

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00318/2017

Original Application No. 180/01104/2017

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

1. Original Application No. 180/00318/2017 -

John Thomas, S/o. Late Mr. P.G. John, aged 37 years, Postal Assistant,
 Adoor HO, Department of Posts, residing at Kochayyath Puthen Veedu,
 Aickad, Kodumon PO, Pin – 691 555. **Applicant**

(By Advocate : Mr. V. Sajith Kumar)

V e r s u s

1. Union of India, represented by the Secretary to
 Government, Department of Posts, Ministry of Communications,
 Government 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 **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

2. Original Application No. 180/01104/2017 -

Sunitha Kumari K.S., W/o. B. Hari Kumar,
 aged 38 years, Postal Assistant, Kanhangad (on temporary
 transfer to Pathanamthitta), having permanent residence at
 Thiruvathira, Ullannur PO, Kulanada, Pin-689 503. **Applicant**

(By Advocate : Mr. V. Sajith Kumar)

V e r s u s

1. Union of India, represented by the Secretary to
 Government, Department of Posts, Ministry of Communications,
 Government of India, New Delhi – 110 011.

2. The Chief Postmaster General, Kerala Circle, Trivandrum-695 033.
3. The Superintendent of Post Offices, Kasaragod Postal Division,
Kasaragod – 671121. **Respondents**

(By Advocate : Mrs. Mini R. Menon, ACGSC)

These applications having been heard on 26.11.2019 the Tribunal on 11.12.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-318-2017 and 180-1104-2017 have common points of fact and law involved and hence are being disposed of through this common order. For the purpose of convenience we shall advert to the facts and Annexures produced in OA No. 180-318-2017.

2. Applicants while 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. They challenged the same before this Tribunal. This Tribunal directed the respondents to consider the applicants 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.

3. The applicants were denied appointment on the ground that there were no vacancies for them for appointment. 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. The applicants were allowed to write LGO exam by taking into account their notional service in terms of the orders in OAs Nos. 659/2012 and 706/2013. They took part in the exam and were appointed as Postal Assistants vide orders dated 27.12.2013 and 20.10.2014 respectively. It is submitted that there was a clause in the appointment letter that their appointments will be subject to cases pending before the Hon'ble Supreme Court. The Apex Court ruled holding that there is no infirmity in the appointment of OBC candidate to the post of Postman.

5. Therefore, the applicants' services were terminated by giving 15 days' notice period. They approached this Tribunal by filing the present OAs. This Tribunal stayed the operation of the impugned orders. The interim orders are continuing. The respondents filed miscellaneous applications Nos. 180/982/2019 and 1180/1153/2018 respectively for vacation of the interim orders and the matter was heard finally.

6. On the other hand, the respondents filed their reply statements and opposed the OAs mainly on the ground that the applicants appeared in the exam for the post of Postman and could not come in the zone of consideration as they were having less qualifying marks compared to the persons selected. The applicants' appointment as Postal Assistants were subject to the court cases pending before the Hon'ble Supreme Court. Respondents pray for dismissing the OA.

7. Heard counsel for the parties at length and perused the record and appreciated the legal position. The point in issue is whether the applicants are entitled for reckoning their 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.

8. As per the stand of the applicants, they are entitled for reckoning their service from the date they appeared in the exam. However, appointment was given to the candidates under reservation quota. Applicants were 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 applicants subject to the outcome of the SLP.

9. 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 applicants was fortuitous enough to continue as Postal Assistant though they were not having the requisite qualifying service of 3 years for sitting in the LGO exam.

10. Thus there is no basis in the contention that the applicants are not aware of the fact that their appointment 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 applicants have no right to continue on the said post. OAs fail on account of having no merit whatsoever. OAs are dismissed and interim orders are hereby vacated . MA No. 180/982/2019 in OA No. 180/318/2017 and MA with diary No. 2193 dated 26.11.2019 in OA No. 180/1104/2017 for vacation of interim stay are disposed of. All other pending MAs are closed. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the order No. CAT/OA/GEN/2016 dated 4.4.2017 issued by the 3rd respondent.
- Annexure A2** - True copy of the notification No. B-3/27/EXAM/2009 dated 20.8.2009 issued by the 3rd respondent.
- Annexure A3** - True copy of the order dated 14.2.2011 in OA 232/2010 of the Hon'ble Tribunal.
- Annexure A4** - True copy of the judgment dated 20.12.2011 in OP (CAT) 1228/2011 and connected cases before the Hon'ble High Court.
- Annexure A5** - True copy of the order dated 6.10.2015 in RP No. 32/2013 in OP (CAT) No. 1099/2011 before the Hon'ble High Court.
- Annexure A6** - True copy of the relevant pages of the RIT Information dated 4.10.2016 issued by the 3rd respondent.
- Annexure A7** - True copy of the relevant pages of the RTI letter dated 27.1.2010 issued by the 3rd respondent.
- Annexure A8** - True copy of the order dated 2.11.2012 in OA 659/2012 of this Hon'ble Tribunal.
- Annexure A9** - True copy of the memo No. B/20/TFR dated 27.12.2013 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of the Department of Posts (Postman/Village Postman and Mail Guards) Recruitment Rules, 1994.
- Annexure R2** - True copy of the copy of the judgment in SLP No. 35223/202 and SLP No. 1799/2013 dated 12.8.2016.

- Annexure R3** - True copy of the DOPT OM No. 2/8/2001-PIC dated 16.5.2001 dated 16.5.2001.
- Annexure R4** - True copy of the interim stay of the Hon'ble Supreme Court in SLP No. 35223/2012 dated 13.3.2013.
- Annexure R4** - True copy of the common judgment of the Hon'ble High Court in OP (CAT) 317/16 dated 18.1.2017.

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APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the order No. BS/106 dated 12.12.2017 issued by the 3rd respondent.
- Annexure A2** - True copy of the order dated 14.2.2011 in OA 436/2011 of the Hon'ble Tribunal.
- Annexure A3** - True copy of the common judgment dated 20.12.2011 in OP (CAT) 1638/2011 and connected cases before the Hon'ble High Court.
- Annexure A4** - True copy of the order dated 6.10.2015 in RP No. 32/2013 in OP (CAT) No. 1099/2011 before the Hon'ble High Court.
- Annexure A5** - True copy of the order dated 30.8.2013 in OA 706/2013 of this Hon'ble Tribunal.
- Annexure A6** - True copy of the memo No. B1/Rectt/Tfr/14-15 dated 20.10.2014 issued by the 3rd respondent.
- Annexure A7** - True copy of the communication dated 21.11.2014 released by the 3rd respondent.
- Annexure A8** - True copy of the interim order dated 12.4.2017 in OA 319/2017 of the Honourable Tribunal Ernakulam Bench.
- Annexure A9** - True copy of the representation made by the applicant dated 13.11.2018 to the 3rd respondent.

- Annexure A10** - True copy of the order No. B1/EX/PA/2018/09.12.2018 dated 30.11.2018 issued by the 3rd respondent to the applicant.

RESPONDENTS' ANNEXURES

- Annexure R1** - Memo No. B1/Rectt/Trf/14-15 dated 20.10.2014 (the appointment letter).
- Annexure R2** - Copy of the judgment dated 12.8.2016 of Hon'ble Supreme Court of India in appeal CA No. 91/2015 in SLP 20142/12 and 35223/12 .
- Annexure R3** - Copy of the order dated 14.3.2016 of Hon'ble Central Administrative Tribunal, New Delhi in OA 1736/2013.
- Annexure R4** - Copy of the common order dated 7.12.2015 in OA 1186/2012 & OA 203/2013 of Hon'ble Central Administrative Tribunal Ernakulam Bench.
- Annexure R5** - Copy of the order dated 4.12.2012 in OA 211/2011 of Hon'ble Central Administrative Tribunal Ernakulam Bench.
- Annexure R6** - Copy of order dated 29.1.2014 in OP (CAT) 1072/2013 of Hon'ble High Court of Kerla, Ernakulam.

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