

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 486 of 2012

CORAM *Tuesday* this the 11^{th} day of August, 2015

***Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member***

1. Pushpakumari K.R. D/o Sri Ramakrishna Pillai aged 46 years, Postman, Erattupetta-I residing at Postal Staff Quarters, Erattupetta-I, Pin. 686 121.
2. Vinu K.K.S/o Sri K.K.Kumaran, aged 36 years, Postman, Kadanad Meenachil PO residing at Koottungal House, Amanakkara PO Ramapuram-686576.

...Applicants

[By Advocates M/s OV Radhakrishnan (Senior Counsel) & \
Mrs. K. Radhamani Amma)

Versus

- 1 Senior Superintendent of Post Offices, Kottayam Division, Kottayam.686001.
- 2 Postmaster General, Central Region, Kochi-682 018.
- 3 Assistant Director (Recruitment) Office of the chief Postmaster General, Kerala Circle, Thiruvananthapuram.695001.
- 4 Chief Postmaster General Kerala Circle, Thiruvananthapuram.695001.
- 5 Union of India, represented by its Secretary Ministry of Communications, New Delhi-110 001.
- 6 Ambili Thankappan, Postman, Erattupetta-2, Pin.686122.
- 7 K.N.Sasikumar, Postman, Palai HPO, Pin. 686575.
- 8 P.T. Thomas, Postman, Anthinad SO, Pin.686651.

....Respondents

[By Advocate Mr. E.N.Hari Menon, ACGSC for R. 1 to 5]

This application having been finally heard on 30.07.2015, the Tribunal on 1/...08.2015 delivered the following

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

This O.A has been filed by the two applicants to set aside Annexure.A7 to the extent it pertains to Kottayam Division. Annexure.A7 is the list of candidates qualified in the Limited Departmental Competitive Examination of Lower Grade Officials (LGO) for promotion to the cadre of Postal Assistants/Sorting Assistants held on 16.10.2011 as per which 3 persons were shown to have been selected in Kottayam Division, who are respondents 6 to 8 in this OA. The applicants also seek for appropriate direction to be given to the respondents not to make any appointment to the cadre of Postal Assistant from Annexure.A7 list. They further seek a direction to the respondents to conduct a fresh departmental examination strictly in terms of the revised pattern and syllabus for the vacancies of the year 2011 in respect of Kottayam Division.,

2. The case of the applicants is stated as under:

2.1 The applicants are working as Postmen under the 1st respondent. The first respondent issued notification dated 20.7.2011 communicating the circular of the third respondent inviting applications for taking the departmental examination for recruitment to the cadre of Postal Assistant/Sorting Assistant for the vacancies of the year 2011 scheduled to be held on 4.9.2011 from among eligible candidates. The last date fixed for receipt of the application was 23.7.2011. Three unreserved vacancies and one vacancy for SC and one vacancy for ST were notified to be filled up in Kottayam Division. The syllabus for the examination was



given in Annexure.A1 notification. The number of candidates for appearing in the Examination is restricted to six. The applicants applied for taking part in the examination to be held on 16.10.2011. On line admit cards were issued to them. (vide Annexures.A2 and A3). Paper I and Paper II consist of 50 multiple choice questions carrying 2 marks each. Each paper contain 100 marks. Out of the 50 multiple choice questions of Paper I question Nos 1 to 25 were arithmetic and tabulation. Question No.26 to 50 were general English/Hindi and grammar. Question 1 to 25 were printed in English. Question No.26 to 37 were printed in Hindi whereas question 38 to 50 were printed in English. Annexure.A4 is the question paper in Paper No.I. The first applicant answered all the 50 questions. The 2nd applicant answered all questions except item No. 26 to 37. Copy of the answer sheets are Annexure. A5 and A6. The list of qualified hands in the above examination was published as per Memo dated 10.2.2012 of the 1st respondent. Respondents 5 to 7 were included in the list of qualified hands for promotion to the cadre of Postal Assistants held on 16.10.2011 for the unreserved vacancies vide Annexure.A7. As per Annexure.A8 information obtained by applicants, Respondents 5 to 7 secured 132, 122 and 120 marks respectively. The 2nd applicant had been informed that he secured 48 marks in Paper I and 60 marks in Paper II. The first applicant had secured 40 marks in Paper I and 48 marks for Paper II. The 2nd applicant was informed that the questions relating to language part were not valued as evident from Annexure. A11 reply. It is clear that questions No.26 to 50 in Paper I were not valued but the valuation was restricted to arithmetic and tabulation part only. Thus the entire recruitment process for making selection to the appointment to the Postal Assistant is vitiated by wrong setting of question papers and confining the valuation to arithmetic and tabulation part only. Non-awarding of marks to language part Paper I comprising 25 multiple

questions carrying 50 marks out of 100 marks for paper I and awarding marks for arithmetic and tabulation by doubling the marks is patently illegal. Therefore, Annexure A7 list of candidates prepared on the basis of wrong awarding of marks is illegal and is liable to be set aside.

3. Respondents filed reply statement contending as follows:

3.1 After the examination was conducted the General Secretary, All India RMS & MMS Employees Union, Mail Guard & Multi Tasking Staff Group C, All India Postal Employees Union, Group C, General Secretary of National Union of Postal Employees, Postmen and Group D/MTS, General Secretary FNPO represented to the Director General stating that in Paper I of the LGO Examination held in 2011, there were 12 questions related to Hindi and 13 questions were in English language. They represented that this has caused much inconvenience to the candidates particularly working in South India such as Andhra Pradesh, Karnataka, Tamil Nadu and Kerala Circles who do not have enough knowledge in Hindi. They requested for examining this issue and demanded for conducting a fresh examination or delete the questions. Besides what has been stated above, the nodal officers of Andhra Pradesh, Tamil Nadu, Jammu and Kashmir and Kerala circles also reported about the same issue. They had also expressed resentments of the candidates who wrote the examination. It was found that Paper No.1 was set for 25 questions on arithmetic/tabulation in bilingual, 13 questions on English language and 12 questions on Hindi Language. That caused much concern for the candidates as they felt the problem of language. Thus the competent authority after a careful examination ordered that the Paper No.1 be restricted to 25 multiple choice questions on arithmetic/tabulation, each question carrying 4 marks. The rationale behind this order was that it should ensure the level playing field among all India

and non-Hindi circles, since the candidates attempting the multiple choice/tabulation questions ensure understanding of either language Hindi or English as the questions were printed in bilingual. Thus the answer scripts were evaluated only for 25 multiple choice questions on arithmetic/tabulation. It was uniformly adopted for all the candidates throughout the country and the results were also declared accordingly. As such the contentions raised by the applicants cannot be sustained. The selection process is not vitiated as contended by the applicants. There was flaw in setting Paper No.1 with reference to the questions on language part. There was no discrimination, since all the candidates who appeared in Paper I Examination were subjected to the same treatment. The applicants have not performed well in Paper No.1 and now they are challenging the selection procedure. Respondents 6 to 8 were also subjected to the same standard of evaluation as that was done in respect of the applicants. There is nothing illegal or arbitrary in the selection of Respondents 6 to 8. The action of the respondents is not arbitrary or vitiated by malafides.

4. A rejoinder was filed by the applicants stating that holding of fresh examination is not cumbersome or time consuming. Therefore the plea raised by the respondents that the valuation could be restricted to arithmetic/tabulation part only is unsustainable. There is a burden cast on the competent authority to conduct fresh Examination and to select the candidates in accordance with the merit in the examination. The competent authority cannot shift their responsibility by saying that conducting re-examination is cumbersome and time consuming. If the selection is illegal, the same has to be set right. The inconvenience to the department cannot be taken as ground for upholding the illegal selection.

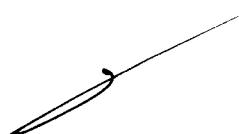
5. An additional reply statement was filed. The decision taken by the respondents was a bonafide one, taken uniformly throughout the country to solve

the impasse and to ensure level playing field to all the candidates who had attended the examination. It is not a case where the applicants alone were discriminated in the matter. As discrepancy arose in Paper No.1 there was no other option but to take a decision to avoid the examination being cancelled in toto which would cause much administrative difficulties to the department and also litigations, claiming appointment from the date of occurrence of vacancies. Conduct of fresh examination involves administrative difficulties and therefore it is not practical. Situation has got all the more complicated in so far as the vacancies of the year 2012 were notified. Those candidates qualified in the 2011 examination have already undergone training and have been appointed as Postal Assistants. The applicants wanted to unsettle the settled position which would open up numerous litigations.

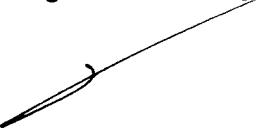
6. The points for consideration are whether Annexure. A7 list is to be set aside, whether appointment of Respondents 6 to 8 are to be set aside and whether a fresh departmental examination is to be conducted as sought for by the applicants.

7. We have heard the learned counsel appearing for the parties and have gone through the documents/annexures produced by the applicants.

8. It is not disputed that the applicants had taken part in the departmental examination held on 16.10.2011. It is also not in dispute that the first applicant had secured 40 marks for Paper No. I and 48 marks for Paper No.2. It is also not disputed that the 2nd applicant had secured 48 marks in Paper No. I and 60 marks in Paper No.II. The 6th respondent is shown to have secured 132 marks in total (for Paper I and II) 7th respondent total 122 marks (Paper No. I and II) and the 8th respondent has secured 120 marks in total. (Paper No. I and II). Therefore it is clear that the mark secured by the applicants was far below the marks secured by



respondents 6 to 8. It is also not in dispute that in paper No1 there were 12 questions related to Hindi and 13 questions in English language. According to the respondents it has caused much inconvenience to candidates particularly working in Andhra Pradesh, Tamil Nadu, Karnataka and Kerala Circles. It was asserted by the respondents that after the examination, the General Secretary and other office bearers of all the unions/associations represented to the respondents that the 12 questions in Hindi and 13 questions in English had caused inconvenience to the candidates. It was an all India examination. There was no dispute with regard to the 25 questions on arithmetic/tabulation in Paper No.1 which were shown in bilingual i.e., English/Hindi. Though the unions had also suggested that a fresh examination need be conducted, it was found impracticable since it was an all India examination. Lakhs of people had taken part in the examination. It is not easy or practical to conduct a fresh examination. Therefore, after thorough deliberation and consideration of the entire aspects they thought of evolving a uniform formula applicable to all the candidates. It was found that the holding of a fresh examination is cumbersome and time consuming. Thus they decided that Paper No.1 be restricted to 25 multiple choice questions on arithmetic/tabulation; each question carrying 4 marks. The rationale behind that order was that it will ensure the level playing among Hindi and non Hindi speaking circle. The candidates attempting the multiple choice questions on arithmetic/tabulation will ensure an understanding of either language Hindi or English since the questions were printed in Hindi as well as in English. Taking such a decision, all the answer scripts were valued only for 25 questions on arithmetic/tabulation giving 4 marks each. Thus the answer scripts were evaluated only for those 25 Multiple Choice Questions as mentioned above. It was uniformly adopted for all the candidates throughout the length and breadth of the country.



It was further contended that there was no grievance at all for any of the Unions in adopting such a uniform standard. Accordingly the results were declared.

9. It is true that there was flaw in setting Paper No.I with reference to the questions on language part Hindi and English. But on that ground alone the entire examination conducted through the country cannot be set at naught. The contention raised by the applicants that it is the duty and responsibility of the respondents to conduct a fresh examination even if it is cumbersome and time consuming cannot be countenanced at all. There was no discrimination shown to the applicants. It was a uniform decision applicable to all the candidates who had participated in the examination. Only because the applicants could not secure higher marks than respondents 6 to 8 in multiple choice questions it cannot be contended that there was discrimination to the applicants. The further plea that had the language paper been valued the applicants would have got more marks and in which event they would secure higher marks than R. 5 to 7 also cannot be sustained. There would be so many other candidates also who will have similar contentions that can be advanced. It is not the applicants alone who can decide and say that they would have secured more marks and if they are not selected the entire selection process should be set at naught and a fresh examination should be conducted.

10. It is contended that so far as the applicants are concerned they are satisfied that the fresh examination is conducted in Kottayam Division alone. As stated earlier the examination was conducted throughout the country. One district cannot be picked up and chosen for conducting a fresh examination since if such a course is adopted then there would be spate of litigations by other candidates who had taken part in the examination to conduct fresh examination throughout the country. It would be an unending process. The administrative difficulties and

inconvenience cannot be lost sight off. No discrimination was shown to the applicants. The applicants having participated in the examination and failed only because they could not secure the maximum marks in multiple choice questions relating to arithmetic/tabulation cannot contend that a fresh examination should be conducted. Though their request is only to have an examination conducted in Kottayam Division such a request cannot be entertained. If such a request is entertained the whole examination conducted throughout the country or at least in South India has to be set aside. That cannot be done. It is also contended by the respondents that vacancies for the year 2012 have been notified. Not only that the candidates who had been selected in the 2011 examination had already undergone training and they have been posted as Postal Assistants at different stations. Any attempt to unsettle the settled position would open up a flood-gate of litigation. The contention that the applicants would have been successful if questions in Hindi and English had been valued is hypothetical since there would be so many other candidates also who would have secured more marks in Hindi and English.

11. It is a case where all the unions and associations had earlier raised similar grievances and a uniform decision was taken by the department. There was no complaint for any union/association thereafter. It is true that only because the union had no complaint an illegality (if there is any) cannot be set right. But we are not inclined to hold that there was any illegality in the decision taken by the respondents. It was applicable to all the candidates who had participated in the examination. In other words, there was uniformity and rationality in the decision taken by the respondents to eliminate the questions on language Hindi and English and confining it to the multiple choice questions on arithmetic/tabulations only.

12. It is also pertinent to note that another application also filed by three other candidates was pending as OA 452/2012. Those applicants after realizing the fact that a uniform decision was taken by the respondents they submitted that the Original Application No. 452/2012 can be closed. Thus that O.A was closed. That also would strengthen the case of the respondents that only because they have taken a uniform decision that the other applicants have chosen not to prosecute the matter.

13. Relying on the decision of the Hon'ble Supreme Court in **Union of India Vs. Pushpakuamri and others -- 2008(9) SCC 242**, it is argued by the learned counsel for the respondents that the matters relating to creation/abolition of post, formation/restructuring of cadre, sources/mode of recruitment, prescription of qualification, selection criteria, evaluation of service records etc. are matters within the employer's domain and that judicial review can come into only if State action is contrary to constitutional or statutory provisions or is patently arbitrary or is vitiated by malafides. As has been said earlier the decision taken by the department was applicable to all the candidates and no discrimination whatsoever was shown to the applicants. The review or decision had to be taken by them in that line only because of the facts and circumstances narrated earlier. There is nothing to show that the action taken by the respondents is opposed to any constitutional or statutory provisions or is malafide. As such we find no merit in this application.

14. In the result this O.A is dismissed. No order as to costs.


(P.Gopianth)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member