

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH AT CHANDIGARH.**

\*\*\*

O.A.NO. \_\_\_\_\_-PB-2011

1. All India Association of IPASP, Haryana Circle through Circle Secretary Sh. Hira Lal son of Late Sh. Chandu Ram, age 47 yeas working as ASPO(HQ) Kurukshetra.
2. Subash Chander son of Sh. Ram Dia, aged 41 years, ASPO Yamunanagar Postal Sub Division, Yamunanagar.
3. All India Association of IPASP, Punjab Circle Headquarters, Chandigarh through Circle Secretary Hari Mohan son of Shri Kishan Pal, aged 50 years, officiating as Deputy Divisional Manager, PLI, office of Chief Post Master General, Punjab Circle, Chandigarh
4. Gopal Krishan son of Late Sh.S.Sharma Asstt. Supdt. Post Offices, East Sub Division, Chandigarh.

..... Applicants

Versus

1. Union of India through the Secretary to Government of India, Ministry of Communications & Information Technology, Department of Posts, New Delhi.
2. The Chief Postmaster General, Punjab Circle, Chandigarh.
3. The Chief Postmaster General, Haryana Circle, Ambala.

## **Respondents**

### **DETAILS OF APPLICATION:**

#### **1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:**

The application has been made against the following orders/for the following reliefs:-

- (1) Application is made against the letter dated 3.10.2011 (**Annexure A-1**) by which Limited Departmental Examination for Promotion to the cadre of Sr. Postmaster has been ordered to be held on 31.12.2011 which is against the Department of Posts, Postal Supdts/Postmaster Group B Recruitment Rules, 1987 as amended from time to time as there is

no vacant post in the quota prescribed under the rules as detailed in the succeeding paras.

(2) Against the letter dated 29.11.2011 by which the applicants have been informed that ASPO are not eligible to appear in the examination. Copy of the letter is attached as **Annexure A-1/1**.

(3) Against the Department of Posts, Senior Postmaster (Group B Gazetted), Postmaster (Grade 'III and II-Group B non-Gazetted) and Postmaster (Grade I-Group C Non-Gazetted) Recruitment Rules, 2010, **Annexure A-8** i.e Postmasters Cadre Rules, 2010 run contrary to the Postal Services Postmaster Group B Rules, 1987 as amended from time to time, as the quota of the Inspector Line, has also been reduced from 19% and 75% by carving out the posts. As submitted earlier, that there are no vacant posts under 75%, 19% and 6% quota.

## **2. JURISDICTION OF THE TRIBUNAL:**

The applicants declare that the subject matter of the order(s) against which they want redressal is within the jurisdiction of the Tribunal.

## **3. LIMITATION:**

The applicants further declare that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

## **4. FACTS OF THE CASE:**

(1) That the applicant no. 1 and 3 are an Association of the employees and is represented by their Circle Secretary. Its members and applicant No. 2 and 4 are similarly situated and common question of facts and law are involved in respect of all the applicants and as such they want to file a Joint Original Application which is maintainable and they may kindly be allowed to file a joint O.A. in the interest of justice.

(2) That there was a cadre of Post Master, which was governed by the Postmaster Services Class II (Recruitment) rules, 1975. The post of Postmaster, according to these rules, has been classified as Class II Gazetted, Non-Selection Post. This post was to be filled up 100% by promotion in the following manner :

- A. 10% posts from amongst General line officials holding posts in Higher Selection Grade (Grade II) (scale Rs.550-760) and Higher Selection Grade (Grade I)(scale Rs.700-900) with 5 years' service in either or both of the grades after appointment thereto on a regular basis, failing which from amongst officials of the above categories with less than 5 years' service but with a combined total service of 8 years in these grades and in the next lower grade of Lower Selection Grade (scale Rs.425-640) after appointment thereto on a regular basis.

- B. 90% posts from amongst Inspectors of Post Offices (scale Rs.425-700) with 5 years' service in the grade, including service in the grades of Higher election Grade (Grade II) (Rs.550-750) Assistant Superintendent of Post Offices (Rs.550-900) and Higher Selection Grade (Grade I) (Rs.700-900) rendered after appointment thereto on a regular basis.

(3) That similarly, there was a cadre of Postal Superintendents which was governed by the statutory set of rules equivalent to the Post Master Services Class II Rules, 1975.

(4) That in the year 1987 both these cadres were merged and were governed by the rules known as Department of Posts, Postal Superintendents/ Postmasters Group 'B' Recruitment Rules, 1987. These rules have also been classified as Group 'B' Gazetted Non Ministerial and it is a selection post and is to be filled up by promotion in the following manner :

(1) 94% from amongst officers holding the post of Inspector, Post Offices or Inspector, Railway Mails :-

(i) With 5 years regular services in the scale of Rs.1640-2900, including services in the scale of Rs.2000-3200, if any or equivalent, failing which

(ii) With 8 years regular services in the scale of Rs.1400-2300 or above or equivalent.

(2) 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) with 5 years regular service in either or all the 3 cadre together".

Copy of the Recruitment Rules, 1987 is enclosed and marked as **Annexure A-2** to this Original Application.

(5) That in 1993 the above said rules were amended and the quota of 94% was bifurcated into 75% and 19% and it was laid down that 75% of the total posts shall be filled up by promotion from amongst Inspector of Post Offices & Inspector of Railway Mail Service (Pay Scale of Rs.1400-2300) with 5 years of regular service in the grade. Copy of the Rules namely Department of Posts, Postal services Group 'B' Recruitment (Amendment) Rules, 1993 is enclosed and marked as **Annexure A-3** to this Original Application.

(6) That the Inspector Post Offices are further promoted as ASPO. However both the Inspectors and ASPs formed one cadre. Since under the 1987 rules, ASPOs were not eligible to appear in the examination for promotion to the post of Postal Services Group B, a clarification was issued on 23-8-1994 for making ASPOs and HSG-I officials as eligible for appearing in the examination. Copy of the letter dated 23.8.1994 is enclosed as **Annexure A-4**.

(7) That on the basis of the above rules in the cadre of postal Services Group B, total

posts in the different quotas are as under :

(a) 75% quota	649
(b) 19% quota	165
(c) 6% quota	52
TOTAL	<b><u>866</u></b>

This information has been given to the applicants by the respondents under the RTI Act, 2005.

(8) That on 3.2.2010, an order was issued by which it was decided to constitute a separate cadre of Postmasters with the following posts by carving them out from the existing general line cadre post and Postal Services Group B of Postal Wing and to designate them as senior Postmaster, Postmaster Grade III, Postmaster Grade II and Postmaster Grade I. On the basis of this a letter was issued on 22.11.2010 stating therein that in the wake of introduction of technology, challenges from the market and to increase productivity, it is absolutely become essential to ensure that key post offices are headed by the professional managers. Thus, in order to ensure that professionally qualified, trained and meritorious officials held the key post offices, it has been decided to introduce a separate cadre of Postmasters. Though it has been mentioned that posts are to be carved out from the exiting general line posts, instead they have carved the posts of Senior postmaster from the total strength of general line and Inspector line. The total number of Senior Postmasters posts has been calculated as 116 posts. Copy of the letter dated 22.11.2010 is enclosed and marked as **Annexure A-5** to this Original Application.

(9) That it has been mentioned in para 5 of the said letter, Annexure A-5, that initial constitution of various grades of Postmaster shall be done by inviting options / applications from the existing incumbents of LSG, HSG II, HSG I in post offices and Postal Services Group B.

(10) That it may not be out of place to mention here that some of the members of the Association have been promoted in Postal Services Group B and are awaiting promotion against 75% Quota. However, no options have been called from them being not eligible. Thereafter owing to fresh notification dated 22.11.2010, none of the senior Inspectors / Asst Supdt Post Offices, awaiting promotion for 649 posts [75% Quota] will be eligible for opting as Senior Postmaster as 100% promotion to Senior Postmaster from Inspector line officials are through limited Departmental Competitive Examination. It would be clear from the letter dated 9.2.2011, issued by the respondent no. 2 inviting applications that such applications have been invited only from the Postal Service Group B officials including Senior Postmaster working on regular basis. Copy of the letter dated 9.2.2011 is enclosed and marked as **Annexure A-6** to this Original Application.

(11) That as mentioned above, total quota of posts in Postal Group 'B' services under 75% quota, 19% quota and 6% quota are 866 posts and 116 posts have been carved out from 866 posts meaning thereby that the quota has to be read keeping in view the remaining posts,

which are 750 posts if the 2010 rules are to be applied which the applicants challenges. In case this was not so, the respondents would have called options from the younger officials promoted and working in Postal Group B services under 19% and 6% quota. This has been admitted by the respondents in their letter dated 31.5.2010 when applicants sought information under the RTI Act, after the issuance of the letter dated 3.2.2010. Copy of the letter dated 31.5.2010 is enclosed and marked as **Annexure A-7** to this Original Application.

(12) That on the basis of this letter, the recruitment rules have been made known as Department of Posts, Senior Postmaster (Group B Gazetted). Postmaster (Grade 'III and II'- Group B Non-Gazetted) and Postmaster (Grade I, Group C non-Gazetted) Recruitment Rules, 2010, copy of which is enclosed and marked as **Annexure A-8**. According to these rules, 25% of the posts of senior Postmaster are required to be filled up by promotion and 75% are to be filled through Limited Departmental Competitive Examination in the following manner :

"Promotion

25% Promotion:

Postmaster Grade-III in PB-2 of Rs.9300-34800 and Grade pay of Rs.4600/- with two years regular service in the grade (including regular service in Higher Selection Grade-I, if any).

75% promotion (through Limited Departmental Competitive Examination):

Inspectors of Posts in P-2 of Rs.9300-34800 and Grade pay of Rs.4200/- with six years, regular service in the grade after qualifying a Limited Departmental Competitive Examination."

(13) That from the above fact, it would be clear that the Rules, **Annexure A-8** i.e Postmasters Cadre Rules, 2010 run contrary to the Postal Services Postmaster Group B Rules, 1987 as amended from time to time, as the quota of the Inspector Line, has been reduced from 19% and 75% by carving out these posts and there is no full effect on 6% quota, which is purely and solely meant for General Line officials. As submitted earlier, since there were no vacant posts under 19% quota except existing 4-5 posts which fell vacant on account of retirement and that taking into consideration that the respondents had issued letter dated 6.4.2011 for holding Departmental Competitive Examination for promotion to the cadre of Postal Services Group B to be held on 15.5.2011 for 32 vacancies for the year 2010, the applicant Association of Punjab Circle approached this Hon'ble Tribunal with OA No. 399/PB/2011 challenging the above said action of the respondents for holding the examination on the ground that the respondents have not worked out the vacancy position under the 19% quota and as there is not vacancy except 2-3 vacancies, the respondents should be restrained to conduct the examination for 32 vacancies. This O.A. was disposed of on 26.5.2011 on the basis of the undertaking given by the respondents as contained in the order to the extent that the vacancy position will be revisited under 75% for promotion under non-examination quota and 19% for promotion under Examination quota. Copy of the order is attached as **Annexure A-9**.

(14) That on the basis of this order of Hon'ble CAT, the respondents revisited the vacancy position as per 1987 rules, the available vacancies came to be only 3 as has been contended by the applicants in that OA. This has been so shown in the noting sheet dated 27th May 2011 as

supplied to the applicant association of Punjab Circle under R.T.I Act, copy of this noting is attached as **Annexure A-10**.

(15) That when the examination under 19% quota was announced, the applicant Association submitted representation on 11.4.2011 giving their various points including the point with regard to 75% quota but without any result. Copies of the representations are enclosed as **Annexure A-11** to this Original Application.

(16) That now the respondents have issued a letter Annexure A-1 for holding examination to the post of Sr. Post Master under 75% quota of 2010 rules i.e. for 87 posts as would be clear from the letter Annexure A-1 and letter dated 13-12-2011, copy whereof is attached **Annexure A-12**.

(17) That according to this letter only the Inspectors are eligible to appear in the examination and ASPO who have common seniority with the Inspectors have been promoted to PSS Group B. This would be clear from the fact that some of the Inspectors who were promoted as ASPOs have been further promoted as Postal Services Group B Officials keeping in view their seniority in I.P Cadre. Copy of the order is attached as **Annexure A-13**.

(18) That the applicants have submitted the representation against the said examination to be conducted on 31-12-2011 to the effect as to how the vacancy position has been taken out as all the posts under all the three quotas of 1987 rules are full and there is no vacancy but with no result. The respondents have not shown from 87 posts have been taken out when all the posts are filled up. If this examination is held then what will happen to those persons who are holding the posts. Copies of the representations are attached as **Annexure A-14 (Cooly)**. To one of the representation the reply was received vide letter dated 29.11.2011, Annexure A-1/1.

(19) That vide letter dated 15.3.2011, the respondents have circulated syllabus for the Limited Department Competitive Examination in respect of Senior Postmaster (Postmasters cadre) and Postal Services Group B. From the syllabus, it would be clear that the syllabus for the post of Senior Postmaster and syllabus for the post of Postal Services Group 'B' is the same and no change has been made in the syllabus for the both the cadres. Copy of the letter is enclosed and marked as **Annexure A-15** to this Original Application.

(20) That thus, impugned rules and order, Annexures A-8 and A-1 and A-1/1 and action of the respondents would cause great loss to the Inspectors who are going to be considered for promotion to the post of PSS Group B under 75% quota, which is seniority basis as they will not get a chance for promotion on seniority basis as examination has been provided under the rules of 2010 and Inspectors have already been promoted under 75% quota of 1987 rules vide letter dated 17.11.2011, copy of which is enclosed and marked as **Annexure A-16** to this Original Application.

(21) That the impugned action of the respondents is in violation of principles of natural

justice, and settled principles of service jurisprudence and as such is liable to be quashed with direction to the respondents not to conduct the examination for the post of Sr. Postmaster as there is no vacant post and action of the respondents is against the rules of 1987 which have neither been repealed nor amended. Hence the O.A.

**5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:**

That the impugned orders, Annexures A-1 and A-8 and action of the respondents are illegal, arbitrary, discriminatory, violative of Articles 14 and 16 of the Constitution, against the rules and law and as such are liable to be quashed and set aside with direction to the respondents to consider the case of the applicant for promotion in their own quota, without diverting their quota to newly created cadre, inter-alia, on the following grounds: -

(1) That it is well settled law that one can be promoted in his own quota and vacancies of one quota cannot be diverted to another quota. Unilaterally, Under the 1987 rules as amended in 1993 there is no Departmental Examination for filling up the 75% posts and so far all posts of PSS Group B have been filled up through this competitive examination. This is because of defective policy of introducing examination for promotion to PSS Group 'B' through competitive examination and not maintaining representation roster for 19%, 6% and 75%.

(2) That for all recruitments representation roster is being maintained to fill the reserve vacancies. Neither representation can exceed the total percentage nor can it be replaced by any other point. As such 75% means filling 75% on the total strength and not vacancies occurred in a particular year as is being done presently. Application of the percentage of reservation through the vacancy based roster was called in question in various cases including in the celebrated case of R.K. Sabharwal Versus State of Punjab, wherein it has been held that reservation of jobs should apply to posts and not to vacancies. There is every apprehension that the examination for 75% vacancies is being conducted without calculating the posts under the quota as there is no vacant post in either of the quota of PSS group B.

(3) That the calculation of vacancies in the present manner is even against the principles of natural justice because reservation in promotion by seniority subject to fitness was introduced in 1972, subject to the some condition. In 1974, reservations in promotion by selection from C to B within B and from B to the lowest rung of Group A were introduced provided the element of direct recruitment does not exceed 50%. Contrary to this, in the notification dated 22.11.2010, all 87 posts [75% of 116] earmarked for Senior Postmaster are ordered to be filled through examination. Instead these should be part of 19% roster meant for Limited Departmental Competitive Examination. Thus, the action of respondents stand vitiated.

(4) That the selection for the vacancies for 2004, 2005 and 2006 was held defective, arbitrary, irrational and discriminatory by the Hon'ble Tribunal in number of cases and respondents were directed to secure year-wise vacancies for those years in respect of

promotion to the cadre of Postal Services Group B by preparing year wise list of eligible candidates and also vacancies and thereafter hold fresh Limited Departmental Competitive Examination (LDCE). Till this issue is resolved, there should be no examination.

(5) That thus, the respondents are liable to be directed to identify 75% of 116 posts (87 posts) of Sr. Postmaster for filling up through the competitive examination and recast the roster for different stream i.e. 19%, 6%, keeping intact the seniority cum fitness quota amongst Inspector Posts cadre to the extent of 649 posts out of 866 posts of PSS Group B. Only those posts which fall vacant owing to retirement, promotion, resignation, Death etc. under 19% and 6 % quota should be filled through examination. Otherwise all the 100% post will be occupied by the official coming through examination and the experienced Inspector Post cadre official will be ignored and deprived of promotional avenue oozing frustrations due to stagnation, and will mar efficiency in the cadre, which will be arbitrary, irrational and discriminatory.

(6) That otherwise also in this examination, according to the rules of 2010, Asstt. Supdt Post Offices is not eligible to appear in the examination for promotion to the post of Sr. Post Master particularly when the post of Asstt. Supdts of Post Offices and Inspectors of Post Offices form one cadre and are in common seniority list and both the posts come under PB-2 of Rs.9300-34800/- with difference in Grade Pay only. Inspectors are in the grade pay of Rs.4200/- whereas the ASPOs are in the grade pay of Rs.4600/-. Since under the 1987 rules read with clarification of 1994, ASPOs were made eligible for appearing in the examination for promotion to PSS Group B, no justification is there to debar the ASPOs for appearing in the examination if the rules of 2010 are to be applied which cannot be applied unless the rules of 1987 are amended.

(7) That the impugned action is illegal, arbitrary, against the rules and law and has caused manifest injustice which is apparent on the face of the record.

(8) That the Government Departments are expected to act as per law and any action taken in violation of the laid down provisions of any Act rendered such an action illegal and the same is not sustainable.

#### **6.DETAILS OF REMEDIES EXHAUSTED:**

The applicants declare that they have availed of all the remedies available to them under the relevant service rules and now they are left with no alternative remedy except to approach this Hon'ble Tribunal for speedy and efficacious justice.

#### **7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:**

The applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or



suit is pending before any of them.

## **8. RELIEF (S) SOUGHT FOR:**

In view of the facts and grounds mentioned in paragraphs 4 and 5 above, the applicants pray for the following reliefs:

(i) Quash the letter dated 3.10.2011 (**Annexure A-1**) by which Limited Departmental Examination for Promotion to the cadre of Sr. Postmaster(Gazetted) has been ordered to be held on 31.12.2011 which is against the Department of Posts, Postal Supdts/Postmaster Group B Recruitment Rules, 1987 as amended from time to time as there is no vacant post in the quota prescribed under the rules as detailed in the preceding paras.

(ii) Quash the letter dated 29.11.2011 by which the applicants have been informed that ASPO are not eligible for appearing in the examination.

(iii) Quash the Department of Posts, Senior Postmaster (Group B Gazetted), Postmaster (Grade 'III and II-Group B non-Gazetted) and Postmaster (Grade I-Group C Non-Gazetted) Recruitment Rules, 2010, **Annexure A-8** i.e Postmasters Cadre Rules, 2010 run contrary to the Postal Services Postmaster Group B Rules, 1987 as amended from time to time, as the quota of the Inspector Line, has also been reduced from 19% and 75% by carving out the posts. As submitted earlier, that there are no vacant posts under 75%, 19% and 6% quota.

(iv) During the pendency of the OA, the operation of the impugned order Annexure A-1 may kindly be stayed.

(v) Issue direction to the respondents to consider the case of the members of the applicant No 1 Union and other applicants for promotion under these rules of 1987 in their quota and promote them from due date with all the consequential benefits and it be declared that the bifurcation of quota now carried out by the respondents is illegal, arbitrary and bereft of any discernible principle.

(vi) Any other order or direction deemed fit and proper in the facts and circumstances of the case may also kindly be issued in favour of the applicants.

(vii) Award costs of the petition in favour of the applicants as they have been dragged into litigation unnecessarily.

(viii) The applicants may kindly be allowed to file a joint Original Application.

9. **INTERIM RELIEF, IF ANY, PRAYED FOR:**

Pending final disposal of the OA, it is prayed that the conducting of the limited departmental examination for Senior Postmaster scheduled to be held on 31.12.2011 in pursuance of Annexure A-1 may kindly be stayed. The applicants have got prima facie case in their favour. Balance of convenience is in favour of the applicants. If the interim relief as prayed for is not granted to the applicants, the applicants will suffer irreparable loss which will not be compensated in terms of money.

Compliance of provisions of Section 24 may kindly be dispensed with at this stage.

10. The application is being filed at the Registry through Shri V.K. Sharma, Advocate.

11. **PARTICULAR (S) OF THE INDIAN POSTAL ORDER/BANK DRAFT FILED IN RESPECT OF APPLICATION FEE:**

a. IPO/Bank Draft No.: Date of Issue:

b. Name of Issuing Bank/P.O.:

c. Payable at: Chandigarh.

12. **LIST OF ENCLOSURES:**

As per index Attached to the Original Application.

**Place: Chandigarh.**

**Dated: 18.12.2011**

**Applicant(s)**

Through: -

**(V.K.SHARMA)**

**Advocate**

**Counsel for the Applicants**

**Verification:**

I, Hari Mohan son of Shri Kishan Pal, aged 50 years, working as Divisional manager, PLI, office of Chief Post Master General, Punjab Circle, Chandigarh, do hereby verify that the contents of paras 1, 4, 6 to 12 are true and correct to my personal knowledge and those of paras 2, 3 & 5 are believed to be true on legal advice and that I have not suppressed any material fact.

**Place: Chandigarh.**

**Dated: 18.12.2011**

**Applicant(s)**

