

Y.Najithamol & Ors vs Soumya S.D.& Ors on 12 August, 2016

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Bench: R. Banumathi, V.Gopala Gowda

NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE

JURISDICTION

CIVIL APPEAL NO. 90 OF 2015

Y. NAJITHAMOL & ORS.

.....APPELLANTS

Vs.

SOUMYA S.D. & ORS.

.....RESPONDENTS

WITH

CIVIL APPEAL NO. 91 OF 2015

J U D G M E N T

V. GOPALA GOWDA, J.

The present appeals arise out of the common impugned judgment and order dated 20.12.2011 passed by the High Court of Kerala at Ernakulam in OP (CAT) No. 1095 of 2011 (S) and connected petitions, whereby the High Court upheld the order of the Central Administrative Tribunal, Ernakulam Bench (hereinafter referred to as the “Tribunal”), which held that the appointment from GDS/EDA to the post of Postman is only by promotion and not direct recruitment, and that because of this reason, the age restriction under Column No. 7(2) of the Department of Posts (Postman/ Village Postman and Mail Guards) Recruitment Rules, 1989 (hereinafter referred to as the “Recruitment Rules”) as well as reservation against the OBC category is not permissible.

Since a common question of law arises in both these appeals, for the sake of convenience, we refer to the facts of the Civil Appeal No. 90 of 2015. The facts of the case required to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief as hereunder:

Appellant nos. 1-4 belong to the OBC category. On 30.11.1992, appellant no.3 commenced service as a Gramin Dak Sevak (GDS) MD. Appellant no.2 commenced service as GDS MD on 16.11.1998, appellant no.4 on 22.08.2001 and appellant no.1 on 08.01.2003. In 2009, the Postmaster General notified 11 vacancies for the post of Postman/Mail Guard. On 27.02.2010, all the four appellants were appointed to the post of Postman, after passing the departmental examination for the same. Challenging the said appointments, Respondent nos. 1 and 2 filed OA 436 of 2010 before the Tribunal on the ground that the appointment to the post of Postman is by way of promotion and, therefore, there can be no reservations for persons belonging to OBCs for the said posts. It was contended before the Tribunal that the selection and appointment of the appellants herein under GDS merit quota overlooking the higher marks obtained by the respondents herein on the basis of the examination held on 20.12.2009 is illegal and arbitrary and that the same is violative of Articles 14, 16 and 21 of the Constitution of India. The Tribunal, adjudicating the essential question as to whether the recruitment of GDS to the cadre of Postman through departmental examination is merit based selection on promotion or not, held as under:

“If the Recruitment Rules for Postman/ Mail Guard are read keeping the entire scheme of promotion in view then the method of recruitment of GDS to the cadre of Postman through departmental examination is to be treated as merit based selection on promotion only. Admittedly, the reservation for the OBC category will not apply to the recruitment of GDS to the cadre of Postman in the instant O.A. Consequently, the nature of the unfulfilled unreserved vacancies in the departmental quota when added to the merit quota of GDS will remain the same as unreserved. Therefore, there is no justification for transferring the unreserved vacancies to the OBC category. That being so, the appointment of the party respondents 4 to 7 is against unreserved vacancies. This appointment is legally untenable because the claim of the applicants for appointment against unreserved vacancies, on account of their having higher merit than the part respondents cannot be ignored.” The Tribunal further held that the order of the Full Bench of the Tribunal passed in O.A. No. 807 of 1999, dated 03.11.1999, holding that the appointment of Extra Departmental Agents to the post of Postman was by way of direct recruitment and not promotion was not applicable to the facts of the instant case. It was distinguished on the ground that the question before the Full Bench was with respect to filling up of those 25% of total vacancies notified for the post of Postman, which were to be filled on the basis of seniority, and thus, pertained to Column 11(2)(i) of the Recruitment Rules, whereas the controversy in the instant case was with respect to the other 25% of the total vacancies, which were to be filled on the basis of merit in the departmental examination and thus, pertained to Column 11(2)(ii) of the Recruitment Rules.

Aggrieved of the order of the Tribunal, the appellants challenged the correctness of the same by way of filing a Writ Petition before the High Court of Kerala at Ernakulam. The Division Bench of the High Court came to the conclusion that a

reading of Columns 11(1) and (2) of the Recruitment Rules does not support the claim that appointments to the said posts are being made by way of direct recruitment instead of promotion. The Division Bench of the High Court held as under:

“We are only concerned with Col.11 (1), 11(2)(i) and 11(2)(ii). The entire vacancies as of now is divided into two portions, i.e. 50% could not be made by promotion from Group D on the basis of their merit in the departmental examination, then the unfulfilled vacancies would go to Extra Departmental Agents on the basis of the rank list in the departmental examination. Then among the other 50%, 25% would go to persons based on the seniority who need not take any departmental examination and for that 25%, if candidates are not sufficient for consideration to the post of Postman based on the seniority, the rest will again go to Extra Departmental Agents based on the merit in the rank list in the departmental examination, then the other 25% from among the Extra Departmental Agents based on the merit in the departmental examination. If still any vacancies are available, from one recruiting division to another postal division is also contemplated and after exhausting that process, if the posts are still remain unfilled again from one postal division located in the same station to another postal division located in the circle. After exhausting the exercise contemplated under Col.11 (1) to (4), if any posts are vacant, then the question of direct recruitment from the nominees of Employment Exchange comes into play. Reading of Column 11(2) to (4), nowhere it refers to any direct recruitment as such. It only says by promotion so far as Group D and if candidates are not sufficient for promotion in Group D, then it goes to Extra Departmental Agents on the basis of merit in the examination. If the intention were to be by promotion only from Group D candidates, then the unfilled from the category under Column 11(1) ought not to have been earmarked for Extra Departmental Agents based on their merit in the Departmental examination.” The High Court accordingly dismissed the Writ Petitions filed by the appellants herein questioning the correctness of the order passed by the Tribunal. Hence the present appeals.

We have heard Mr. V. Giri, the learned senior counsel appearing on behalf of the appellants in the Civil Appeal 90 of 2015 and Mr. N.K. Kaul, learned Additional Solicitor General appearing on behalf of Union of India and Dr. K.P. Kylashnath Pillay, learned senior advocate appearing on behalf of some of the respondents.

The essential question of law which arises for our consideration in the instant case is whether the appointment of the appellants to the post of Postman is by way of direct recruitment or by promotion.

We first turn our attention to the relevant rules at play in the instant case, which are the Recruitment Rules. The Schedule to the said Recruitment Rules specifies the method of recruitment, age limit, qualifications etc. relating to appointments to the said posts. Column 1 specifies the name of the post as Postman/Village Postman, and Column 3 specifies it to be a Group ‘C’ post.

Column 11 of the Recruitment Rules which is at the heart of the controversy in the present case, reads as under:

“Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods :-

50% by promotion, failing which by Extra Departmental Agents on the basis of their merit in the Departmental Examination.

50% by Extra Departmental Agents of the recruiting division of Unit, in the following manner, namely:

25% of vacancies of postman shall be filled up from amongst Extra Departmental Agents with a minimum of 5 years of service on the basis of their seniority, failing which by the Extra Departmental Agents on the basis of Departmental examination.

(ii) 25% from amongst Extra Departmental Agents on the basis of their merit in the departmental examination.

If the vacancies remained unfilled by EDAs of the recruiting division, such vacancies may be so filled by EDAs of the postal division failing in the Zone of Regional Director.

If the vacancies remained unfilled by EDAs of the recruiting units such vacancies may be filled by EDAs of the postal divisions located at the same station. Vacancies remaining unfilled will be thrown upon to Extra Departmental Agents in the region.

Any vacancy remaining unfilled shall be filled up by direct recruitment through the nominees of the Employment Exchange."

A careful reading of the above Column makes it clear that essentially two 'pools' are envisaged from which appointments to the post of Postman can be made. One is the pool of those candidates who are being promoted, and the other is the pool of the Extra Departmental Agents who are appointed to the said post after passing a departmental examination. 50% of the candidates being appointed to the post of Postman are selected by way of promotion. The remaining 50% of the candidates are selected in two ways. 25% of the candidates are selected from amongst the Extra Departmental Agents on the basis of their seniority in service, and the other 25% candidates are selected from the Extra Departmental Agents based on their merit in the Departmental Examination.

Further, Column 12 of the Recruitment Rules reads as under:

“In case of recruitment by promotion/deputation/transfer grade from which promotion/deputation/transfer to be made:

Promotion from Group 'D' officials who have put in three years of regular and satisfactory service as on the closing date for receipt of applications through a Departmental examination.

Extra Departmental Agents through a Departmental Examination.

Direct recruitment through a Departmental Examination."

The post in the instant case, that of Postman is a Group 'C' post. Thus, it is quite natural that 'promotion' to the said post can happen only from the feeder post, which in the instant case, are the Group 'D' posts. Admittedly, GDS is not a Group 'D' post, and members of GDS are merely Extra Departmental Agents.

At this stage, it is also useful to refer to the decision of this Court in the case of C.C. Padmanabhan & Ors. v. Director of Public Instructions & Ors.[1], wherein it was held as under:

"This definition fully conforms to the meaning of 'promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely-

- (i) that the new post is in a higher category of the same service or class of service;
- (ii) the new post carries a higher grade in the same service or class." Promotion to a post, thus, can only happen when the promotional post and the post being promoted from are a part of the same class of service.

Gramin Dak Sevak is a civil post, but is not a part of the regular service of the postal department. In the case of Union of India v. Kameshwar Prasad[2], this Court held as under:

"2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. [See: Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department p. 1.] Further, a three-judge Bench of this Court in the case of The Superintendent of Post Offices & Ors. v. P.K. Rajamma[3] held as under:

“It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by Court in Kanak Chandra Dutta's case (supra) are clearly satisfied in the case of the extra departmental agents.” (emphasis laid by this Court) A perusal of the above judgments of this Court make it clear that Extra Departmental Agents are not in the regular service of the postal department, though they hold a civil post. Thus, by no stretch of imagination can the post of GDS be envisaged to be a feeder post to Group ‘C’ posts for promotion.

A Full Bench of the Ernakulam Bench of the Central Administrative Tribunal in the case of M.A. Mohanan v. The Senior Superintendent of Post Offices & Ors.[4], had the occasion to consider a similar question. The majority opinion of the Tribunal held as under:

“As the name itself indicates, EDAs are not departmental employees. They become departmental employees from the date of their regular absorption as such. And promotions are only for departmental employees. Therefore, EDAs cannot be treated as 'promoted' as Postmen. They can be treated as only appointed as Postmen. It is further seen from instructions of Director General Posts under Rule 4 of Swamy's publication referred to earlier that EDAs service are terminated on appointment as Postman and hence they become eligible for ex gratia gratuity. If the recruitment of EDAs as Postman is treated as a promotion, the question of termination will not arise. This also leads one to conclude that the recruitment of EDAs Postman cannot be treated as one of promotion.

Further, Hon'ble Supreme Court in C.C. Padmanabhan and Ors. v. Director of Public Instructions and Ors., 1980 (Suppl.) SCC 668=1981(1) SLJ 165 (SC), observed that 'Promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in higher category of the same service or class. Applying the above criteria appointment as Postman from EDA cannot be termed as promotion as the posts of Postman and EDA belong to two different services viz. regular Postal Service' and 'Extra Departmental Postal Service.'” (emphasis laid by this Court) The Tribunal in the instant case sought to distinguish the aforementioned case with the case in hand, by placing reliance on another decision of the Tribunal and holding that the Full Bench was concerned with the cases of those candidates covered under Column 11(2)(i), whereas the case of the candidates in the instant case was covered under Column 11(2)(ii), and thus, the decision of the Full Bench has no bearing on the facts of the case on hand. This reasoning of the Tribunal cannot be sustained, as the Full Bench of the Tribunal was clearly adjudicating the broader

question of whether the appointment of Extra Departmental Agents to the post of Postman is by way of direct recruitment or by way of promotion. The attempt to distinguish the ratio of the Full Bench of the Tribunal on such a superficial ground is akin to reading the decision of the Full Bench like a Statute, which cannot be sustained.

The Division Bench of the High Court placed reliance on the wording of Column 11(1) to conclude that since the Extra Departmental Agents being appointed as provided under Column 11(1) can be called as promotees, then the Extra Departmental Agents under Column 11(2)(i) and (ii) also must be treated at par. The said reasoning of the High Court also cannot be sustained. It is nobody's case that the Extra Departmental Agents being appointed under Column 11(1) be called promotees. The language of Column 11(1) itself makes this crystal clear. The use of the words 'failing which' makes it obvious that there is a distinction between those candidates who are being selected by way of promotion, and the candidates who are Extra Departmental Agents and have cleared the departmental examination, and that the latter will be considered for appointment only if there are no eligible candidates under the former category. Thus, the appointment of GDS to the post of Postman can only be said to be by way of direct recruitment and not promotion.

Further regard may be had to the Notification dated 11.08.2009 issued by the Office of the Postmaster General, Department of Posts, notifying the examination for recruitment to the cadre of Postman/ Mail Guard. Under the Head of 'Eligibility', it states as under:

“ Group D-..... GDS- For GDS, the upper age limit shall be 50 years with 5 years relaxation for SC/ST candidates and 3 years relaxation for OBC candidates as on 1st July, 2008 and he/ she should have completed a minimum of 5 years regular satisfactory services as on 1st January 2008. There is no restriction on number of GDS to be permitted to take the examination under the 25% merit quota. All eligible GDS will be allowed to appear in the examination.

Note (i): Reservation will be provided for OBCs in Recruitment of GDS as Postman as is being done in the case of SC/STs.” The said notification also makes it evident that reservations for candidates belonging to the OBC category were very much in contemplation at the time the departmental examination was conducted. Even if a mere reading of Columns 11(1) and 11(2)(i) and (ii) of the Recruitment Rules as well as the Notification issued while notifying the departmental examination is not enough, the subsequent legislative developments leave no scope for doubt as to the legislative intent. The relevant Column of the Department of Posts (Postman and Mail Guard) Recruitment Rules, 2010, reads as under: “Column 11

(a)...

(c) 25% by recruitment on the basis of Competitive examination limited to Gramin Dak Sevaks* of the recruiting Division who have worked for at least five years in that capacity as on the 1st day of January of the year to which the vacancy(ies) belong failing which by direct recruitment;

*Gramin Dak Sevaks are holders of Civil posts but they are outside the regular Civil Service due to which their appointment will be by direct recruitment.” Even though the said Rules are not meant to apply retrospectively, and neither are we suggesting that they do, this makes the position of the Gramin Dak Sevaks crystal clear. Their appointment as Postman is only by way of direct recruitment and not by way of promotion.

Having concluded that the selection of Extra Departmental Agents or Gramin Dak Sevaks to the post of Postman under Column 11(2)(ii) of the Recruitment Rules is only by way of direct recruitment and not by way of promotion, the question of whether reservation for candidates belonging to OBC category is allowed becomes easier to answer. It has now been well settled by a nine judge Bench of this Court in the case of Indra Sawhney v. Union of India[5] that reservation for candidates belonging to OBC category is permissible in cases of direct recruitment.

In view of the reasoning and conclusions recorded by us as above, the order of the Tribunal as well as the impugned judgment and order of the High Court are set aside. There is no infirmity in the appointment of the appellants to the post of Postman. The Appeals are accordingly allowed. No costs.

... .. J . [V . G O P A L A G O W D A]
.....J. [R. BANUMATHI] New Delhi, August 12, 2016

[2] 1980 (Supp) SCC 668 [4] (1997) 11 SCC 650 [6] (1977) 3 SCC 94 [8] O.A. No. 807 of 1999, decided on 03.11.1999 [10] 1992 Supp (3) SCC 217