

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD**

Writ Petition No.25931 of 2015

Order: (per V.Ramasubramanian, J.)

The Union of India and the Department of Posts have come up with the present writ petition challenging an order of the Central Administrative Tribunal, directing them to recalculate the vacancies in the cadre of Postal Services Group-B and to consider the case of the respondents 1 to 5 herein as against the unfilled vacancies.

2. We have heard Mr. B.Narayana Reddy, learned Assistant Solicitor General of India appearing for the Union of India and Mr. Siva, learned counsel appearing for the respondents 1 to 5.

3. By a Notification dated 10-4-2012, it was proposed to hold a Limited Departmental Competitive Examination for promotion to Postal Services Group B-2012 on 03-6-2012. The respondents 1 to 5 applied. By proceedings dated 17-7-2012, a select list of 15 candidates was published, as against the 19% general quota prescribed for out of turn promotion through limited competitive examination under the Recruitment Rules. The names of the respondents 1 to 5 herein did not find a place in the select list.

4. After some time, the department enlisted 210 candidates by proceedings dated 28-12-2012 under the 75% promotion quota.

5. Shocked at the number of vacancies notified for regular promotion and contending that the calculation of vacancies at 15 (14 under the Open Category and one under the Scheduled Castes category) under the 19% quota to be filled up by Limited Departmental Competitive Examination was contrary to the orders of the Department of Posts and Telegrams dated 19-01-2007, the respondents 1 to 5 filed an application in O.A.No.554 of 2013 on the file of the Central Administrative Tribunal, Hyderabad. Finding that as per the decision of the Supreme Court in **State of Punjab v. Dr. R.N. Bhatnagar** [1998 Supp. 3 SCR 693], reiterated by a 3-member Bench in **All India Federation of Central Excise Officers' Association v. Union of India** [(1997) 1 SCC 520] and as per the Office Memorandum dated 19-01-2007, the number of posts to be allotted for Limited Departmental Competitive Examination was to be calculated on the number of vacancies and not on the number of posts, the Central Administrative Tribunal allowed the original application filed by the respondents 1 to 5. Aggrieved by the said order, the Union of India is before us.

6. The facts that led to the dispute on hand and the rival contentions could all be appreciated easily by having

a look at the details furnished by the Union of India in a table in para-6 of the Affidavit in support of the writ petition.

Hence, it is extracted as follows:

“Total number of Postal Service Group-B Posts: 866

Sl. No.	Category	% of Share in total Posts	No. of Posts Category wise	Officials in Position	Vacancies
(1)	(2)	(3)	(4)	(5)	(6)
1	75% by Promotion on seniority – IP line	866 x 75%	649	439	210
2	19% by promotion through LDCE from IP line	866 x 19%	165	150	15
3	6% by promotion through LDCE from Clerical line	866 x 6%	52	45	07

*LDCE : Limited Departmental Competitive Examination.

7. According to the Union of India, the total sanctioned strength of Postal Services Group-B is 866. 75% of these posts are to be filled up by way of promotion through the Departmental Promotion Committee. The number of posts thus reserved for promotion works out to 649.

8. 19% of the total posts which works out to 165 are to be filled up from among the Inspectors of Posts through Limited Departmental Competitive Examination and 6% of the posts are to be filled up from among the Clerical line staff, again through Limited Departmental Competitive Examination.

9. According to the petitioners, the total number of posts thus earmarked for promotion under the 19% quota is 165. The number of officials who had been promoted under this quota and who were in service as at the beginning of the year 2012 was 150. Therefore, the petitioners claim that they arrived at the number of vacancies to be filled up under the 19% quota for the year 2012 correctly as 15.

10. In *R.K. Sabharwal v. State of Punjab*¹, the Supreme Court held that the reservation for the Scheduled Castes, Scheduled Tribes and Backward Classes was post based and not vacancy based. But in *Dr. R.N. Bhatnagar (supra)*, the Supreme Court made a distinction between (i) the reservation based upon social backwardness guaranteed under the Constitution of India and (ii) the quota-rota prescribed in the Statutory Rules for filling up a superior post through different streams. The decision in *Dr. R.N. Bhatnagar* was reiterated by the Supreme Court in *All India Federation of Central Excise Officers' Association*.

11. Therefore, admittedly the Government of India issued an Office Memorandum dated 19-01-2007, revoking the earlier Office Memorandum dated 25-5-1998 and holding that wherever a quota is fixed for direct recruitment, promotion and/or deputation, the same would be applied on the number of vacancies.

¹ (1995) 2 SCC 745

12. However, the petitioners contend that the Office Memorandum dated 19-01-2007 does not apply to cases of this nature but would apply only to cases of direct recruitment and promotions. It is also contended by the petitioners that the decision in *Dr. R.N. Bhatnagar and All India Federation of Central Excise Officers' Association* would apply only to cases where there is a roster for apportioning vacancies for direct recruitment and promotion. Since in the case on hand the quota stipulated is only between three different streams and methods of promotion, the petitioners claim that the decision in *Dr. R.N. Bhatnagar and All India Federation of Central Excise Officers' Association* would not apply to the case on hand.

13. We have carefully considered the above submissions.

14. Before testing the applicability of the ratio laid down in *Dr. R.N. Bhatnagar and All India Federation of Central Excise Officers' Association*, it is necessary for us to have a look at the Statutory Rules that govern the posts in question. The posts of Postal Superintendent/Post Masters Group-B were originally governed by a set of rules known as "Department of Posts, Postal Superintendent/Post Masters Group-B Recruitment Rules, 1987". These Rules were replaced by a new set of rules by a Notification bearing G.S.R. No.329, dated 29-6-1994. By the new set of rules known as

“Department of Posts, Postal Service Group-B Recruitment (Amendment) Rules, 1993”, the entries in column No.12 in the Schedule to the existing Rules were substituted by new entries. Rule 4 of the 1993 Rules by which the entries in column No.12 of the Schedule were substituted reads as follows:

“4. In the schedule of the said rules in column 12 for the existing entries the following entries shall be substituted namely:-

By promotion

75% of the total posts shall be filled by promotion from amongst Inspectors of Post Offices and Inspectors of Railway Mail Service (Pay scale Rs.1400-2300/-) with 8 years regular services in the grade.

Promotion by examination

(i) 19% of the total posts shall be filled on the basis of a departmental competitive examination from amongst Inspectors of Post Offices and Inspectors of Railway Mail Service (Pay scale Rs.1400-2300/-) with five years regular service in the grade.

(ii) 6% of the total posts shall be filled on the basis of the same departmental examination from amongst clerical line officials working in Post Offices/ Divisional Offices with 5 years regular service in the Lower selection Grade and above.”

15. The expression used in the Statutory Rules is “total posts”. The entries in column No.12 of the Schedule to the Amended Rules do not use the expression “vacancies” but use the expression “total posts”. Therefore, *prima facie* the Union of India is right in contending that if the quota allotted for promotion through Limited Departmental Competitive Examination is on the number of total posts, the percentage

reserved for a particular stream cannot be applied on the number of vacancies arising every time but has to be applied on the total number of posts falling under the quota, after deducting the number of persons occupying the posts reserved under the said quota.

16. In *R.K. Sabharwal*, the Supreme Court pointed out, while dealing with a system of roster maintained for the purpose of communal reservation that as and when there is a vacancy in a particular post, the same has to be filled from amongst the category to which the post belonged in the roster. Pointing out the distinction between the problematical expressions such as “posts” and “vacancies”, the Supreme Court held that the cadre strength is always measured by the number of posts comprising the cadre and that the right to be considered for appointment can only be claimed in respect of a post in a cadre. The Court said in para-7 that the percentage of reservation has to be worked out in relation to the number of posts which form the cadre strength and that the concept of vacancy has no relevance in operating the percentage of reservation.

17. However in *Dr. R.N. Bhatnagar*, when the very same question arose, in a different context, the Supreme Court made a distinction between a rule of reservation envisaged for a specified category of persons as permitted under Article 16(4) of the Constitution of India and a rule of recruitment

from two different sources. In *Dr. R.N. Bhatnagar*, the Supreme Court was concerned with the interpretation to be given to Rule 9 of the Punjab Medical College Educational Service (Class-I) Rules, 1978. The said Rule provided a quota of 75% of the posts of Professors for promotion and 25% of posts by direct recruitment. The expression used in Rule 9 was “posts” and not “vacancies”. The following observations of the Supreme Court in *Dr. R.N. Bhatnagar* are of significance:

“It is well settled that once recruitment is made from two sources i.e. departmental promotes and direct recruitment from open market and once the concerned candidates enter into any cadre through entry point reserved for them, they get fused and blended into one single cadre and their birth marks get obliterated.

.....

It has, therefore, to be appreciated that when posts in a cadre are to be filled in from two sources whether the candidate comes from the **source** of departmental promotes or by way of direct recruitment once both of them enter a common cadre their birth **marks** disappear and they get completely integrated in the common cadre. This would be in consonance with the thrust of Article 16(1) of the Constitution of India. No question of exception to the said general thrust of the constitutional provision would survive as Article 16(4) would be out of picture in such a case. Consequently the decision rendered by the Constitution Bench in *R.K. Sabharwal’s* case (*supra*) in connection Article 16(4) and the operation of roster for achieving the reservation of posts for SCs, STs and BCs as per the scheme of reservation cannot be pressed in service for the present scheme of Rule 9(1) is not as per Article 16(4) but is governed by the general sweep of Article 16(1). The attempt of learned counsel for the respondent to treat a quota rule as reservation rule would result in requiring the State authorities to continue the birth-marks of direct recruits and promotes even after they enter the common cadre

through two separate entry points regulating their induction to the cadre.”

18. In *All India Federation of Central Excise Officers' Association*, a 3-member Bench of the Supreme Court reiterated the principles laid down in *Dr. R.N. Bhatnagar*. In *All India Federation of Central Excise Officers' Association*, the Supreme Court was concerned with a proposal mooted by the Government of India for providing a quota rule of 6:1:2 for the three feeder channels in Group-B for promotion to Group-A. The Supreme Court held that the ratio in *Dr. R.N. Bhatnagar* would squarely govern the said case.

19. On account of the shift that happened with the decision in *Dr. R.N. Bhatnagar*, the Government of India issued an Office Memorandum dated 19-01-2007. The Office Memorandum may be extracted in entirety so that the stand taken by the Union of India could be seen in context. Hence the Office Memorandum dated 19-01-2007 is extracted as follows:

“The undersigned is directed to refer to this Department’s OM No.AB – 14017/2/97-Estt.(RR) dated the 25th May, 1998 on the subject noted above and to say that paragraph 2 of the said OM provided as follows:-

“The Supreme Court in its judgment in R.K. Sabharwal’s case has ruled in favour of a change-over from the existing “vacancy” based reservation roster to “post” based roster. Under the existing policy the determination of different quotas for recruitment is vacancy-based. In order to comply with the aforesaid Supreme Court judgment, which has been implemented vide the DOPT OM No.36012/2/96-Estt.(Res.) dated the 2nd July, 1997, it will be necessary to amend the existing Service Rules / Recruitment Rules under column 11 of Annexure-1 in the DOP&T guidelines dated the 18th March, 1988 to replace

the words “percentage of the ‘vacancies’ to be filled by various methods by “percentage of the ‘posts’ to be filled by various methods”.

2. The Supreme Court in its Judgement in CWP No.5893 of 1997 decided on 18.12.1998 – State of Punjab & Others vs. Dr. R.N. Bhatnagar & another held as follows:-

“The quota of percentage of departmental promotes and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time. there is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promote by a promote.”

3. The Court also held that the decision rendered by the Constitution Bench in R.K. Sabharwal’s case vs. State of Punjab & others [(1995 (1) SLR 791 (SC)] in connection with Article 16(4) and the operation of roster for achieving the reservation of posts for Scheduled Castes, Scheduled Tribes & Backward Classes as per the scheme of reservation, cannot be pressed in service for the scheme of method of appointment.

4. The Supreme Court referred the above-mentioned case in its judgement dated 22.2.1999 in All India Federation of Central Excise vs. The Union of India & others [IA Nos.4, 6-8 in Writ Petition (C) No.306 of 1988 with Writ Petition (C) No.651 of 1997], and reiterated the above-mentioned decision.

5. It has, therefore, been decided to rescind the instructions contained in Para 2 of this Department’s OM dated 25.5.98, reproduced in paragraph 1 of this OM. The column 11 of the Annexure 1, appended to this Department’s OM No.AB-14017/12/87-Estt.(RR) dated 18.3.1988 would continue in its form that existed before the issuance of OM dated 25.5.1998. For the sake of clarity, the column 11 of Annexure 1 would be as follows:-

Method of recruitment;

Whether by direct recruitment or by promotion or by deputation / absorption & percentage of the **vacancies** to be filled by various methods.

6. In case column 11 of the Annexure 1 in regard to Recruitment Rules for posts has been amended by the ministries / departments in accordance with the instructions contained in the OM of 25.5.1998, the same

may be amended / notified again, as indicated in paragraph No.5, in consultation with the Legislative Department. This may be done without making reference to the Department of Personnel & Training / Union Public Service Commission.

7. The attached Annexure illustrates how the post-based roster for reservation and vacancy-based roster for appointment under various methods are to be operated.

8. The reservation position for SCs/STs/OBCs would continue to be governed by the DOPT OM No.36012/2/96-Estt.(Res.) dated 2nd July 1997.

9. This would take effect from the date of issue and the past cases would not be reopened.”

20. It can be seen from the Office Memorandum extracted above, that after the decision of the Supreme Court in *All India Federation of Central Excise*, the Union of India accepted (1) a post-based roster for communal reservation and (2) a vacancy-based roster for appointment by various methods. Once this is clear, we do not know how the Union of India has now taken a stand that the Office Memorandum dated 19-01-2007 will not apply to the case on hand.

21. It is also brought to our notice by Mr. Siva, learned counsel for the respondents 1 to 5, that the Department of Posts issued a Notification very recently on 07-10-2016 for the conduct of Limited Departmental Competitive Examination for promotion to the cadre of Postal Services Group-B from 2012-13 onwards. In para-9 of the Notification, the Department has given a tabular statement with regard to the break-up of vacancies which can usefully be extracted as follows:

Category-wise break up of vacancies

Examination for	Year	UR	SC	ST	Total
Inspector Posts Line officials (19% quota of vacancies)	2012-13	06	04	01	11
	2013-14	21	04	02	27
	2014-15	30	08	03	41
	2015-16	32	02	03	37
	2016-17	01	00	00	01

22. We are unable to reconcile ourselves to the statistics furnished by the Union of India in the table provided under para-6 of their Affidavit in support of the writ petition with the vacancies that they have shown in the table under para-9 of the recent Notification dated 07-10-2016. If 165 posts alone are reserved under the 19% quota for promotion through Limited Departmental Competitive Examination from a particular line and if 150 officers who were promoted through the said channel were in place in April, 2012, more than about 100 vacancies could not have arisen during the period from 2012-13 to 2016-17. This shows that there was something grossly wrong with the stand taken by the Union of India.

23. On first principles, we do not know whether the application of the principles laid down in *Dr. R.N. Bhatnagar* would tilt the balance in favour of one or the other streams and eventually destroy the object of the quota-rota rule. A time may come when the entire P.S. Group-B Services may either be occupied only by promotees (75%) or by persons

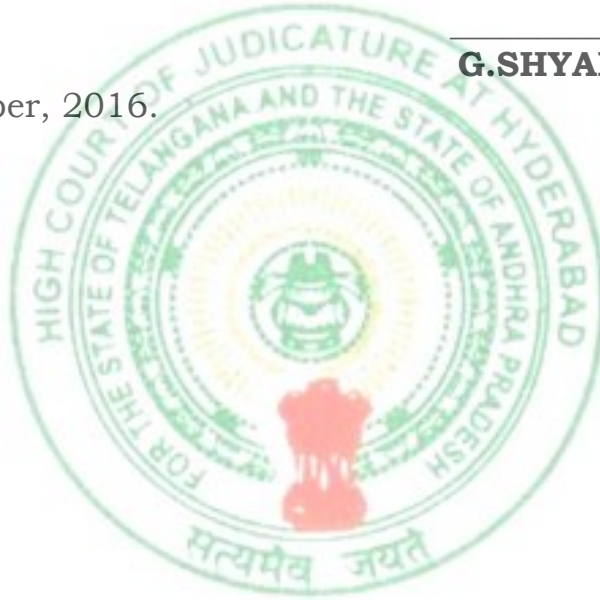
selected under the 19% quota earmarked for Inspector of Posts through a Limited Departmental Competitive Examination or by persons coming under the 6% quota for Clerical line staff. The object of reserving a major portion of the cadre strength for promotion on the basis of merit cum seniority and leaving the remaining posts for recruitment out of turn through a Limited Departmental Competitive Examination is actually to strike a balance between the aspirations of the existing employees and ensuring efficiency of administration by recognising talent. The principles laid down in *Dr. R.N. Bhatnagar* followed in *All India Federation of Central Excise*, in our humble view, may strike at the very root of the balance that is sought to be struck between the interests of the employees and the need for improving efficiency in administration. If the number of persons promoted under one stream far exceeds the number of persons appointed through the other stream, this balance is obliterated. ***The theory that once promoted/appointed (through different streams), their birth marks get obliterated, may be applicable to the promoted/appointed individuals. But the same cannot apply to the vacancies or posts. We must always bear in mind, the distinction between a post and a person occupying the post. The birth mark is on persons and not on posts.*** Therefore, a time may come when the principles enunciated in *Dr. R.N. Bhatnagar* may be revisited

by the Apex court. But as on date, the law laid down by the Supreme Court in *Dr. R.N. Bhatnagar* holds the field and hence our hands are tied and we are unable to interfere with the order of the Tribunal. Therefore, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

05th December, 2016.
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**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD**

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(per VRS, J.)



05th December, 2016.
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