

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00319/2017

Wednesday, this the 11th day of December, 2019.

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Sunil Somasekharan Pillai, aged 38 years,
S/o Somasekharan Pillai,
Postal Assistant, Eraviperur PO,
Department of Posts.
Residing at Sunil Villai, Thumpamon Thazhom P.O.
Elavanthitta, Pathanamthitta -689 632.

Applicant

(Advocate: Mr.V.Sajithkumar)

versus

1. Union of India represented by the
Secretary to Government,
Department of Posts,
Ministry of Communications, Govt of India,
New Delhi-110 011.
2. The Chief Postmaster General,
Kerala Circle,
Trivandrum-695 033.
3. The Superintendent of Post Offices,
Pathanamthitta Postal Division,
Pathanamthitta-689 645.
4. The Superintendent of Post Offices,
Thiruvalla Postal Division,
Thiruvalla, Pathanamthitta-689 101.

Respondents

(Advocate: Sri S.R.K.Prathap, ACGSC)

The OA having been heard on 26th November, 2019, this Tribunal delivered the following order on 11.12.2019:

ORDER**By Ashish Kalia, Judicial Member**

Applicant who was working as Gramin Dak Sevak (GDS for short) appeared in examination for the post of Postman in the year 2009 and qualified as a general candidate but was not given appointment. He challenged the same before this Tribunal. The Tribunal directed the respondents to consider the applicant as no reservation would apply to the promotional post. The respondents had challenged the matter before the Hon'ble High Court which upheld the view taken by the Tribunal and held that the benefit of the judgment would be extended only to those candidates who were applicants before CAT and who were respondents in the Writ Petitions.

2. There were 8 vacancies in the year 2008, but only 3 vacancies were filled under the direct recruitment quota which was meant for GDS. However, two vacancies were given for compassionate appointment and sports quota. However, the applicant was not given appointment.

3. By order dated 30.8.2013 in OA No.706/2013 and connected cases, this Tribunal had held that the applicants therein are entitled to get the benefit of notional service in the cadre of Postman from the date of occurrence of vacancy for the purpose of taking part in the departmental examination for the post of Postal Assistant. The order was though challenged but upheld by the Hon'ble High Court in OP(CAT) No.44/2013.

4. Pursuant to further exam for the post of Postman, the applicant was appointed as Postman on 28.3.2013. He was allowed to write LGO exam by taking into account his notional service in terms of the order in OA 706/2013.

He took part in the exam and was appointed as Postal Assistant on 23.10.2014

It is submitted that there was no clause in the appointment letter that his appointment will be subject to SLP pending before Hon'ble Supreme Court filed by the private respondents. The Apex Court ruled in favour of private respondents holding that there is no infirmity in the appointment of OBC candidate to the post of Postman.

5. The applicant's services were terminated by giving 15 days' notice period. He approached this Tribunal by filing the present OA. This Tribunal stayed the operation of the impugned order at Annexure A1. The interim order was continuing. The respondents filed a misc. application for vacation of the interim order and the matter was heard finally.

6. On the other hand, the respondents filed their reply and opposed the OA, mainly on the ground that the applicant appeared in the exam for the post of Postman in 2008 exam and he got 127 marks as against the last selected candidate who got 139 of unreserved candidate. Hence he did not come in the zone of consideration. But he qualified against 2011 vacancy and given appointment on 28.3.2013.

7. The applicant was appointed as Postman against a 2008 vacancy subject to the outcome of the SLP No.35223/2012 filed by Smt.Najithamol. It is further submitted that it was clearly stipulated in memo dated 12.3.2014 issued by respondent No.3 that the said appointment was subject to the outcome of the SLP. The copy of the memo dated 12.3.2014 is also annexed with reply. Lastly, it is submitted that the applicant has mislead this Tribunal by saying that there is no change in the appointment letter in this regard and prayed for dismissal of

the OA.

8. Heard counsel for the parties at length and perused the record and appreciated the legal position. The point in issue is whether the applicant is entitled for reckoning his notional service by virtue of CAT order and upheld by the Hon'ble High Court and the matter was sub judice before the Apex Court on the very same issue.

9. As per the stand of the applicant, he is entitled for reckoning his service from 2008 when he appeared in the exam and got 137 marks but appointment was given to the 36 candidates under reservation quota. Applicant was successful in challenging the same that the posts were promotional quota and the OBC candidates are not entitled for reservation being a promotional post for GDS. The matter was sub judice before the Apex Court when the Department had decided to give appointment to the applicant from 2008 subject to the outcome of the SLP.

10. The Apex Court has reversed the order of this Tribunal and held that reservation will be applicable for the post of Postman being direct recruitment. The applicant was fortuitous enough to continue as Postal Assistant thought he was not having requisite qualifying service of 3 years for sitting in the LGO exam.

11. Thus there is no basis in the contention that the applicant is not aware of the fact that his appointment from 2008 was an offshoot of the judicial pronouncement. Now since law is made clear by the judgment in the matter of Y.Najithamol. in our considered view, the applicant has no right to continue on the said post. OA fails on account of having no merit whatsoever. OA is

dismissed and interim order is hereby vacated . MA No.969/19 for vacation of interim stay is disposed of.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

Annexure A1: Copy of the order No.CAT/1/2013 dated 4.4.2017 issued by the 4th respondent.

Annexure A2: Copy of the notification No.Rectt/12-2/2008/ADR dated 12.8.2009 issued by the 2nd respondent.

Annexure A3: Copy of the order dated 14.2.2011 in OA 608/2010 of this Tribunal.

Annexure A4: Copy of the judgment dated 20.12.2011 in OP (CAT) 1228/2011 and connected cases before the Hon'ble High Court.

Annexure A5: Copy of the order dated 6.10.2015 in RP No.32/10`3 in OP(CAT) No.1099/2011 before the Hon'ble High Court.

Annexure A6: Copy of the relevant pages of the RTI letter No.B-3/27/Exam/2009/II dated 10.5.2010 issued by the 3rd respondent.

Annexure A7: Copy of the relevant pages of the RTI letter dated 27.1.2010 issued by the 3rd respondent.

Annexure A8: Copy of the order dated 30.8.2013 in OA 706/2013 of this Tribunal.

Annexure A9: Copy of the memo No.BB/40 dated 23.10.2014 issued by the 4th respondent.

Annexures filed by the respondents:

Annexure R1: Copy of the Department of Posts (Postman/Village Postman and Mail Guards) Recruitment Rules, 1994.

Annexure R2: Copy of the Memo No.B-3/27-Exam/2009/II dated 12.3.2014 issued by the 3rd respondent.

Annexure R3: Copy of O.M. No.2/8/2001-PIC dated 16.5.2001 issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training.

Annexure R4: Copy of OM No.14015/1/76-Estt(D) dated 3.12.1999 issued by Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training.

Annexure R5: Copy of OM No.14015/1/76-Estt(D) dated 4.8.1980 issued by Ministry of personnel, Public Grievances and Pension, Department of Personnel and Training.

Annexure R6: Copy of the interim stay of the Hon'ble Supreme Court in SLP No.35223/2012 dated 13.3.2013.

Annexure R7: Copy of page 8 of OA No. 706/2013 filed by the applicant containing the reliefs sought for by the applicant.

Annexure R8: Copy of the common judgment of the Hon'ble High Court dated 18.1.2017 in OP(CAT) No.328/2016.

Annexure R9: Copy of the memo No.B(3)/27/Exam/2009/II dated 12.3.2014