

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.415/11

Friday this the 5th day of August 2011

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

Anitha A Nair,
W/o.Jayachandran M.B.,
GDS MD Paingarappilly,
Mulanthuruthy, Ernakulam Division.
Residing at Thekkumthala House,
Thekkumthala Lane, Azad Road, Cochin – 682 017. ...Applicant

(By Advocate Mr.Shafik M.A.)

V e r s u s

1. Union of India represented by the Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
2. The Superintendent of Post Offices,
Ernakulam Division, Ernakulam – 682 011. ...Respondents


(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 5th August 2011 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, a GDSMD working at Paingarappilly PO in the Ernakulam Division was an aspirant to the post of PA/SA through the Departmental Quota for the year 2009. Notification for the examination was published vide Annexure A-2 dated 19-08-2010. Though according to the applicant, she had faired well in the examination, on her not having been selected, she has sought for the marklist and the same was provided



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to her vide Annexure A-3. The marks obtained was 81.38%. Of the eight individuals who had appeared for the examination, the applicant happens to be the highest scorer (81.38%) while the second highest happens to be 77.06%. Rules provide for the requirement that for selection to the post of PA/SA through the Departmental quota, only those Gramin Dak Sevaks shall be eligible for being considered who have secured marks not below the marks secured by the last direct recruitment of the relevant category selected, as the case may be of Other Communities, SC, ST or OBC of the same year. Para (3) of the conditions at Annexure A-2 refers. The lowest marks of the selected candidate in the last PA recruitment of outside quota for unreserved was 81.58%. Thus, the applicant having secured .2% less than the above was not selected.

2. The applicant sought for the revaluation of the paper after receiving a copy of the answer sheet wherein one of the questions according to the applicant had been rightly answered but has been treated as a wrong answer. Respondents have rejected the claim of the applicant for revaluation.

3. The applicant has filed this OA seeking the following relief(s) :-

(i) To call for the records relating to Annexure A-1 to Annexure A-7 and to declare that the applicant is entitled to be awarded marks in question No.41 in A-5 answer sheet.

(ii) To direct the respondents to re-evaluate the A-5 answer paper and to award the correct marks to the applicant and to revise the select list, include the applicant and to make promotions on the basis of such revised results.



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(iii) To declare Rule 15 of Appendix 37 of P&T Manual Volume IV as unconstitutional, ultra vires, unreasonable and void.

(iv) To issue appropriate direction or order to revise the select list and to appoint the applicant also as Postal Assistant in Ernakulam Division, immediately on the basis of the marks on re-valuation and to grant her all consequential benefits with effect from the date of her entitlement.

4. Respondents have contested the OA. In their reply, they have inter alia stated as under :-

"4. The question No.41 to find the odd man out, the answer given by the applicant is A 480 where as the correct answer is C 662 because it is the only number which does not have digit '4' in it. The argument of the applicant that 480 is the only one that is most divisible by 2 cannot be accepted because all numbers are prima-facie divisible by two at least once and hence that cannot be the yardstick for identifying the odd man out. Key to the aptitude test exam dated 12.9.2010 is produced and marked as Annexure R-1. Hence the answer was evaluated as wrong answer and no marks were awarded. The request made by the applicant for revaluation of answer script is not under the purview of Annexure A-7 order, hence her request was not considered."

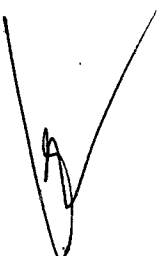
5. As regards the rule relating to revaluation, respondents have stated as under :-

"5. Rule 15 Appendix 37 of Postal Manual Volume IV was also modified by Annexure A-7 order. The revaluation of answer papers is being done in cases of following grievances :-

(i) Particular answer(s) were not evaluated.

(ii) Excess attempted answer(s) were not evaluated.

(iii) For the same answer the examiner added marks to one candidate and to another no marks were assigned or the answer struck off as wrong.



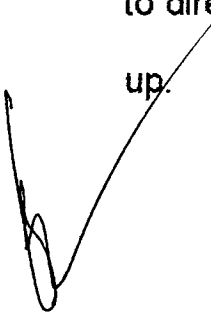
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The applicant's grievance for revaluation did not come under the above category, hence her request for revaluation was not considered. The answer to question No.41 furnished by the applicant was wrong and no marks was awarded."

6. Counsel for the applicant argued that the applicant's answer to the particular question cannot be held to be wrong in view of the fact that the same is more logical than the one given in the key answer. The uniqueness of the number 480 compared to the other three numbers has been brought more intelligently than the way the key answer reflected, which is more based on visual sense.


7. Counsel for the respondents has stated that the question is one of legal issue. Whether there is provision for revaluation and if not whether the action on the part of the respondents in rejecting the request is illegal. Since there is no question of revaluation save in respect of specified contingencies and since the request for revaluation of the answer sheet of the applicant does not fall under any of the specified contingency, no interference is called for.

8. Arguments were heard and the respondents were also directed to furnish the details of notified vacancies and whether there is any unfilled vacancy either in the same division or other divisions. In so far as Ernakulam is concerned, since none qualified in the examination held for GDS, the 3 vacancies in Ernakulam Division have already been transferred to direct recruitment for the year 2010 and the vacancies have been filled up.

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9. This is certainly a hard case. The applicant an young individual, working as GDSMD since 2006, has no further avenues. Selection within the departmental quota alone is the lone ventilation available to the applicant. Her claim is not on the ground that she being the top most ranker amongst the candidates who competed she must be selected without any comparison with the lowest marks obtained by the selected candidate in the previous year Direct Recruitment. She compares her marks as required and having secured only point 2 percent (.2%) she finds that had her one question been evaluated correctly, she would have been selected. Her claim is that the figure 480 is the odd man out of the four numbers (480, 314, 662 and 574, for it is that number which is divisible by factor 2 more than one number of time while all other numbers are divisible by 2 only once. The key answer reflected the number 662 on the basis of the fact that it is that number where number 4 is missing. This part of the question paper relates to "Reasoning and analytical ability." A comparison of the analysis that the term 4 is missing in 662 and hence, the same is the odd man out and that 480 is the odd man in view of its maximum multiple factors and the lone number which is divisible by 2 more than one time, (unlike the other numbers which are divisible by 2 only once) would reflect which answer is more analytical and has better reasoning. The Tribunal do not intend stating that the lone answer to the question is 480 which the applicant has answered, but the same could be (keeping in view the object of part of the question paper, i.e. reasoning and analytical ability) treated as 'more correct'. It has been held in the case of Subash Chandra Verma vs State of Bihar 1995 supp (1) 325 as under :-



(3) *Several controversial questions were set and in relation to some questions, there could be more than one answer. In an objective type of test, more than one answer are given. The candidates are required to tick mark the answer which is the most appropriate out of the plurality of answers. The questions and answers were prescribed by the experts in the field with reference to standard books. Therefore, it is incorrect to say that a question will have more than one correct answer. **Even if the answers could be more than one, the candidates will have to select the one which is more correct out of the alternative answers....** (emphasis supplied).*

10. Here is a case where the applicant deserves favourable consideration by the respondents on more than one ground – (a) The answer of the applicant cannot be held to be completely wrong. And if the marks thereof be awarded, the applicant could have been through. (b) The applicant is the lone individual who secured almost the same marks as the lowest mark of the previous year recruitment. Others are far below the applicant in their marks. (c) Though three vacancies were earmarked, none could be appointed from the GDS and thus, an imbalance in the ratio is also created.

11. Solution to the issue is not far from comprehension. If the applicant were selected, there would have been two posts which would have been transferred to the Direct Recruitment. Let there be one direct recruit vacancy that may be diverted from any of the unfilled posts in any other Division and against the same, the applicant could well be accommodated.



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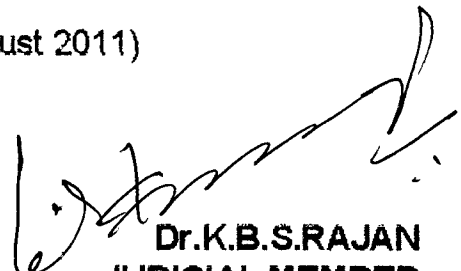
12. In view of the above, the OA is allowed to the extent that the respondents are directed to consider the case of the applicant for appointment against any of the unfilled direct recruitment vacancy in any of the Divisions. If there be no such vacancy under the Unreserved quota, one of the vacancies from any other reserved quota be diverted temporarily and the applicant accommodated and from out of the future unreserved vacancies, one vacancy could be diverted to that quota.

13. This order be complied with, within a period of three months from the date of communication of this order.

14. No cost.

(Dated this the 5th day of August 2011)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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