

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

**OA/310/00064/2017, OA/310/00077/2017, OA/310/00078/2017
& OA/310/00085/2017**

Dated the 02nd day of June Two Thousand Twenty

**CORAM : HON'BLE MR. P. MADHAVAN, Member (J)
HON'BLE MR. T. JACOB, Member (A)**

OA 64/2017 :-

R.Sumathi,
No. 23, Mariamman Koil Street,
Madulampettai BO,
Kumbakonam City SO, Pin 612001.Applicant

By Advocate M/s. R. Malaichamy

Vs

1.Union of India,
rep by its Secretary,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan,
Sansad Marg, New Delhi 110001.

2.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600002.

3.Superintendent of Post Offices,
Kumbakonam Division,
Kumbakonam 612001.Respondents

By Advocate Mr. K. Rajendran

OA 77/2017 :-

M.Bavithra,
No. 3/303 K, Annamalai Nagar,

Thirumarugal,
Nagapattinam Taluk & District,
Pin 609702.

....Applicant

By Advocate M/s. R. Malaichamy

Vs

1.Union of India,
rep by its Secretary,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan,
Sansad Marg, New Delhi 110001.

2.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600002.

3.Superintendent of Post Offices,
Nagapattinam Division,
Nagapattinam 609001.

....Respondents

4.R.Sivadoss @ Veerasundaram,
GDS MD/MC,
Karukkangudi BO a/w Tirunallar SO 609607,
Nagapattinam Postal Division

....Respondent (impleaded as R4 as
per order sheet dt. 21.12.2018 in MA 695/2018)

By Advocates Mr. Su. Srinivasan, Mr. P. R. Satyanarayanan (R4)

OA 78/2017 :-

M.Manikandan,
No. 93, South Street,
Kodukkur Village,
Perambalur Post,
Vridhachalam Tk,
Cuddalore Dist. Pin 606302.

....Applicant

By Advocate M/s. R. Malaichamy

Vs

1.Union of India,
rep by its Secretary,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan,
Sansad Marg, New Delhi 110001.

2.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600002.

3.Superintendent of Post Offices,
Vridhachalam Division,
Vridhachalam 606601.

....Respondents

By Advocate Mr. Su. Srinivasan

OA 85/2017 :-

R.Bharathi,
No. 1, Ramaiah Nagar,
Madhukur By Pass Road,
Mannarkudi, Tiruvarur District 614001.

....Applicant

By Advocate M/s. R. Malaichamy

Vs

1.Union of India,
rep by its Secretary,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan,
Sansad Marg, New Delhi 110001.

2.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600002.

3.Superintendent of Post Offices,
Thanjavur Division,

Thanjavur 613001.

....Respondents

By Advocate Mr. K.Ramasamy

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

These OAs are filed seeking following reliefs :-

“OA 64/2017 :-

- i. To call for the records of the 2nd respondent pertaining to his order which is made in No. REP/2-Misc/2016 dated 09.01.2017 and the instructions made in No. REP/4-4/2014 dated 29.06.2016 in so far as the condition regarding “the applications need not be called for where there is no vacancy” which is stated in para 8(ii) is concerned and set aside the same;
- ii. direct the respondents to select and appoint the applicant as Postal Assistant subject to come out successful in the Computer Skill Test (Paper-II); and
- iii. to pass such further or other orders as this Hon'ble Court may deem fit and proper.

OA 77/2017, OA 78/2017 :-

- i. To call for the records of the 2nd respondent pertaining to his order which is made in No. REP/4-4/2014 dated 29.06.2016 in so far as the condition regarding 'the applications need not be called for where there is no vacancy' which is stated in para 8(ii) is concerned and set aside the same; consequent to;
- ii. direct the respondents to select and appoint the applicant as Postal Assistant/Sorting Assistant for the vacancies notified for SC and UR in any divisions of the 2nd respondent Circle subject to come out successful in the Computer Skill Test (Paper II examination); and
- iii. to pass such further or other orders as this Hon'ble Court may deem fit and proper.

OA 85/2017 :-

- i. To call for the records of the 2nd respondent pertaining to his order which is made in No. REP/4-4/2014 dated 29.06.2016 in so far as the condition regarding 'the applications need not be called for where there is no vacancy' which is stated in para 8(ii) is concerned and set aside the same; consequent to;
- ii. direct the respondents to select and appoint the applicant as Postal Assistant/Sorting Assistant for the vacancies notified for OBC in any divisions of the 2nd respondent Circle subject to come out successful in the Computer Skill Test (Paper II examination); and
- iii. to pass such further or other orders as this Hon'ble Court may deem fit and proper.”

2. The applicants in these OAs are working as GDS in various Postal Divisions – Kumbakonam, Nagapattinam, Thanjavur & Vridhachalam in Tamil Nadu. The respondents had issued a notification on 29.06.2016 for filling up of the unfilled vacancies of Departmental quota for year 2013, 2014 to the cadre of Postal Assistant & Sorting Assistant which were diverted to GDS candidates.

3. The applicants were eligible to apply for the posts and they had applied for the posts. There are two papers – Paper I & Paper II. Paper I consists of 4 parts – A – General Knowledge, B – Maths, C – English & D – Analytical Ability. Each part will have 25 questions with 1 mark each. The qualifying marks to be obtained for Paper I is OC – 40%, SC & ST – 33%, OBC – 37%. Applicant in OA 64/2017 belongs to OBC category of Kumbakonam Division, Applicant in OA 77/2017 belongs to SC community of Nagapattinam Division, Applicant in OA 85/2017 belongs to OBC of Thanjavur Division and applicant

in OA 78/2017 belongs to SC category of Vridhachalam Division.

4. According to these applicants, they had passed the examination in Paper I on the basis of marks fixed for the community but they were not called for Paper II. They approached the Tribunal and obtained an interim order to participate in the Paper II examination with condition that their result will not be published.

5. According to the applicants, the respondents had not properly assessed the numbers of reserved Vacancies. They should be considered for appointment as and where vacancy exist in the Circle. According to them, the condition in the notification “Applications need not be called for where there is no vacancy” has to be struck down as illegal & they seek to consider them for Postal Assistant in any of the division where vacancies exist.

6. The respondent appeared and filed detailed reply denying the claims of the applicants. According to them, a notification was issued calling eligible applicants for direct recruitment for Gramin Dak Sevaks to Postal Asst/Sorting Asst for the unfilled vacancies of the department Quota for the year 2013 & 2014 on 29.06.2016. The said notification was issued on the basis of recruitment rules published in 2011. As per rules, applications are to be called “division wise”. Their merit will be considered based on merit in the examination in respective division. They also stated the marks to be obtained by candidates of each category and also the details of vacancy published as per notification.

	UR	SC/ST	OBC
Kumbakonam	1	0	0
Nagapattinam	2	0	1
Thanjavur	1	1	0
Vridhachalam	4	0	4

7. According to the respondents, the applicant in OA 64/2017 got only 9 marks in Paper C Part I. There was only UR vacancy at Kumbakonam and the minimum marks to be obtained is 10 & hence she was not called for Paper II. According to the respondents, the applicant had raised a dispute that the Question No. 67 was wrongly printed as “BIZZARE” instead of “BIZARRE” and hence she is entitled to get one more mark in Paper C (Part I) & she will become eligible under the UR category. According to the respondents, they had published Answer keys of Paper I in the website on 16.08.2016 and all concerned were requested to give their objection. After considering observations made, they had published the final Answer key in the website on 08.09.2016. Thereafter answer sheets were evaluated and mark list of Paper I was published. The applicant in OA 64/2017 had raised objection only after publication of result on 19.12.2016. So the respondents had to reject the claim as it is highly belated.

8. The applicant in OA 77/2017 belongs to SC community and there was no Reserved vacancy in the division for SC candidates and she can only be considered under UR vacancy. The applicant had got only 9 marks in Part A (Paper I) which will not qualify her in UR category. So, she was also not

qualified for examination in Paper II.

9. The applicant in OA 85/2017 belongs to OBC category & there existed only 1 UR vacancy and 1 SC vacancy in Thanjavur Division. She got only 9 marks for Part A (Paper I). The minimum marks fixed for UR vacancy is 10 marks and hence she also could not be called for examination in Paper II.

10. The applicant in OA 78/2017 belonged to SC category of Vridhachalam Division. There were only 4 UR & 4 OBC vacancies & hence he can come only under the UR vacancy. The applicant got only 8 marks in Part B & 9 marks in Paper C (Part I) instead of 10 marks. Hence he could not be called for the paper II examination.

11. The Counsel for the applicant mainly contented that if the vacancy is considered under Circle level, all the applicants could have got selected. According to him, as per directorate order dt. 08.05.2012 regarding the procedure for direct recruitment of Postal Assistants, the select lists are prepared at Circle level and the selected candidates are allotted to various divisions of their choice. The procedure of selection division wise is arbitrary & violative of Art 14 of the Constitution.

12. On the other hand, Counsel for the respondents would contend that the said directorate letter dt. 08.05.2012 is relating to the selection of Postal Assistant by direct recruitment from open market where any eligible person can participate. In this case, the candidates belong to only GDS & it is a selection to fill up unfilled vacancies after promotion by direct recruitment. As per schedule

to the recruitment rules for the post of Postal Assistant 2011, the Direct Recruitment to unfilled vacancies from GDS should be done on the basis of Recruiting Division/Unit

“(a) 50% of the posts by promotion through a Limited Departmental Competitive Examination failing which the unfilled vacancies shall be filled up by direct recruitment of Gramin Dak Sevak* of the recruiting division or unit on fulfilling the following conditions, as on 1st day of January of the year to which the vacancy(ies) pertain to, on the basis of examination limited to such Gramin Dak Sevaks and if the posts still remain unfilled by the Gramin Dak Sevaks, these shall be filled by direct recruitment from amongst other open market candidates of the same year fulfilling the age and qualification conditions.”

According to the Counsel for the respondent, Recruitment Rules are sacrosanct & executive instructions cannot override the rules framed under Art 309 of the Constitution.

13. The Counsel had invited our attention to the decision of Apex Court in **Union of India & others Vs C. Girija & others** (CA 1577/2019 dt. 13.02.2019) (Para 17 & 18) wherein Apex Court has held that after participating in the selection process, the candidate cannot challenge the method/manner of selection process. He also invited our attention to the decision of the Apex Court in **Ashok Kumar V. State of Bihar & others** (reported in 2017 (4) SCC 357) wherein the Court held that the candidates after appearing in an examination without objection & subsequently finding not successful, a challenge against the process is precluded.

14. We had carefully gone through the pleadings & various annexures produced. As per the Recruitment Rules 2011, the selection has to be division wise and accordingly notification was published. Recruitment rules has to be

followed strictly. The applicants in this case after participating in the selection process without objection cannot be permitted to challenge the procedure. All the applicants had failed to come up in Paper I and hence, there is no question to permit them to participate in paper II. The applicants are not entitled to say that they should be considered Circle wise after completing the process. Unless, the Recruitment Rule is amended, their selection cannot be made circle wise. The Counsel for the applicant invited our attention to para 18 of **Dr. (Major) Meeta Sahai V. State of Bihar & others** in Civil Appeal No. 9482/2019 where it was held that candidate by agreeing to participate in the selection process only accepts the prescribed procedure & not illegality in it. Here the procedure prescribed cannot be considered as illegal or discriminatory as such. So we feel that this decision cannot be applied to the facts & circumstances of this case.

15. So, we find that there is no merit in the arguments raised by the applicants in this case. There is no arbitrariness or illegality in the procedure adopted. **So we find no merit in the OAs filed & they are liable to be dismissed.**

16. Hence the OAs 64/2017, 77/2017, 78/2017 & 85/2017 will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P. Madhavan)
Member(J)

02.06.2020

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