

PETITIONER:
UNION OF INDIA & ORS. ETC.

Vs.

RESPONDENT:
K.G KULKARNI ETC.

DATE OF JUDGMENT: 27/03/1997

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS.2671-75

(Arising out of SLP (c) Nos. 24175,25170-71 and 25172-73 of 1996)

O R D E R

Delay condoned.

Leave granted.

These appeals by special leave arise from the order of the Central Administrative Tribunal, Bangalore Bench, made on July 17,1996 in OA No.363/96.

The facts in appeal arising out of SLP No.23039 of 1996, are sufficient for disposal of all the appeals. Therein, the admitted facts are that the respondent was appointed in the year 1967 as a Sorter in the Railway Mail service and has worked in different capacities since then at different places. At the relevant time, viz., February 15, 1993 onwards he was working as a clerk in the speed post section of the Bangalore G.P.O. Recruitment to the post of postal superintendent/postmasters, Group 'B' was sought to be made. Since he was not given an opportunity to appear in the examination for selection to the said post, he filed OA in the Tribunal. The Tribunal, following the decision of this court in Sawan Ram Malra vs. Union of India & Ors. [(1995) Supp. 3 SCC 620], has set aside the examination and directed the appellant authorities to conduct examination afresh. Thus, these appeals by special leave.

It is seen that under the schedule read with Rule 3 of the Rules in operation, viz., the Department of posts, Postal Superintendent/postmasters Group 'B' Recruitment Rules 1987, the method of recruitment has been provided. In Column 12 thereof, it is stated thus:

"By promotion:

(1) 94% from amongst officers holding the post of Inspector, post offices or Inspector, Railway Mails".

Clause (2) thereof provides thus:

"6% from amongst General line of officials by means of a Departmental Competitive

Examination amongst officers belonging to Higher Selection Grade-I(scale of pay Rs.2000-3200/-), Higher selection Grade-II (scale of pay Rs.1640-2900/-) and Lower selection Grade (scale of Pay Rs.1400-2300) within 5 years regular service in either or all the 3 cadres together".

These Rules subsequently came to be amended in exercise of power under proviso to Article 309 of the constitution and became effective from June 29, 1994. There in, Rule 2 provides thus:

"In the Department of posts, postal service Group 'B' Recruitment Rules, 1987(hereinafter referred to the 'said' Rules'), in the preamble for the words "postal superintendent/postmasters Group'B' the words and letter "postal service Group'B' shall be substituted"

Rule 4 provides the method of selection thus:

"In the schedule of the said Rules in column 12 for the existing entries the following entries shall be substituted viz.,

By Promotion:

75% of the total posts shall be filled by promotion from amongst Inspector of post offices and Inspectors of Railway Mail services (Pay scale Rs. 1400-2300/-) with eight years' regular service in the grade"

Examinations for appointment by promotion are required to be conducted , as indicated therein thus:

"Promotion by examination:

(i) 19% of the total posts shall be filled on the basis of a department competitive examination from among the 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 five years' regular service in the Lower Selection Grade and above."

The question, therefore, is whether the respondent, working in the Railway Mail service, is covered under 19% quota as provided in the column (i) or under 6% quota as provided in the column (ii)? It is stated by the appellants that the recruitment to the said post by promotion is to be made from amongst the cadre of the Inspectors of Post offices or Inspectors of Railway Mail service appointed in the pay scale of Rs. 1400-2300/- with five year' regular service; however, the respondent did not apply for the said post under 19% quota under which he was not working in the

post office or Divisional post offices in the regular service, but was working in the speed post section in the said post office; and continue to be governed by the RMS Rules. Under these circumstances, he was not eligible to be considered for selection to the said post in question. It is contended that the Tribunal is not right in holding that the ratio in the Sawan Ram Malra case applied to the facts in this case. Therein, prior to the amendment of the Rules, it was not specified that the candidates would be excluded from the list of candidates eligible to apply for consideration of appointment by promotion by qualifying departmental competitive written examination. Paragraph of the 1986 Rules clearly indicates that their eligibility for promotion is to be considered according to the Rules. In para 4, it is stated that "in the 1986 Rules, in the matter of recruitment, there was no reference to officials in RMS. The 1967 Rules expressly include "Inspector, Railway Mails" in the matter of promotion to the 94% quota. RMS has officials falling in General line. There are no words of limitation in 1987 Rules in respect of General Line officials so as to exclude General Line officials in the RMS." Thus, it could be seen that in the absence of any specific provision making some officials ineligible for being considered for promotion by written examination, this court held that the candidate eligible for selection from the cadre of Inspectors, Railway Mails is equally eligible to apply and to appear in the Departmental compartmental competitive written examination.

However, in the present case, in view of the amendment made in 1994, the line of officials was specified, namely, clerks working in the post offices or Divisional offices. The clerks working in the RMS, thereby, became ineligible to be considered in 6% quota reserved for them. The respondent did not apply against 19% quota to which he was eligible. The Tribunal, therefore, is not right in setting aside the examination already conducted. The conduct of the examination afresh is not legal.

The appeals are accordingly, allowed. The order of the Tribunal is set aside. No costs.