

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00721/2016

Tuesday, this the 1st day of June, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

Sunitha K.A., W/o. Biju T.K., aged 34 years,
MTS, Alappuzha Head Post Office, Department of Posts,
residing at Krishnapuram House, Narakathara,
Kavalam PO, Alappuzha – 688 506. **Applicant**

(By Advocate : Mr. V. Sajith Kumar)

V e r s u s

1. Union of India, represented by Secretary to Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle, Trivandrum-695 033.
3. The Superintendent of Post Offices, Alappuzha Postal Division,
Alappuzha – 688 012. **Respondents**

(By Advocate : Mr. Brijesh A.S., ACGSC)

This application having been heard on 10.03.2021, the Tribunal on
01.06.2021 delivered the following:

ORDER

Hon'ble Mr. P. Madhavan, Judicial Member –

The OA is filed seeking the following reliefs:

“(i) *To quash Annexure A1.*

(ii) *To direct the respondents to consider the claim of application to notional appointment of MTS with effect from 13.11.2013 and to grant her the benefits of notional appointment with increments and arrears of pay.*

(iii) *Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and*

(iv) *Grant the costs of this Original Application.”*

2. According to the applicant the respondents had notified for a limited departmental competitive examination for the post of MTS from the GDS agents who have completed one year of service as on 1.1.2013. As per the scheme and syllabus, four papers have to be cleared each carrying 23 marks. The notification is produced as Annexure A3 in this OA. The respondents had released the mark sheet on 13.11.2013 and as per the said mark list the applicant as well as Smt. Divya Krishnan had secured 76 marks each. Smt. Divya Krishnan was selected on the basis of her age. According to the applicant Smt. Divya Krishnan had got one mark mistakenly for a wrong answer and she got appointment overlooking the merit of the applicant. According to the applicant in Part-B marks were given to wrong entry and at the same time her right entry was not given marks. The applicant had submitted a representation seeking a proper evaluation of answer scripts. Her representation was produced as Annexure A5. Thereafter she filed OA No. 174 of 2014 seeking to quash the appointment given to Smt. Divya Krishnan. The official respondents had filed a statement in the above OA admitting the mistake and stating willingness to correct the same and appoint the applicant. A copy of the statement was produced as Annexure A6. In the meanwhile the said Smt. Divya Krishnan had filed OA No. 568 of 2014 and the same was considered and dismissed by the Tribunal. Accordingly, the official respondents had given an order of appointment to the applicant on 1.9.2015 and it is produced as Annexure A7. She was given appointment only with effect from 1.9.2015. She immediately gave a

representation to 3rd respondent seeking a notional appointment with effect from 18.11.2013, the date of appointment of Smt. Divya Krishnan. She also pointed out that similar treatment was given to Smt. Rajimol of Thiruvalla Postal Division. Her representation is produced as Annexure A8.

3. According to the applicant she is eligible to get appointment with effect from 18.11.2013 on which date Smt. Divya Krishnan was given appointment. According to her the delay occurred only because of the mistakes committed by the respondents Department and she cannot be blamed for that. Therefore, the respondents are liable to grant her notional appointment with effect from the date of her entitlement.

4. The official respondents entered appearance and filed a detailed reply. They admitted that the applicant was working as GDS BPM, Kannady in Alappuzha Division and the applicant appeared for the LDCE examination for the post of MTS for the year 2013. Based on the marks obtained in the examination and as per the recommendation of the DPC held on 11.11.2013 one Smt. Divya Krishnan who was working as GDS BPM, Pandarakulam in Alappuzha Division was selected for direct recruitment to the cadre of Multi Tasking Staff (MTS). She joined the post on 18.11.2013. Against the appointment of the said Smt. Divya Krishnan, the applicant has filed OA No. 174 of 2014 alleging that the marks had been granted to a wrong answer by setting a wrong answer key for denying appointment to her. The applicant claimed to be the meritorious candidate. The grievance of the applicant is

against the illegality in framing the answer key. Since Smt. Divya Krishnan was senior in the GDS cadre she was given appointment as MTS. According to the respondents the applicant in this OA claims that she had written the correct answer to question No. 6 (set No. 1) in the examination. The competent authority had considered her representation and examined the same with the result. It was found that question No. 6 in set No. 1 (Mathematics) was not given marks. On verification it was found that there had occurred a mistake in the key of the question No. 6 in set No. 1 and question No. 1 in set No. 2 and accordingly the revised mark list was prepared. Smt. Sunitha K.A., the applicant have scored a total of 77 marks and she was meritorious and she became eligible for appointment against the notified vacancy. The Tribunal in OA No. 174 of 2014 filed by the applicant had directed the respondents to appoint her as MTS. In compliance of the said order the applicant was appointed as MTS with effect from 1.9.2015 after reverting Smt. Divya Krishnan who was mistakenly appointed as MTS. The applicant is appointed only with effect from 2.9.2015 and her claim for notional appointment was not acceded to on the ground that principle of 'no work no pay' had to be applied in her case and her appointment cannot be pre-poned. So the claim of the applicant for notional appointment with effect from 18.11.2013 was not allowed.

5. The applicant has filed a rejoinder in accordance with her earlier statement in the OA and contended that the Department has earlier extended

notional appointment to one Smt. M Rajimol of Thiruvalla Division and the said order was produced as Annexure A9.

6. The main contention put forward by the applicant is that her appointment was delayed only because of the mistake committed by the official respondents in properly evaluating the answer papers and she cannot be denied the benefit of appointment from the eligible date onwards. According to the applicant one Smt. Divya Krishnan was given appointment erroneously with effect from 13.11.2013 and she was reverted as she was found not eligible to the post. The revaluation conducted revealed that the applicant was the meritorious candidate as she secured more marks than Smt. Divya Krishnan. So she ought to have been given appointment from the date from which Smt. Divya Krishnan was appointed. The applicant mainly relies on the decision of the Hon'ble Supreme Court in *C. Jayachandran v. State of Kerala & Ors.* – AIR 2020 SC 3846 wherein it was held that the appellant C. Jayachandran was entitled to get the appointment from the date on which others were also appointed.

7. We have gone through the various pleadings and documents produced by both sides. We have also heard the counsel appearing on both sides. On a perusal of the pleadings and records we find that the selection was conducted for the year 2013 and the mark list was published on 13.11.2013. One Smt. Divya Krishnan who got 76 marks along with the applicant was given appointment on the basis of her seniority. But when the applicant filed

OA No. 174 of 2014 the respondents came up with a statement that there has occurred a mistake in the calculation of marks in the answer sheets and the applicant got one more mark and the respondents had revised their selection list accordingly. As per the order passed by the Tribunal in OA No. 174 of 2014 the applicant was given appointment with effect from 1.9.2015 as per Annexure A7 order. The applicant herein claims that she ought to have been appointed notionally with effect from 18.11.2013 the date on which Smt. Divya Krishnan was appointed. As per the statement filed by the respondent themselves it appears that there had occurred mistake in the evaluation of answer sheet and the said mistake was mainly due to the answer key provided by the respondents themselves. The applicant got one more mark on revaluation and she got 77 marks in the examination. The said Smt. Divya Krishnan got only 76 marks and the applicant was appointed after reverting Smt. Divya Krishnan who was appointed by the Department. So it is a clear case of wrong done by the Department themselves and the Department is bound to cure the defect by giving notional appointment to the applicant. There is no reason put forward by the respondents to deny the right of the applicant for getting notional appointment. It is true that the applicant is not entitled to get back wages but she is eligible to get notional appointment from the date on which the earlier person Smt. Divya Krishnan was appointed. So we find merit in the contentions put forward by the applicant in this case.

8. In the result we allow the OA and the respondents are directed to grant notional appointment to the applicant with effect from 18.11.2013 the date of her entitlement with fixation benefit alone. No costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00721/2016

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the memo No. B2/MTS/2013 dated 17.3.2016 issued by the 3rd respondent.
- Annexure A2** – True copy of the order dated 12.8.2015 in OA 174/2014 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.
- Annexure A3** – True copy of the relevant pages of the notification No. B2/MTS/2013 dated 2.9.2013 issued by the 3rd respondent.
- Annexure A4** – True copy of the memo No. B2/MTS/2013 dated 13.11.2013 issued by the 3rd respondent.
- Annexure A5** – True copy of the representation dated 22.2.2014 submitted by the applicant before the 2nd respondent.
- Annexure A6** – True copy of the statement dated 6.8.2014 in OA 174/2014 by the respondents.
- Annexure A7** – True copy of the memo No. B2/MTS/2013 dated 1.9.2015 is issued by the 3rd respondent.
- Annexure A8** – True copy of the representation dated 14.3.2016 submitted by the applicant to the 3rd respondent.
- Annexure A9** – True copy of the memo No. B2/Appt dated 11.1.2016 issued by the Superintendent of Post Offices, Thiruvalla Division.

RESPONDENTS' ANNEXURES

- Annexure R1** – True copy of Directorate letter No. 17-11/2014-GDS dated 6.2.2014.

-X-X-X-X-X-X-X-X-