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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00050 of 2017

Thursday, this the 19th day of December, 2019

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

1. Indulekha J.R.,
Postman, Kottarakara P.O.,
Kollam – 691 506,
Residing at Nirmalyam,
Chepra P.O.,
Kollam – 691 520.
2. Mini R.,
Postman, Kottarakara P.O.,
Kollam – 691 506,
Residing at Madathil Veedu,
Thadicadu P.O., Kollam -691 306.
3. Sheeja S.,
Postman, Arinallur P.O.,
Kollam – 690 538,
Residing at Sree Krishna Bhavan,
Perungalam P.O., Kollam – 691 538.

... Applicants

(By Advocate Shri Vishnu S.Chempazhanthiyil)

Versus

1. The Senior Superintendent of Post Offices,
Kollam Postal Division,
Kollam – 691 001.
2. The Chief Postmaster General,
Kerala Circle,

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Thiruvananthapuram – 695 033.

3. The Secretary & Director General,
Dak Bhavan,
New Delhi – 110 001.

..... Respondents

(By Advocate, Mr.Sinu G. Nath ACGSC)

This application having been heard on 17th December, 2019, the Tribunal on 19th December, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.50/2019 is filed by Ms.Indulekha J.R., Ms.Mini R. and Ms.Sheela S., Postmen, who had appeared for Limited Departmental Competitive Examination for promotion of Lower Grade Officials to the cadre of Postal Assistant/Sorting Assistant, that was held on 31.07.2016. A copy of the notification for selection published on 17.06.2016 is at Annexure A1. The examination was for filling up of vacancies under 50% promotion quota vacancies of PA/SA that arose during the period from 01.01.2015 to 31.03.2016 and the notified number of vacancies as per Annexure A to Annexure A1 enclosures, in Kollam district were 4. The applicants obtained information regarding vacancies that arose from 01.01.2015 to 31.03.2016 in Kollam District under RTI and a copy of the said information supplied by communication dated 22.07.2016 is at Annexure A2. It is seen from Annexure A2 that 15 vacancies had arisen

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during the period. That would mean that 8 vacancies would be available as 50% promotion quota. The grievance of the applicants is that only 4 vacancies were notified despite the admitted existence of 15 vacancies, from which half of the number should have been notified. Annexure A2 also discloses that the remaining 4 vacancies meant for the 50% promotion quota were filled up by Rule 38 transfers.

2. In the examination conducted, it was seen that the first applicant secured 106 marks, second applicant, 98 marks and third applicant secured 96 marks, placing them as the next eligible candidates in line to be promoted as PA, if more number of vacancies were available for promotion quota for the notified period. Annexure A3 refers. The under-estimation done in notifying only 4 vacancies in the Kollam Postal Division as having arisen during the period 01.01.2015 to 31.03.2016, has deprived the three applicants of their rightful promotion, OA claims.

3. Further, the applicants state that the information obtained under RTI Act regarding grant of Rule 38 transfers does not take away the available 4 vacancies ($8-4=4$), as it is seen from Annexure A5 that the transfer granted for 4 persons were actually mutual transfers. This would necessarily mean that by effecting such transfers, no vacancy would get exhausted. The relief sought in the OA are as follows:

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1. Direct the respondents 1& 2 to recompute the vacancy position of Postal Assistant in Kollam Postal Division, taking into account all the vacancies, as is disclosed in Annexure A2.

2. Call for the records leading to the issue of Annexure A1 and set aside Annexure A1, to the extent the same does not take into account all vacancies in the cadre of Postal Assistant that has arisen during the period 01.01.2015 to 31.03.2016.

3. Direct the respondents 1&2 to consider appointment of the applicants as Postal Assistants in the order of their merit in the competitive examination held pursuant to Annexure A1 against available/actual vacancies that has arisen during the period 01.01.2015 to 31.03.2016.

4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

5. Award the cost of these proceedings.

4. The respondents have filed a reply statement disputing the contentions raised in the OA. The service details of the three applicants are mentioned, with the first applicant joining service as Postman in 2010 and second and third in 2009. It is maintained that there were 4 vacancies notified for LDCE for the period from 01.01.2015 to 31.03.2016 and they were assigned UR-2, SC-1, ST-1. The applicants did not come within the zone of consideration on the basis of marks obtained in their examination.

5. It is admitted that in reply to an RTI enquiry, information was provided to the applicants that there were 15 vacancies that arose in Kollam Postal Division for the period from 01.01.2015 to 31.003.2016 in the PA grade. The details of 15 vacancies mentioned in Annexure A2 are also given in the statement, which shows as, 7 due to retirement, 2 due to death, 3 due to promotion and 3 due to resignation. It is again maintained that the 4

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additional vacancies claimed by the applicants for the promotion quota have already been adjusted against Rule 38 inward transfers and the applicants in any case can claim only notified vacancies which have been utilised to accommodate more meritorious candidates.

6. The respondents also maintain that the applicants had willingly participated in the examination and having not been selected, now cannot turn around and question the selection. This is a view expressed by the Hon'ble Supreme Court in **Om Prakash Shukla Vs. Akhilesh Kumar Shukla – 1986 Supp SCC 285.**

7. Heard Shri Vishnu S. Chempazhanthiyil, learned Counsel for the applicant and Shri Sinu G. Nath, learned ACGSC for respondents. The LDCE examination in question is to select candidates for promotion to the notified vacancies. The vacancies notified were four in number. The applicants were not selected, coming next to the selected candidates in the merit list. The four vacancies claimed form 50% of the available number of vacancies that had arisen in Kollam Postal Division from 01.01.2015 to 31.03.2016 on the basis of the information supplied by the respondents themselves. The applicants have contended that there were 15 vacancies which arose during the period under Kollam Postal Division.

8. In the reply statement, this fact is admitted by the respondents and the

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statement, in fact details how these vacancies have arisen. However, no acceptable reasons have been advanced, why 50% of the same i.e., eight in number were not notified for LDCE examination instead of the four. The only contention raised in their attempt to justify this omission by the respondents is to state that four candidates from outside the District had to be accommodated as transfers under Rule 38. Again, all these four are seen accommodated as mutual transfers. Clearly, it is illogical to claim that these 4 vacancies will be utilised when the mutual transferees are accommodated. As is known, in the case of mutual transfer, one candidate leaves the District/ Division and another takes his/her place without effecting the overall vacancy position. Shri Sinu G.Nath, learned ACGSC submitted during the final hearing that the applicants, having willingly participated in the selection cannot question the same after they have come out unsuccessful. We cannot accept this argument for the reason that the candidates referred to are not unsuccessful as claimed. The respondents by their act of commission and omission notified a figure substantially different from the number of vacancies actually available for promotional quota. If, as is admitted, 15 vacancies arose in Kollam District during the selection period, the Postmen who took the examination for the 50% promotion slots, have rightful claim to the 8 vacancies therein.

9. We see substance in the contentions raised by the applicant. OA is disposed of with the direction that further four candidates selected on the

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basis of community reservation roster may also be granted promotion. We are not specifically directing promotion to the three applicants, because we do not have the community reservation roster available before us. The promotions may be granted within a period of 30 days from the date of receipt of a copy of this order. OA stands disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00050/2017

1. Annexure A1 - True copy of the notification No.Rectt/10-3/2016/1 dated 17.6.2016 issued by the 2nd respondent.
2. Annexure A2 - True copy of RTI information supplied vide communication No.RTI/46/2016 dated 22.07.2016.
3. Annexure A3 - True copy of RTI information supplied vide communication No.Rectt/33-20/16/2016 dated 30.12.2016.
4. Annexure A4 - True copy of the representation dated 07.01.2017 submitted by the 1st applicant to the 2nd Respondent.
5. Annexure A5 - True copy of RTI information supplied vide communication No.RTI/137/2016 dated 03.01.2017.
6. Annexure R1(a) - True copy of the Department of Posts (Postal Assistants and Sorting Assistants) (Group C Non Gazetted) Recruitment Rules, 2011.
7. Annexure R1(b) - True copy of Postal Directorate letter No.25-10/2014-SPG dated 09.07.2014.
8. Annexure R1(c) - True copy of the Postal Directorate letter No.141-141/2013-SPB II dated 31.01.2014.
9. Annexure A6 - True copy of approval given by the CPMG vide No.ST/36-20/10/2013 dated 04.07.2013.
10. Annexure A7 - True copy of Memo No. BB/38 dated 25.07.2013 issued by SSPOs, Kollam Division.
11. Annexure A8 - True copy of approval given by the CPMG vide ST No.36-20/13/2013 dated 07.10.2013.
12. Annexure A9 - True copy of Memo No.BB/38 dated 19.12.2013 issued by SSPOs, Kollam Division.
13. Annexure A10 - True copy of approval given by CPMG vide No.ST/36-20/5/2014 dated 08.05.2014.
14. Annexure A11 - True copy of Memo No. BB/43 dated 29.05.2014 issued by SSPOs, Kollam Division.

15. Annexure A12 - True copy of approval given by CPMG vide No.ST/36-20/14/2014 dated 27.5.2014.

16. Annexure A13 - True copy of Memo No.BB/43 dated 23.6.2014 issued by SSPOs, Kollam Division.

17. Annexure A14 - True copy of information sought under RTI Act by one V.S.Saraschandran, Postman Kundara and answers given by the Public Information Officer, Kollam Division.

18. Annexure A15 - True copy of information furnished by the Office of CPMG vide No.ST/36/R-38/RTI/2015 dated 3.1.2017.
