

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.468/07

Friday this the 1st day of February 2008

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

Jose Domanic,
S/o.Dominic,
Accountant, Head Post Office, Thodupuzha.
Residing at Quarters No.C2,
Postal Staff Quarters, Thodupuzha.

...Applicant

(By Advocate Mr.M.R.Hariraj)

Versus

1. Union of India represented
by Secretary to the Govt. of India,
Ministry of Communications,
Department of Posts, New Delhi.
2. The Director General,
Posts, Department of Post,
Dak Bhavan, New Delhi.
3. The Chief Post Master General,
Kerala Circle, Trivandrum.
4. The Sr. Superintendent of Post Offices,
Idukki Division, Thodupuzha P.O.
5. Smt.Thressiamma James,
Sub Post Master,
Kanchiyar P.O., Idukki District.

....Respondents

(By Advocate Mr.P.J.Philip,ACGSC)

This application having been heard on 1st February 2008 the Tribunal
on the same day delivered the following :-

8

.2.

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant in this case is seeking a direction to the respondents to fill up the vacancies in the cadre of LSG (Accts) and HSG II (Accts), APM (Accts) in Kerala Postal Circle strictly in accordance with the Recruitment Rule of 1976 and to consider him in preference to any others not qualified for the said posts. *According to him,* the decision of the 3rd respondent conveyed to SSRM, RMS 'TV' Division etc. vide Annexure A-1 letter dated 3.2.2006 for not holding separate Departmental Promotion Committees for making promotion to Higher/Lower Selection Grade Assistant Post Masters (Accounts) is contrary to the aforesaid Recruitment Rules. The following are the decisions contained in the aforesaid letter :-

(a) No more Departmental Promotion Committee is called for at Circle level for filling up of LSG APM(A/C)/AHRO(A/C) posts.

(b) LSG APM (A/C)/AHRO (A/C) vacancies arising in a division are to be added to other LSG vacancies.

(c) 1/3rd of the LSG vacancies including APM (A/C)/AHRO(A/C) are to be filled up at divisional level by promoting officials according to their seniority and eligibility in PA/SA cadre and 2/3rd to be notified for examination as per the condition laid down in the recruitment rules.

(d) No more separate Departmental Promotion Committee is called for for making promotion to HSG-II APM(A/C) by exclusively promoting LSG APM(A/C)/AHRO(A/C).

(e) Vacancies in HSG-II including HSG-II APM(A/C)/AHRO (A/C) are to be taken together and 1/3rd of these vacancies are to be filled up at Circle level by promoting LSG officials according to their strict seniority and 2/3rd of the vacancies are to be notified for examination.


8

.3.

2. The applicant in this O.A commenced his service as Postal Assistant in Kerala Postal Circle. He passed the examination for appointment to Accountants of Post Offices and Railway Mail Service conducted as per Rules 273 to 279 of Posts and Telegraphs Manual Volume IV on 17.5.1990. According to Rule 273 (a) (i) of the said rules, appointment to LSG, APM (Accounts) is to be made from among :-

"All clerks/sorters who have not less than three years continuous service as clerks/sorters as the last date fixed for the receipt of applications and have been declared permanent or quasi-permanent before that date; and have a consistently good record of service for the preceding 3 years are eligible to appear at the examination."

3. In terms of Rule 276-A (a) of the said rules '*official on the ordinary clerical, time scale of pay, who have passed the Accountants examination, will be eligible for appointment to posts of Accountants or Assistant Accountants in the lower selection grade in preference to their seniors in the general gradation list, who have not passed the Accountants examination even though such seniors may have passed the old lower selection grade examination.*' Thus the applicant is eligible for appointment to the post of Lower Selection Grade Accountant or Assistant Accountant in preference to anyone who has not passed Accounts test. The 3rd respondent has also clarified the position regarding the appointment of Time Scale Accountant and Lower Selection Grade Accountant from among the officials who have passed PO & RMS Accountants Examination and that Postal and RMS Accountants and Lower Selection Grade Accounts are separate cadres and appointments to



.4.

these cadres are made on circle basis vide Annexure A-4 letter dated 18.12.1959. Therefore, the applicant has sought the following main reliefs in this O.A :-

1. Call for the records leading to the issue of Annexure A-1 and Annexure A-11 and quash the same.

2. Direct the respondents to fill up the vacancies in the cadre of LSG (Accounts) and HSG II (Accounts), APM (Accounts) in Kerala Postal Circle strictly in accordance with recruitment rule of 1976 and to consider the applicant in preference to any others not qualified for the said posts.

4. Respondents have refuted the contentions of the applicant in their reply statement.

5. We have heard Shri.P.A.Kumaran, learned counsel for the applicant. It is seen that the issue involved in this case has already been decided by this Tribunal in O.A.140/07 on 11th October, 2007. The grievance of the applicants therein was also against the decision of the Chief Post Master General, Kerala Circle, not to hold separate Departmental Promotion Committee for making promotion to Lower Selection Grade Assistant Post Master (Accounts) (LSG APM A/Cs for short) as envisaged in the Recruitment Rules. The very same Annexure A-11 letter dated 24.5.2007 in this O.A was under challenge in the said O.A as Annexure A-7. This Tribunal quashed the said letter following the order of the Madras Bench of this Tribunal in O.A.201/06 passed on 21.11.2006 which is as under :-



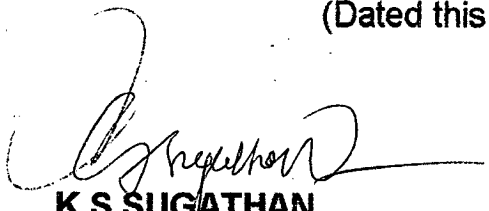
"13. The amendment notification at Annexure A-3 amends only provision relating to categories at Sl. Nos. 11 and 12 and the entries relating thereto as evident from para 2(ii) of the Recruitment rules at Annexure A-3. It does not effect any change in the provisions relating to categories at Sl. Nos. 15 or 16 viz. LSG Accountants in RMS offices for whom the above provision in 1976 Rule will continue to apply. This is the correct factual and legal position. The respondents confirmed this position by the clarification at point 10 of Annexure A-4 letter of the Ministry dated 28th January, 2003. Even point 15 of the above letter emphasises that officials having accounts qualification only may be considered for being posted as APM (Accounts). In the light of these parameters laid down by the respondents themselves, it is not clear why the department has all on a sudden issued Annexure A-7 letter dated 10.2.2006 withdrawing the clarification NO. 10 issued vide A-4 letter and directing clubbing of vacancies of LSG areas in a division. Though the Annexure A-7 order stated that it is issued in view of the Revised Recruitment Rules. The said clarification is not in consonance with the recruitment Rules which did not modify any of the provisions relating to LSG Accounts Posts. A clarificatory letter can be withdrawn by another letter. But a letter which is in the form of an advice by any construction cannot override the Recruitment Rules, the 1976 Recruitment Rules still hold the field as far as the LSG (Accounts) posts are concerned. A clarificatory order cannot take away the right given under the Recruitment Rules which are statutory in nature. The Madras Bench of the Tribunal has also held in its order dated 21st November, 2006 in O.A. 201/2006 on the same issue as under:

".....Without announcing the Accounts Line posts for the Fast Track Examination and filling up these post only from Fast Track qualified persons, and seeking clarification from the Directorate which is still awaited and not holding any DPC since 2002 for the PO & RMS Accounts line officials for filling up the norm based Accounts Line post on some plea or other, cannot at all be appreciated as being fair to all those who have passed the PO & RMS Examination and whose interest also needs to be protected by the respondents. Further it has been submitted by the respondents that the Directorate order dated 30.5.2006 has completely withdrawn the Fast Track Promotion scheme, which tantamounts to promotion from the feeder grade only and not through this Fast Track examination, thus strengthening the need for conducting the DPC for PO & RMS Accountants, without any further procrastination on the part of the respondents."

14. We are in respectful agreement with the same. Annexure A-7 is accordingly quashed. The applicants are eligible to be considered for promotion to norm based LSG Accounts vacancies based on Annexure A-2 Recruitment Rules of 1976. The respondents are directed to convene the Departmental Promotion Committee for consideration of the eligible applicants to the LSG Accountant posts and issue necessary promotion order if they are otherwise eligible as per rules within a period of four weeks from the date of receipt of the order."

6. Since this case is covered in all respects by the orders in the aforesaid O.As, this O.A is also allowed on the above line. Accordingly, we hold that the applicant herein is eligible to be considered for promotion to norm based LSG Accounts vacancies based on the Recruitment Rules of 1976. Respondents are, therefore, directed to convene the Departmental Promotion Committee for consideration of the eligible candidates to the LSG Accountant posts and to consider the applicant also along with others in O.A.140/07 if he is otherwise found eligible as per rules. There shall be no order as to costs.

(Dated this the 1st day of February 2008)


K.S.SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

asp