

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.180/00470/2018

Wednesday, this the 19th day of August, 2020

CORAM:

Hon'ble Mr. P.Madhavan, Judicial Member

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

V.K.Somarajan Pillai, aged 51 years

S/o V.S.Krishna Kurup

Postman, Pandalam MDG,

Pandalam-689 501.

Residing at Viruthethu Kizhakkethil,

Njettoor, Kulanada,

Pathanamthitta-689 503.

Applicant

(Advocate: Mr.M.R.Hariraj)

Versus

1. Union of India, represented by
the Secretary to Govt of India
Department of Posts,
New Delhi-110 001.

2. Chief Post Master General,
Kerala Circle
Trivandrum-695 033.

3. Superintendent of Post Offices,
Pathanamthitta Postal Division,
Pathjanamthitta-689 645.

Respondents

(Advocate: Mr.Thomas Mathew Nellimoottil, Sr.PCGC)

This OA having been heard on 17th August, 2020, the Tribunal delivered the following order on 19.08.2020:

ORDER**P.Madhavan, Judicial Member**

The applicant in this case is aggrieved by the notice issued to him by the respondents for reverting him from the post of Postman on the basis of the ruling of the Hon'ble Supreme Court. According to the applicant, he was not aware of the appeal filed by the respondents and the decision given by the Hon'ble Supreme Court and he could not file any review against the same. The matter is being delayed due to the vacation of the Hon'ble Supreme Court.

2. The applicant was working as GDS Branch Post Master under the 3rd respondent and he participated in the Limited Departmental Competitive Examination (LDCE) for recruitment to the cadre of Postman/Mail guard for the vacancies of 2009. According to him, 12 vacancies were notified. The applicant got 119.5 marks. Even though 12 vacancies were available, only 8 vacancies were filled up. One OBC candidate Smt. V.B.Usha who got lesser mark was also appointed extending the benefit of reservation for OBC. The applicant in this case had earlier filed OA No.245/2012 claiming that he ought to have been appointed to any of the remaining vacancies on the basis of his merit. The said OA was disposed of by the Tribunal holding that no reservation for OBC can be given and there exists vacancies remaining unfilled and directing the respondents to consider accommodating the applicant in any of the available vacancies. The order of the Tribunal is produced as Annexure A1. The respondents challenged the said decision of the Tribunal before the Hon'ble High Court of Kerala and the High Court had dismissed the appeal filed namely, OP (CAT) 1729/2013(Z) by order dated 2.7.2013. On the basis of the said order of the Hon'ble High Court, the applicant was appointed as Postman by the respondents as per order dated 31.3.2014 (Annexure A3). While the applicant was working as Postman, he had received a

letter stating that the SLP filed by the respondents was allowed by the Hon'ble Supreme Court and the department asked him to show cause why he shall not be reverted to the post of GDS.(Annexure A4). The applicant gave a representation pointing out that he was unaware of the case pending before the Supreme Court (Annexure A5). He was given a copy of the decision of the Hon'ble Supreme Court and he sought time for taking steps before the Hon'ble Supreme Court. He instructed his advocate in the Supreme Court to obtain certified copies of the judgment in the SLP. But it did not succeed as the case had already been disposed of. He is taking steps to obtain copies of the above SLP and in the meanwhile the Supreme Court was closed for vacation. So the applicant seeks the following reliefs:

- (i) *Quash Annexure A4;*
- (ii) *Direct the respondents to permit the applicant to continue as Postman with all consequential benefits.*

3. The applicant had also sought for an interim order of stay of Annexure A4 and this Tribunal had granted an interim order of stay against Annexure A4 on 1.6.2018.

4. The respondents appeared through Govt Pleader Mr. Thomas Mathew Nellimoottil, Sr.PCGC who filed a detailed reply and also filed an MA No. 906/2018 to vacate the interim order of stay. According to the respondents, the Hon'ble Supreme Court had set aside the order of the Tribunal in OA No.245/2012 and of the Hon'ble High Court on the basis of the decision in **Y.Najithamol and others Vs. Soumya S.D. & Ors.**, in Civil Appeal No.90 of 2005. In the said appeal, the Hon'ble Supreme Court has held that the appointment to the post of GDS after conducting a test is a direct appointment and therefore reservation is permissible for OBC or any other eligible group and there is no merit in the claim of the applicant. According to the respondents, the appointment order given after

the decision of the Hon'ble High Court was subject to the result of the SLP filed by the respondents. The applicant also knew that as it was clearly mentioned in Annexure A3 by which the applicant was given the appointment. Since the earlier orders of the CAT and the Hon'ble High Court were reversed, the applicant is not entitled to be posted as Postman and he is liable to be reverted. The applicant had no right to continue.

5. The order of the Hon'ble Supreme Court in Civil Appeal No.90 of 2005 (*Najithamol vs. Saumya*) is produced as Annexure R2. The decision of the Hon'ble Supreme Court in the appeal filed against the order of the Tribunal was also produced by the respondents. The MA filed for vacating the stay was also considered along with the OA.

6. Learned counsel for the applicant Sri M.R.Hariraj has filed an argument note in support of his case. According to him, the applicant had earlier filed OA No.245/2012 and the Tribunal had allowed the OA and it was confirmed by the Hon'ble High Court. The contention of the applicant there was that since the appointment of Postman is by way of promotion, there is no question of any reservation and the reservation given to OBC is not correct. He also argued that the total vacancies notified for the selection was for 12 posts and only 8 persons were given appointment. There exist remaining vacancies and the applicant is the next person who had secured the merit. So, the respondents can very well accommodate him in any of the remaining vacancies.

7. The respondents' counsel also filed an argument note and the learned counsel for the respondents mainly relied on the written reply given by the department itself in countering the arguments of the applicant. The appeal filed by the respondents against the order of the High Court was allowed by the Apex Court following the case of *Najithamol & Others*. So, the decision of the Tribunal as well as of the

Hon'ble High Court stands set aside and the applicant cannot rely on those decisions to continue in the same post. According to the counsel, the applicant has no clear case that there exist remaining vacancies. According to the respondents, there existed 12 vacancies for the year 2019 and out of this, 6 vacancies were earmarked for departmental quota and the remaining 6 under direct recruitment quota. In the direct recruitment quota, one vacancy each was reserved for PH and sports quota. Out of the remaining 4 vacancies, 2 vacancies are set apart for seniority quota and 2 for merit quota. The communal break up of the total vacancies is given in para 4 of the reply. Since no departmental candidate came up in departmental quota, all the 6 vacancies were added to GDS direct recruitment quota. Hence the revised communal break up of the vacancies are UR-7, OBC-1, PH-1. Accordingly, 7 candidates from UR category and 1 person from OBC were selected. Smt.V.B.Ushakumari, the 8th person, comes under OBC quota. The last mark for unreserved quota was 120.5 and the applicant got only 119.5 and he was not able to come in the merit list for appointment. As regards the contention of the applicant that there exist remaining vacancies for filling up 2009 vacancies, the counsel for the respondents would submit that out of the 12 vacancies that arose in 2009, 2 vacancies were filled up under seniority quota, 8 vacancies were filled up on the basis of LDCE and one vacancy each was given to PH and sports quota. So, there exists no other vacancy and the contention of the applicant that only 8 vacancies were filled up is incorrect.

8. We have carefully gone through the pleadings and the various documents produced by the applicant as well as the respondents. Earlier, OA No.245/2012 was filed contending that the appointment after LDCE examination conducted for the post of Postman was only a promotion and, therefore, no reservation can be granted to OBC. Further it was also contended that there existed further vacancies and the

applicant being the next person in the merit list may be given appointment. The Tribunal considered the question and found that being a promotion, no reservation can be granted and hence the Tribunal allowed the OA and directed the respondents to consider the appointment of the applicant to any of the vacant posts without disturbing the person appointed under the OBC quota. The appeal filed by the respondents before the Hon'ble High Court was dismissed and the respondents had given appointment on the basis of the direction of the Hon'ble High Court as per Annexure A3 order. It is specifically mentioned that the appointment to the applicant was given subject to the outcome of the SLP filed by the department. The SLP filed by the respondents (SLP(C) CC No.12920/14-CA 144/18) was allowed by the Hon'ble Supreme Court based on the decision of the Hon'ble Supreme Court in *Y.Najithamol and others Vs. Soumya S.D. & Ors.*, in Civil Appeal No.90 of 2005 and held that the appointment to the post of Postman after the test is a direct recruitment and it is not a promotion. It was also held that reservation can be allowed in such cases and reversed the decision of the Tribunal and the High Court. Now the respondents have come up with an MA to vacate the interim order passed in the initial stage by the Tribunal granting time for taking steps to file review application before the Hon'ble Supreme Court as the applicant stated that he was unaware of the proceedings before the Hon'ble Supreme Court. The applicant herein has filed a restoration application in MA 2349/2018 in CA 144/2018 and the same was disposed of by the Hon'ble Apex Court along with CA 143/2018 following the decision in Najithamol case (CA 90/2015) on 10.1.2018. In view of the law laid down by the Hon'ble Supreme Court in *Najithamol* (supra), the appointment to the post of Postman is clearly a direct appointment and it cannot be held that no reservation is applicable to the said post. One post was reserved for OBC and the same was granted. 7 persons in the UR category were also appointed

and the applicant did not come within the merit and he was not granted any appointment. As regards availability of vacancy, the respondents have clearly stated that there is no vacancy existing in the notified vacancies and there is no provision for appointment of the applicant to any of the vacancies of that year. So, we find no merit in the contentions raised by the applicant's counsel in this case. **Hence the OA is devoid of merit and it is liable to be dismissed. OA will stand dismissed. The interim order granted earlier will also stand vacated. No order as to costs.**

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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Annexures filed by the applicant:

- Annexure A1: Copy of final order dated 1.1.2013 in OA 245/2012 of this Tribunal.
- Annexure A2: Copy of the judgment dated 2.7.2013 in OP(CAT) No.1729/2013 of the Hon'ble High Court of Kerala.
- Annexure A3: Copy of the Memo No.B-3/27/Exam/2009/III dated 31.3.2014.
- Annexure A4: Copy of the Memo No.CAT/OA/Gen/2017 dated 26.3.2018.
- Annexure A5: Copy of the representation dated 31.3.2018.
- Annexure A6: Copy of the letter No.CAT/OA/Gen/2016 dated 26.4.2018 along with its enclosure.
- Annexure A7: Copy of the representation dated 10.5.2018 submitted by the applicant.

Annexures filed by the respondents:

- Annexure R1: Copy of the Department of Posts (Postman, Village Postman and Mail Guard) Recruitment Amendment Rules, 1994.
- Annexure R2: Copy of the judgment dated 12.8.2016.
- Annexure MA1: Copy of the judgment of the Hon'ble Supreme Court dated 10.1.2018.
- Annexure MA2: Copy of interim order of the Tribunal in OA No.180/00470/2018 dated 1.6.2018.
- Annexure MA3: Copy of the interim order of the Tribunal in OA No.180/00470/2018 dated 10.7.2018.
- Annexure MA4: Copy of the judgment of the Hon'ble Supreme Court dated 5.2.2020.