

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: **0813.03.2017**

Delivered on :: **13.03.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE M.V.MURALIDARAN**

W.P. No.44421 OF 2016

- 1 All India Association of
Inspectors & Asst. Superintendent Posts
Tamilnadu Circle M-5 P & T Quarters
Subburayan Nagar Chennai-18 Rep by Shri G.
Babu Circle Secretary
- 2 C.Rajasekaran
E3 Postal Staff Quarters Tailors Road
Kilpauk Chennai-10 Asst. Superintendent
Posts Sub Division-I Chennai City North
Division Chennai-8 ... petitioners

versus

- 1 The Union of India
Rep by the Secretary (Posts) Ministry of
Communications Department of Posts
Dakbhan New Delhi-110 001
- 2 The Asst. Director General(DE)
Department of Posts Dakbhan New Delhi-
110 001
- 3 The Chief Post Master General
Tamilnadu Chennai-600 002
- 4 The Assistant Director
(Recruitment & Establishment) O/o Chief
Postmaster General Tamilnadu Circle
Chennai-600 002

5 The Registrar

Central Administrative Tribunal Chennai
Bench Chennai-600 104

... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the 5th Respondent Tribunal in its order dated 14.12.2016 made in O.A. 1756 of 2016 quash the same and consequently allow the OA as prayed for.

For petitioners : Mr.Karthick Rajan

For Respondents : Mr.G.Rajagopal, Additional Solicitor General,
assisted by Mr.Venkataswamy Babu, SPC, for R-1

ORDER

K.K.SASIDHARAN, J.

The action taken by the Department of Posts, Ministry of Communications, for the conduct of limited departmental competitive examination for promotion to the post of P.S. Group "B" from the year 2012 onwards by clubbing the year wise vacancies to fill up 19% of the total posts by single examination without giving five physical chances to appear in five different years of examination, made the All India Association of Inspectors and Assistant Superintendent of Posts, Tamil Nadu Circle, and one of its members, to file original application before the Central Administrative Tribunal. The Central Administrative Tribunal (hereinafter referred to as the Tribunal), dismissed the original application taking into account the reply statement filed by the Department of Posts, indicating the rule position and the practical difficulties to conduct separate examinations,

taking into account the limited number of vacancies relating to the earlier years and the delay involved in the selection process. Feeling aggrieved, the petitioners are before this Court.

Summary of facts:-

2. The first petitioner is stated to be the All India Association of Inspectors and Assistant Superintendent Posts, Tamil Nadu Circle. The second petitioner is working as Assistant Superintendent of Posts, Chennai. He is seeking promotion to the post of P.S. Group "B".

3. The promotion to the post of Postal Services Group "B" is governed by the Department of Posts, Postal Services Group "B" Recruitment (Amendment) Rules 1993. The rules provide that 75% of the total vacancies should be filled by seniority from among the eligible employees holding the post of Inspector of Posts, 19% of vacancies by Limited Departmental Competitive Examination for Inspector line officials and 6% by Limited Departmental Competitive Examination for General Line officials.

4. The Department of Posts promoted officials to fill up 19% quota by conducting separate examinations for the year 2009, 2010, 2011 and 2012. Thereafter, examinations were not held, in spite of vacancies.

5. While so, the Department of Posts issued the impugned notification dated 7 October 2016, for filling up all the vacancies which have arisen for the period 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 by means of a single competitive examination to be held on 4 December 2016. The notification was challenged before the Tribunal by the petitioners primarily on the ground that it would deny them opportunity to appear for the separate examinations for the year 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. In short, it was the contention of the petitioners that the second petitioner and other similarly situated employees were denied of an opportunity to appear in the separate examinations to be held year wise on account of the act of clubbing vacancies and the proposal to conduct a single examination for filling up the 19% quota for the five year period 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.

6. Before the Central Administrative Tribunal, the respondents filed a reply statement and contended that it would not be possible to conduct separate examination. According to the respondents, the claim of the petitioners would be considered by fixing different cut off marks for different years, taking into account the year wise vacancy position. The respondents further contended that in view of the limited vacancies for the earlier years, it would neither be feasible nor practicable to conduct the examination year wise separately.

7. The Tribunal found considerable force in the case pleaded by the Department of Posts and consequently upheld the notification. The original application was dismissed with costs.

Submissions:-

8. The learned counsel for the petitioners contended that it was the consistent practice of the Department of Posts to conduct competitive examination year wise. In fact, the Department earlier published a calendar indicating separate dates for examination year wise. However, examination was not conducted as scheduled. According to the learned counsel, in case examinations are conducted year wise, it would enable eligible candidates to write the examination and try their luck in respect of the vacancy every year. The learned counsel contended that though there is no rule, respondents have been conducting separate examinations year wise and as such, there is a precedent to be followed subsequently. The learned counsel further contended that in case only a single examination is conducted, eligible officers would be denied of an opportunity to claim promotion for different years by operating 19% quota. The notification is therefore liable to be set aside being discriminatory and arbitrary exercise of power.

9. The learned Additional Solicitor General while justifying the order passed by the Tribunal, contended that there are only limited vacancies to be filled up. In case examinations are to be conducted year wise, it would require considerable time, besides taking various steps like setting question papers, fixing centres, correction of answer sheets etc. According to the learned Additional Solicitor General, the claim of the eligible officers would be considered taking into account the year wise vacancy. He would further contend that the performance of the candidates would be considered in respect of vacancies for all the five years as per their eligibility, by adopting different cut off marks for different years. It was his further contention that the rules do not provide for separate examination in case the vacancies are clubbed. The learned Additional Solicitor General by placing reliance on paragraph 13 of the counter affidavit submitted that a rational method of selection would be followed to do justice to all the candidates.

The issue:-

10. The only question that arises for consideration is as to whether the Department of Posts, Ministry of Communication, was correct in issuing a common notification for filling up the posts of PG Group "B" by operating 19% quota without holding separate examinations year wise.

Discussion:-

11. There is no dispute that the Department of Posts conducted examination every year for filling up the vacancy for the year 2009, 2010, 2011 and 2012. The last examination to fill up the 19% quota by way of limited departmental competitive examination was conducted on 13 June 2012. Thereafter, for the first time, the impugned notification was issued on 7 October 2016, for filling up all the remaining vacancies which have arisen for the period 2012-13, 2013-14, 2014-15, 2015-16, 2016-17. The notification provides for a single examination to be held on 4 December 2016 to fill up the posts relating to the five year period.

12. The notification dated 7 October 2016 indicates that the Department of Posts, Ministry of Communication proposes to fill up 19% quota by conducting Limited Departmental Competitive Examination. The crucial date for service eligibility for the five different years was specifically mentioned in the notification. There are 11 vacancies for the year 2012-13. The crucial eligibility or cut off date for considering the case for promotion to the post of P.S.Group B for the year 2012-13 is 1 January 2012. Similarly, the crucial dates are indicated for the examination year 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. The vacancy position for both reserved and unreserved are specifically stated in the notification.

13. It is the contention of the petitioners that in case the examination is conducted year wise, it would enable the candidates to appear for five examinations separately and try their luck every vacancy year. According to the petitioners, in case a candidate is not found eligible for promotion on the basis of the marks obtained by him in the examination conducted for the year 2012-13, still he would be having another chance to appear for the next examination for the vacancy year 2013-14. Similarly, he would be in a position to appear for three more examinations, taking into account the crucial date of eligibility. In case there is only one examination for all the five vacancy years, he would be denied of multiple choice and his destiny would be decided on the basis of the marks obtained in the single comprehensive examination.

14. There is no dispute that the Department is expected to identify the vacancies and conduct limited departmental competitive examination every year. The total vacancies have to be filled up by allotting 75% for seniority among the eligible employees holding the post of Inspector of Posts, 19% by Limited Departmental Competitive Examination for Inspector line officials and 6% by Limited Departmental Competitive Examination for General Line officials. Though the Department of Posts conducted year wise examinations consistently and more particularly in the very same vacancy year, the fact remains that no such examination was conducted

after 3 June 2012.

15. The reply statement filed by the Department of Posts shows that the case of the eligible candidates would be considered on merits by fixing different cut off marks for different years. The procedure to be adopted for making promotion to the post of 19% quota is indicated in the following paragraph of the counter affidavit.

“... as per procedure to be adopted, performance of all the candidates eligible for year 2012-13 will be considered for the vacancies of 2012-13 and a select list will be drawn i.e. if cut off of merit for the 06 IP line UR vacancies for the year 2012-13 is 74% and a candidate has secured 64% of marks and he fails to come in the merit for 2012-13, his case will again be considered for the 21 vacancies for the year 2013-14. Again if the cutoff for 2013-14 is 68% and his selection is not considered as he has secured 64% marks, his case will again be considered for the 30 vacancies for the year 2014-15. And now if the cutoff for 2014-15 is 63%, now this candidate will be selected against the vacancies of 2014-15 as he has secured more marks than the cutoff i.e. the marks secured by the last selected candidate of the merit list for

the year 2014-15. Had he secured less than 63% marks, his case would have again be considered for the vacancies of the year 2015-16 and so on. The only think is that the applicant would not get five physical chances to appear in the five different years of Exam.”

16. There are about 2000 eligible candidates. The first petitioner seeks to protect the interest of 141 members of the union. There are about 142 vacancies to be filled up by operating 19% quota for service candidates.

17. In case separate examinations are to be conducted year wise, necessarily, the process has to be repeated with sufficient interval. The Department has to give sufficient time in between two examinations. The Department of Posts wanted all these posts to be filled up early in larger public interest. The process of promotion would be delayed considerably in case the respondents are made to conduct separate examinations taking into account the period of vacancies. The respondents are therefore correct in their contention that in case examinations are conducted separately, it would take a minimum period of three years to complete the process and fill up the vacancies.

18. There is no rule or regulation which mandates that if vacancy is not filled up in a particular year and there is a proposal to club the vacancies, in such contingency, separate examination must be conducted year wise. The earlier practice of conducting examination in the very same year would not give a right to the petitioners to insist that Department should conduct similar exercise even if all the posts are clubbed together. In case the method indicated in the reply affidavit is followed, it would give an opportunity to all the aspiring candidates. This is more so on account of fixing separate cut off marks, taking into account the period of vacancies. We are therefore of the view that the petitioners have not made out a case for quashing the impugned notification and the order passed by the Tribunal.

19. We are informed that the examination was conducted as scheduled and the members of the first petitioner association and the second petitioner participated in the selection process. The respondents 1 to 4 are directed to complete the selection process strictly in accordance with the procedure indicated in the reply affidavit.

Costs awarded by Tribunal :-

20. The Tribunal while dismissing the original application, directed

the first respondent to pay a sum of Rs.1000/- by way of cost to the second petitioner herein. The Tribunal indicated that in case cost is not paid, recognition of the union would be reviewed. We do not find any justification for imposing cost. Similarly, there is no valid reason for giving direction to the Department of Posts to review the recognition of the Union, in case the cost amount is not deposited. This is not a frivolous litigation. The first petitioner espoused the cause of its members by filing the original application. It is for the Tribunal to consider as to whether there is any merit in the case pleaded by the first petitioner. The Tribunal proceeded as if it was a frivolous litigation and imposed cost. We do not find any valid ground to sustain the order directing payment of cost. We therefore set aside the direction given by the Tribunal to pay cost.

21. The order passed by the Tribunal declining to quash the notification is upheld. The direction to pay cost is set aside.

22. The Writ Petition is allowed to the limited extent indicated in paragraphs 19 and 20 above. No costs. Consequently, W.M.P.Nos.38266 and 38267 of 2016 are closed.

(K.K.SASIDHARAN, J.) (M.V.MURALIDARAN, J.)
13.03.2017

Index: Yes/no
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To

- 1 The Secretary (Posts)
Ministry of Communications Department of Posts
Dakbhavan New Delhi-110 001
- 2 The Asst. Director General(DE)
Department of Posts Dakbhavan
New Delhi- 110 001
- 3 The Chief Post Master General
Tamilnadu Chennai-600 002
- 4 The Assistant Director
(Recruitment & Establishment) O/o Chief
Postmaster General Tamilnadu Circle
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- 5 The Registrar
Central Administrative Tribunal Chennai
Bench Chennai-600 104

K.K.SASIDHARAN, J.

and

M.V.MURALIDARAN, J.

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