there was a statutory prescription under Section 4 of the UP Public Services (Reserved for Scheduled Castes and Scheduled Tribes) Act, 1994.

9. In addition to the decision of the Supreme Court in Jitendra Kumar Singh, Mr.M.S.Velusamy, learned counsel for the petitioner also relies upon a decision of the Central Administrative Tribunal, Madras Bench in V.Maruthamuthu v. Union of India in O.A.No.1006 of 2004 dated 6.6.2005, which was also confirmed by a Bench of this Court in W.P.No.631 of 2006 dated 24.1.2008 and another decision of the Central Administrative Tribunal, Madras Bench in O.A.No.85 of 2008 dated 30.4.2009, which was also confirmed by a Division Bench of this Court in W.P.No.14852 of 2009 dated 15.10.2009.

10. We have carefully considered the above submissions.

11. In order to understand the scope of the dispute raised by the petitioner, it is necessary to have a look at certain facts and the statutory Rules and the Circulars.

12. The recruitment to the post of Postman/Mail Guard/Head Mail Guards was originally governed by the Recruitment Rules of the year 1969. These Rules were superseded by a set of Revised Recruitment Rules notified by the Department of Posts on 6.7.1989. As per the revised procedure prescribed in the Recruitment Rules of the year 1989, the method of recruitment to the post of Postman is as follows:-

- "i. 50% of vacancies by promotion of Department officials failing which by ED agents on the basis of merit in the Departmental examination.
- ii. 50% of vacancies by Extra Departmental agents of the Recruitment Division/Unit in the following manner:
 - 25% from among the ED agents on the basis of seniority in service.
 - 25% from among the ED agents on the basis of merit in the examination."

13. After the issue of the Recruitment Rules, the upper age limit fixed for Extra Departmental Agents (GDS) for appearing for the Departmental Examination became 50 years under a notification dated 30.1.1995. But candidates belonging to the Scheduled Castes and Scheduled Tribes are entitled to relaxation in the upper age limit up to 5 years as on the 1st July of the year in which the examination is held.

14. In so far as this relaxation is concerned, a clarification was issued by the Department of Posts and Telegraphs by an Office Memorandum in O.M.No.36028/17/2001-Estt. dated 11.7.2002 indicating that for considering a candidate as against unreserved vacancies, no relaxation in the upper age limit will be given.

15. The question as to whether a reserved category candidate can seek relaxation of any of the criteria for being considered as against the unreserved vacancy, was answered by the Supreme Court in Anurag Patel v. UP Public Service Commission [2004 Supp(4) SCR 888]. It was held in the said decision that if a candidate belonging to the reserved category finds place in the selection list, after having availed himself the facility of relaxation in norms and exemption in age limit prescribed for the general candidates, on the basis of his preference he ought to be adjusted against the vacancies/posts of the reserved quota. In the light of this judgment, if the writ petitioner is considered against the unreserved vacancy after relaxing the upper age limit, the post occupied by him will have to be treated as a reserved vacancy. This will do injustice to another Scheduled Caste candidate who seeks appointment as against such a reserved vacancy.

16. The Central Administrative Tribunal not only took note of the decision of the Supreme Court in Anurag Patel, but also took note of the decision in R.K.Sabarwal v. State of Punjab [(1995) 2 SCC 745], Union of India v. Virpal Singh Chowkan, [(1995) 6 SCC 684] and Ritesh R. Sah v. Dr.Y.L.Yamul [(1996) 3 SCC 253]. The Tribunal

also took note of the decision of the Supreme Court in K.Manorama v. General Manager, Southern Railway [(2010) 10 SCC 323], where the Supreme Court reiterated that if a member of Scheduled Caste gets selected in the open competition on the basis of his own merit, he will not be counted against the quota reserved for Scheduled Caste. Therefore, we are of the considered view that the Tribunal did not commit any error warranting our interference.

17. As rightly pointed out by the Tribunal, the decision in Jitendra Kumar Singh as no application to the facts of this case. In that case, reliance was placed upon a provision in the statute that conferred the benefit of relaxation. The petitioner does not rely upon any such statutory prescription.

18. Mr.M.S.Velusamy, learned counsel for the petitioner relied upon a set of Rules issued by the President of India, in exercise of the powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution. These Rules called "The Central Civil Services and Civil Posts (Upper Age Limit for Direct Recruitment) Rules, 1998, provide for relaxation of the upper age limit up to five years, in favour of Scheduled Castes and Scheduled Tribes. In the Table under Rule 5 of these Rules, it is stated that the benefit of relaxation up to five years in the upper age limit is applicable even to posts to be filled up by way of promotion. Therefore, the learned counsel contends that the respondents ought to have granted relaxation of upper age limit.

19. But, unfortunately, the above provision may not apply to an unreserved vacancy to be filled up by way of promotion. If no vacancies are reserved for Scheduled Castes in the matter of promotion to a particular post, then the benefit of relaxation of the upper age limit may be available. But, where a few vacancies are earmarked and reserved for Scheduled Castes and Scheduled Tribes, they cannot claim relaxation of upper age limit, as against an unreserved vacancy.

20. Therefore, we are of the considered view that the order of the Tribunal does not call for any interference. Hence, the writ petition is dismissed. There will be no order as to costs. Consequently M.P.No.1 of 2015 is closed.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

gr/kpl

To

1. The Registrar, Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.
2. The Chief Postmaster General,
Tamil Nadu Circle, Chennai - 600 002.
3. The Postmaster General, Chennai City Region,
Chennai - 600 002.
4. The Superintendent of Post Offices, Chengalpattu Postal Division,
Chengalpattu - 603 001.

1 cc to Mr.M.S. Velusamy, Advocate, sr. 38845
1 cc to Mr. Venkataswamy Babu, Advocate, Sr.38936

W.P.No.6297 of 2015
and
M.P.No.1 of 2015

GR (CO)
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