

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00400/2020

Thursday, this the 4th day of February, 2021

CORAM

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

Sreevidya L, Aged 47 years,
W/o Anil Kumar,
Postal Assistant (Temporary),
Mavelikkara Postal Division.
Residing at: Kumaranchira House,
Prayar South, Alumpeedika P.O.,
Kollam Dt. - 690 547.
Mob.: 85479 25569

Applicant

(Advocate: Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the Secretary to the Government of India, Ministry of Communications & Information Technology, (Department of Posts), Dak Bhavan, New Delhi-110 001.
2. The Director General of Posts, Department of Posts, Dak Bhavan, New Delhi-110 001.
3. The Chief Postmaster General, Kerala Circle, Department of Posts, Thiruvananthapuram-695 033.
4. The Superintendent of Post Offices, Mavelikkara Postal Division,

Mavelikkara-690 101.

5. The Superintendent of Post Offices,
Lakshadweep Postal Division,
Kavaratti -682 555, Laskshadweep.
6. Anitha S., aged 32 years,
W/o Rajesh Kumar,
Kayamkulam Head Post Office,
Kayamkulam Sub Division,
Mavelikkara Division.
Residing at Puthenveedu, Perungola P.O.,
Kayamkulam, Alappuzha District-690 559.
7. Lekha O., aged 32 years,
W/o Prasannan,
Postman,
Keerikkad P.O.,Mavelikkara Postal Division.
Residing at Pellathu, Ayikkad-Cheppad P.O.,
Alappuzha District-690 507
Mob:9747259008

Respondents

Advocate:

Mr.N.Anil Kumar, SCGSC for R1 to 5.
Mr.V.Sajith Kumar for R6 & 7.

The OA having been heard on 20th January, 2021, this Tribunal delivered the following order on 04.02.2021:

O R D E R

By P.Madhavan, Judicial Member

The OA is filed seeking the following reliefs:

(i) *Quash Annexure Al and direct the respondents to grant the consequential benefits thereof;*

(ii) *Declare that the applicant is eligible to be considered for promotion as Postal Assistant for the vacancy year 2019 against one of the UR*

vacancies notified for Mavelikkara Postal Division and direct the respondents accordingly;

(iii) Direct the respondents to subject the applicant for a skill test and direct further to place her at the appropriate position in the rank list of Mavelikkara Postal Division for the vacancy year 2019 for promotion as a Postal Assistant and direct further to grant her all the consequential benefit as if Annexure A-1 had not been issued at all.

2. Applicant in this case is presently working as Postal Assistant in the Lakshadweep Division under the 4th respondent. The applicant's case is that her candidature for promotion as Postal Assistant for the vacancy year 2019 was cancelled by the 4th respondent even though she came up qualified in the written examination in second position in Mavelikkara Division. A skill test was scheduled on 23.8.2020 and the respondents, on 22.8.2020, cancelled her candidature as per Annexure A1, stating that she cannot appear for the Data Entry Skill Test being part of the selection process as she had already got selected and working as Postal Assistant. The applicant is aggrieved by the said order.

3. The applicant entered service as Gramin Dak Sevak on 27.10.1998 and thereafter got posted as Postman with effect from 19.7.2013. Recruitment to the post of Postal Assistant/Sorting Assistant is governed by the Department of Posts (Postal Assistant/Sorting Assistant Group 'C' Non-Gazetted) Recruitment Rules, 2015. The said Rules is produced as Annexure A2. In terms of Annexure A2, 50% of the posts are filled by promotion through a Limited Departmental Competitive Examination (LDCE) from among Postmen/Mail Guards with three years regular service in the grade. The respondents issued a notification for

vacancies from 2016 to 2018 as per Annexure A3. The applicant applied for the post of Postal Assistant. There were two unreserved vacancies in Mavelikkara Division for the year 2017-18 and one vacancy for the year 2018. Even though the applicant passed the examination, she was not shown in the merit list dated 27.2.2019. In the meanwhile, notification for the vacancies of 2019 was issued by the respondents as per Annexure A5 dated 24.6.2019. She again applied for the post of Postal Assistant as per this notification also as she was eligible for the same. She wrote the examination on 4.8.2019, but the said examination was cancelled and another notification dated 5.8.2019 was issued and the date of examination was shown as 15.9.2019. As per the scheme of the examination, she has to pass Papers I & II written examination and Paper III Data Entry Skill Test. She wrote the examination on 15.9.2019. But after the publication of the answer keys, some of the applicants filed OA No.762/2019 and obtained an interim order not to publish the result of the applicants therein (Annexure A7). Since there was no stay in the proceedings, the 3rd respondent issued a letter inviting the successful candidates for appearing for the Data Entry Skill Test. The said test was first proposed on 9.2.2020 and later it was adjourned to another date. The applicant got 83% marks in Paper I and 41% marks in Paper II. According to the applicant, Paper II & III are only qualifying in nature and the rank list is prepared on the basis of the marks obtained in Paper I. The Skill Test scheduled on 9.2.2020 was stayed by the Tribunal on 7.2.2020. The respondents challenged the

said order before the Hon'ble High Court and the Hon'ble High Court set aside the interim order of stay and permitted the respondents to continue with the selection. In the meanwhile, according to the applicant, she was appointed as Postal Assistant under the Lakshadweep Division in the surplus vacancy for the year 2017-18 as per Annexure A11 order. Since there were travelling restrictions to Lakshaddweep, the applicant was directed to continue in the parent post and to take in-house training at Kayamkulam. Thereafter, she was directed to join temporarily at Mavelikkara as Postal Assistant till transportation to Lakshadweep resumed. The order is produced as Annexure A12.

4. According to the applicant, Annexure A1 issued against her is arbitrary and it violates the principle of equality. According to her, she had participated in the written examination and she was eligible for applying for the post having come out successful with 83% marks in Paper I. Thereafter the respondents cancelled her candidature as per Annexure A1.

5. Official respondents appeared and filed a detailed written submission admitting the service particulars of the applicant and her application for the post of Postal Assistant as per both the notifications issued by them. According to the respondents, the applicant had applied for the vacancies for the year from 2016 to 2018 and she was one of the surplus candidates and she was not appointed immediately. There were a total of 11 vacancies in Mavelikkara Division and the marks secured by the last selected UR candidate for the vacancy year 2017-18 and

2018 in Mavelikkara was 136 and 152 respectively. The applicant could secure only 128 marks and hence she could not come up in the zone of selection for Mavelikkara Division. As per the instructions of the Directorate contained in letter dated 27.7.1989, surplus qualified candidates in all the Postal Divisions in the Circle were arranged on the basis of their merit in the LDCE held on 9.12.2018 and these surplus qualified candidates were allotted to the unfilled vacancies in the postal divisions under relevant category in the respective years.

The Directorate's letter referred above is produced and marked as Annexure R1. Since the applicant was not selected for Mavelikkara Division, she became a surplus qualified candidate as per Annexure R1 letter and the applicant was selected for the unfilled UR vacancy for Lakshadweep Division for the vacancy year 2017-18. A copy of the surplus candidate result is produced as Annexure R2.

The applicant was directed to report at the Office of the Superintendent, RMS 'EK' Division, Kochi on 11.3.2020 for pre-appointment formalities and the applicant was posted as Postal Assistant, Minicoy SO in Lakshadweep Division.

The applicant had also undergone the in-house training from 19.3.2020 and she was allotted, as a special case, to the Mavelikkara Division due to lack of transportation facility till transportation is restored. According to the respondents, the Lakshadweep Postal Division is functioning with only 12 Postal Assistants against the sanctioned strength of 18 Postal Assistants and, therefore, the service of the applicant, the selected candidate, is highly essential at Lakshadweep

Division. Now the transportation facility to Lakshadweep Division is in full swing and the applicant was relieved from Mavelikkara Division and she joined at the Office of the Laksahdweep Division on 23.11.2020 forenoon. They have produced the Charge Report dated 23.11.20 as Annexure R4. According to them, the applicant was aware that she would come under the zone of consideration when she secured 83% marks in Paper I. She could have waited for the result of the examination for the vacancy of 2019 but instead she opted to join at Lakshaddweep without any objection. According to them, the Skill Test for the year 2019 vacancy was delayed due to the interim order passed by the Tribunal and later the said order was vacated by the Hon'ble High Court and the selection was conducted. According to the respondents, once a person is appointed as Postal Assistant, he/she cannot again participate in the examination for the same post. It was only because of that the applicant's candidature was cancelled after her appointment to the Lakshadeep Division. She was posted at Lakshaddweep Division considering the choice stations preferred by her at the time of submission of application for LDCE held on 9.12.2018. She had accepted the offer of appointment as a surplus qualified candidate even though she was well aware of the fact that there is every chance to get an appointment in Mavelikkara Division on her merit in the LDCE examination held for filling up the vacancies of the year 2019. The applicant had made a conscious decision to choose Lakshadweep Division where the Postal Assistant post is immediately available.

6. The 7th respondent who is a private individual appeared and filed a detailed reply in accordance with the reply filed by the official respondents. The applicant herein had become a Postal Assistant in the Lakshdeeps Postal Division and she is drawing salary from them. The applicant had accepted Annexure R2&R3 appointment orders and she cannot claim the vacancies of the year 2019 now. There is no arbitrariness or illegality in the order issued as Annexure A1.

7. The main point to be decided is whether Annexure A1 order cancelling the candidature of the applicant for the vacancies of the year 2019 is arbitrary or not.

8. We have heard the counsel appearing for the applicant as well as for the respondents in this case. The counsel for the applicant mainly relies on some of the decisions of the Hon'ble Supreme Court regarding the principle of law – *actus curiae neminem gravabit*. According to the counsel for applicant, the pendency of cases before this Tribunal filed by some of the candidates for 2019 vacancies and the interim order passed by the Tribunal had delayed the conduct of examinations and skill test and this has caused injury to the applicant and she could not get appointment in Mavelikkara Division. It is a principle of law that the acts of the courts shall not injure any person and if such an injury takes place, it has to be rectified by the court. So, according to the applicant, the action of the respondents is against the principles of natural justice and also against the binding decisions of the Apex Court. The counsel for applicant has produced the decision of the Constitution Bench in **S.G. Jaisinghani vs. Union of India** (AIR 1967 SC

1427). It clearly lays down what is arbitrariness in the decision and how it has to be dealt with. It was held in the decision that it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. He also referred to *Dr.M.V. vs. Union of India & Ors* [1993 (2) SCC 429] wherein it was held that “*it is well settled that suitability and eligibility has to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date*”. He also referred to *Ashok Kumar Sonkar vs. Union of India and Ors.* [2007 (4) SCC 54] wherein it was held that “*the question as to what should be the cut off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer res-integra. It would be last date for filing application as would appear from the discussions made hereinafter*”. Another case referred by the counsel is *Bhupinderpal Singh & others vs. State of Punjab and others*. He also referred to *Mrs. Kavita Trehan and another vs. Balsara Hygiene Products Ltd.* (AIR 1995 SC 441). It was held therein that “*there is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake...*”

9. We have carefully gone through the various decisions cited by the counsel

for the applicant and the arguments put forward by the counsel at the time of hearing. According to the counsel for the applicant, the applicant is seriously aggrieved by the interim orders passed by the Tribunal at various stages regarding the conduct of the tests for the Limited Departmental Competitive Examinations for the vacancies of the year 2019. Now the applicant is unable to participate in the Skill Test due to the Annexure A1. So, according to the counsel, the applicant should be granted the reliefs as prayed for.

10. On the other hand, the counsel for respondents would contend that the applicant became eligible for participating in the LDCE conducted for the year 2015 to 2018 and she participated in the said examinations and she came up successful in the said examinations but did not score the necessary merit for being considered for Mavelikkara Division. As per Annexure R1 letter, the surplus qualified candidates can be given posting in the departmental vacancies of the same year if there exist vacancies. Accordingly, the case of the applicant was considered and she came up in the merit list for the vacancies and since the applicant had opted for Lakshadweep Division also in the application, she was granted the said appointment. Since she was appointed as Postal Assistant, she cannot again participate for the next year vacancy for the purpose of getting an appointment in Mavelikkara Division. It may be true that 2019 examination was delayed due to pendency of cases. The applicant was posted for the vacancy of 2017-18 and 2018 and no injury was caused to the applicant by giving such an

appointment. The department had actually protected her interest by giving appointment. It may also be true that the applicant may be interested in getting appointed in Mavelikkara Division but that cannot be considered as a sufficient reason to strike down Annexure A1 letter cancelling the candidature of the applicant for the subsequent years.

11. We have carefully gone through the pleadings and the various documents produced before the Tribunal. On a perusal of the pleadings, we can see that the applicant has applied for Limited Departmental Examination for the vacancies of the year from 2015 to 2018 and she became successful in the examination but did not qualify in the merit list for appointment to Mavelikkara Division. We also find that the applicant had also applied for the vacancies of the year 2019 and she participated in the written examination and she secured 83% marks in Paper I and 41% marks in Paper II. Only skill test was remaining in the examination. At that time, a dispute arose between some of the candidates regarding the answers given to some of the questions and there was a stay regarding the declaration of the results of the applicants who filed cases subsequently when the skill test was scheduled by the respondents. Those applicants in the said OA(s) obtained a stay order and the Skill Test (for 2019 vacancies) was delayed. The respondents filed OP(CAT) No.81/2020 and OP(CAT) No.72/2020 before the Hon'ble High Court and the High Court set aside the interim order and permitted the respondents to continue with the examination. If we go through Annexure R1 circular, it can be

seen that when there exist surplus qualified candidates, they can be appointed in the surplus vacancies of other divisions as per their preferences. The applicant in this case passed the examination for the period from 2015 to 2018 and her case was considered by the respondents for filling up the surplus vacancies of the departmental promotion quota available in other divisions. The applicant has preferred Lakshadweep Division also in her application and accordingly the applicant was allotted to Lakshadweep Division by the respondents. Since the applicant already got appointed as Postal Assistant before completion of the Skill Test for the year 2019, her candidature for 2019 examination was cancelled as per Annexure A1 as she was already promoted against the earlier year's vacancy. There is absolutely no arbitrariness seen in the Annexure A1 letter as claimed by the applicant. We also cannot find any injury having been caused to the applicant due to the Annexure A1 letter cancelling her candidature for the subsequent years. We find no merit in the contention raised by the counsel for the applicant in this case. The decisions cited by the applicant are not applicable to this case and that there is no need of any further discussion regarding the above decisions in the matter. **We find that the applicant is not entitled to get the reliefs as claimed in the OA. Accordingly the OA is dismissed. The interim order will stand vacated. No order as to costs.**

(K.V.Eapen)
Administrative Member
aa.

(P.Madhavan)
Judicial Member

Annexure A1: True copy of Order bearing No.B2. B2/40/3/Exam 2019 dated 21.08.2020 issued by the 4th respondent.

Annexure A2: True copy of Department of Posts (Postal Assistant/Sorting Assistant Group 'C'-Non- Gazetted) Recruitment Rules, 2015.

Annexure A3: True copy of the notification No. Rectt/10-3/2018 dated 30.10.2018

Annexure A4: True copy of the notification bearing No. Rectt/10-3/2018 dated 27.02.2019.

Annexure A5: True copy of the Limited Departmental Competitive Examination (LDCE) notification for the vacancy year 2019 issued by the 3rd respondent bearing No. Rectt/ 10-3/2019 dated 24.06.2019.

Annexure A6: True copy of the notification bearing No. Rectt/10-3/2019 dated 05.08.2019 issued by the third respondent.

Annexure A7: True copy of the Interim Order in O.A No. 180/00762/2019 dated 29.10.2019 of this Tribunal.

Annexure A8: True copy of the Order bearing No. Rectt/10-3/2019 dated 28.01.2020 containing the relevant pages relating to Mavelikara Postal Division.

Annexure A9: True copy of the interim order in O.A. No. 180/762/2019 dated 07.02.2020 rendered by this Tribunal.

Annexure A10: True copy of the Judgment in OP (CAT) 81/ 2020 dated 24.06.2020 rendered by the Hon'ble High Court of Kerala.

Annexure A11: True copy of the Memo No. PF/LS/20-21 dated 17.03.2020 issued by the fifth respondent.

Annexure A12: True copy of the communication bearing Memo No. PF/LS/20-21 dated 29.04.2020 issued by the 5th respondent.

Annexure A13: True copy of the communication bearing No. B2/40/3/Exam 2019/II dated 17.08.2020 issued by the 4th respondent.

Annexure A14: True copy of the Hall Ticket issued to the applicant for appearing for the Data Entry Skill Test (DEST) on 23.08.2020.

Annexure A15: True copy of the text e-mail sent by the applicant to the fourth respondent.

Annexure R1: True copy of extract of Postal Directorate letter No.60-127/85-SPB-I dated 27.7.1989.

Annexure R2: True copy of surplus qualified candidates result dated 6.3.2020.

Annexure R3: True copy of the letter dated 11.3.2020.

Annexure R4: True copy of the charge report dated 23.11.2020.

Annexure R6(1) True copy of the letter No. Rectt/10-3/2019 dated 6.11.2020 issued by the 3rd respondent in the OA.

Annexure MA1: Copy of interim order dated 28.8.2020.

Annexure MA2: True copy of the instructions dated 27.7.1989.

Annexure MA3: True copy of surplus qualified candidates result dated 6.3.2020.