

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 527/2007

FRIDAY THIS THE 5th DAY OF OCTOBER, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

D. Balakrishnan S/o Damodaran
Postman, Speed Post Center,
Head Post Office, Thiruvalla
residing at Valayil House,
Chathankari PO
Thiruvalla.

..Applicant

By Advocate Mr. V. Sajith Kumar

Vs.

- 1 The Superintendent of Post Offices
Thiruvalla Postal Division
Thiruvalla
- 2 Chief Postmaster General
Kerala Circle, Department of Posts,
Trivandrum
- 3 Director General of Posts,
Department of Posts,
Dak Bhavan, New Delhi.
- 4 Union of India; represented by the
^{Mr. S. Srinivasan, S/o Post, Secy.}
Secretary to the Government of India,
New Delhi.
- 5 Postmaster, Head Post Office
Thiruvalla.

..Respondents

By Advocate Mr.T.P.M. Ibrahimkhan, SCGSC.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The Applicant who is working as a Postman at the Speed Post Center, Thiruvalla, is aggrieved by Annexure A-10 circular

- dated 15.1.2007 to the extent it limited the number of chances for the Lower Grade Officials for taking the departmental examination for promotion to the cadre of Postal Assistant/Sorting Assistant and the consequential orders issued by the respondents rejecting his candidature in the LGO Examination conducted in the year 2007.

2 The following reliefs have been prayed for in the O.A.

(i) To call for the records leading to Annexure A-10 dated 15.1.07 and the circular No. Rectt/10-3/07.I dated 3.1.07 attached to it and to quash the same to the extent it restricts the number of chances for Lower Grade officials for taking the departmental examination for promotion to the cadre of PA/SA as six and Annexure A-11 letter dated 24.4.2007 of the 5th respondent rejecting the candidature of the applicant and to quash Annexure A-13, Annexure A-15 and Annexure A-16 orders to the extent the applicant; is excluded from selection in departmental examination for promotion as PA/SA conducted on 27.4.07.

(ii) To issue appropriate direction or order commanding the respondents to regularise the candidature of the applicant in the departmental examination for promotion to PA/SA conducted on 27.4.07 and promote him to the cadre of PA on the basis of the result in the above examination with all consequential benefits.

(iii) Grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case.

3 The grounds urged in support are:

(i) The applicant has a fundamental right to be considered for promotion to the cadre of PA/SA in accordance with Annexure A-1 and A-2 Recruitment Rules dated 27.12.1990 and 31.1.1992 and these rules are statutory rules which cannot be altered, amended by administrative instructions.

(ii) The Recruitment Rules do not restrict the number of chances for appearing for the Departmental Examination and the respondents cannot superimpose the eligibility conditions which are not provided in the Recruitment Rules.

(iii) As on today Annexures A-1 and A-2 Recruitment Rules are not even amended incorporating any limitation on the number of chances to be availed of by the departmental candidates.

(iv) Annexure A-6 to the extent it limits the chances to six is contrary to Annexure A-5 and A-7 orders of this Tribunal in O.A. 975/97 and 1006/01

(v) Respondents have issued regular hall ticket and permitted the applicant to write the examination. The applicant has scored sufficient marks but he has been excluded from the select list on the ground that his candidature is purely provisional. This action of the respondents is without any logic or reason and against the directions of the Tribunal.

4 The applicant has also further submitted that he has availed only five chances in the Departmental examination, though he applied for the test six times, he could not appear in the examination held on 24.4.2005 due to illness and had submitted a representation on 20.4.2007 explaining the above circumstances. In the year 2005 itself

he had applied for withdrawal from the examination on medical grounds by representations dated 19.4.2005 and 22.4.2005. Moreover, he was suspended with effect from 9.4.2005 and the suspension order was communicated to him on 16.4.2005 and at that time his application for medical leave was pending with the Postmaster, Thiruvalla from 9.4.2005. Due to these circumstances he had intimated his intention to keep away from the examination in the year 2005.

5 Reply statement has been filed. The respondents have averred that the recruitment to the cadre of Postal Assistant /Sorting Assistant in the Department of Posts is governed by the Department of Posts (Postal Assistants & Sorting Assistants) Recruitment Rules, 2002 promulgated as per notification dated 9.1.2002 published in the Gazette of India dated 10.1.2002 and effective from that date. The 1990 Recruitment Rules mentioned by the applicant has been superseded by the 2002 Amendment. In the 2002 Rules under Column 11 of the Schedule the following note has been incorporated:

"Note:- The procedure for recruitment shall be governed by the administrative instructions issued by the department from time to time."

6 The details regarding the method of recruitment such as syllabus, qualifying marks and the number of chances etc. are taken care of by such departmental instructions. The right of the respondents to issue such instructions came up for judicial scrutiny in B. Sujatha Vs. Union of India and Ors. (O.A 274/2004) before this Tribunal and it has upheld the same. The earlier orders issued by the Tribunal in O.A.1006/2001

was rendered in the scenario prevailing at the time of passing of that order. At that relevant time the **1990 Recruitment Rules** governed the field. This issue has again come up before the Tribunal in O.A. 262/2005 and the Tribunal has dismissed the OA upholding the right of the Department to issue such administrative instruction in the light of the **2002 Recruitment Rules**. The Tribunal had elaborately considered the legal issue and held as follows:

"15 The second question is whether the applicant can continue to place reliance on Annexures A-5 and A-7 judgments of this Tribunal which were rendered before the amendment of the Recruitment Rules. In fact it was in order to meet the observations of this Tribunal in the above judgments since the earlier rule did not provide for any restriction in the number of chances for appearing in the examination and that such a right vested in the Lower Grade Officials could not be restricted and divested by administrative instructions, that the respondents sought to amend the Recruitment Rules to take such a power to provide for such a contingency by issue of administrative instructions. This is evident from the provisions of the amended Recruitment Rules according to which in col. 11 the following note has been incorporated:

Note- The procedure for recruitment shall be governed by the administrative instructions issued by the department from time to time.

16 Therefore, the vires for striking down the restricting provisions on the basis that they do not derive any source of power from the Recruitment Rules cannot be extended to the new Recruitment Rules and the examinations held consequent to the amended Recruitment Rules according to the administrative instructions regarding restriction of the number of chances would after coming in to effect of the new Recruitment Rules of 9.1.2002 be deemed to be in accordance with the provisions in the Recruitment Rules. Therefore we will have to reject this contention of the applicant that the respondents are bound by the orders in Annexures A-5 and A-7 judgment of this Tribunal which have become final as they were rendered in a different legal matrix."

In view of the above finding of the Tribunal in the O.A. 262/05 the attempt of the applicant to project his case relying on the orders of the

Tribunal in O.A. 975/97 and 1006/01 has no legal backing and it cannot be accepted.

7 With regard to the applicant's contention that he had availed of only five chances, it has been submitted that the applicant was under suspension w.e.f. 9.4.2005 was admitted provisionally for the LGO examination held on 24.4.2005 but he had neither accepted the hall ticket nor appeared for the examination nor had he submitted any application at any time seeking permission to withdraw his candidature. As per Rule 6 of Appendix 37 of the P&T Manual Vol.IV an extract of which is produced as Annexure R-4, withdrawal of candidates should not ordinarily be allowed unless the circumstances of the case fully justify the concession. The official was neither under medical leave nor had he submitted any request for withdrawal of his candidature. Therefore it has been considered that he has already availed the maximum permissible six chances and was not admitted initially to the examination proposed to be held on 29.2.2007. The applicant filed O.A. 275/07 seeking permission and considering his representation and the fact that he had filed the O.A. the hall permit was issued to him and his candidature was made provisional. Therefore, his results have not been published as the very admission of the applicant to the examination was irregular and there is nothing illegal in the order at Annexure A-16 dated 15.2.2007.

8 The rejoinder has been filed.

9 We have heard Shri V. Sajith Kumar for the applicant and Shri Shaji, on behalf of Shri TPM Ibrahim Khan, SCGSC appearing on

behalf of the respondents.

10 In the light of the reply filed by the respondents enclosing the judgment of this Tribunal in O.A. 274/04 and 262/05 upholding the right of the respondents to issue administrative instructions to govern the procedure for the departmental examinations taking note of the amended provisions in the **2002 Recruitment Rules**, the learned counsel for the applicant submitted that he is not pressing for that part of the relief regarding quashing of Annexure A-10 to the extent it restricts the number of chances and stated that he was not aware of the above developments in this regard. He further submitted that at this point of time since the applicant has already appeared in the examination, has also qualified in the same as admitted by the respondents themselves, the results of the examination may be declared and he may be considered for promotion and appointment duly considering his appearance in this examination held on 29.4.2007 as the **sixth** chance admissible within the limits prescribed in accordance with the Recruitment Rules. On behalf of the respondents it was stated that the applicant had fared well in the examination and qualified in the examination as per the marks obtained by him.

11 We have considered the submissions of the learned counsel and perused the records and judgments referred to by them. At the outset we would like to state that it is the primary responsibility of the applicant to be well aware and place all full and correct facts before the Tribunal and any suppression of the facts whether wilful or otherwise has to be viewed seriously. The applicant's reliance on Annexure A-1 and A-2

Recruitment Rules dated 1990 and 1992 and the categorical statement made in ground (H) of the O.A. that even as of today these Recruitment Rules have not been amended, are a patent travesty of facts, in the light of the position brought out by the respondents with the issue of Recruitment Rules 2002. Similarly the reliance placed by the applicant on the judgment of this Tribunal in O.A.Nos. 975/97 and 1006/01 was entirely misplaced as the orders in O.A. Nos. 274/04, 262/05, etc. hold the field. This also amounts to suppression of facts and as the applicant and his counsel should have done his home work properly before filing the O.A. Ignorance of Rules/Law cannot be pleaded as an excuse.

12 While noticing this position since the counsel of the applicant has argued that he is relinquishing the prayer to that effect, we would now consider only the question whether the applicant had availed of all the six chances to appear in the examination as provided in the the rules/instructions. Evidently from the records it is seen that the said last chance was in respect of the examination which was conducted in the year 2005. The respondents have also admitted the fact that though the examination was held on 24.4.2005 the applicant had neither accepted the hall ticket nor appeared in the examination. It is also admitted that he was under suspension w.e.f. 9.4.2005. His application for medical leave was according to the respondents received by the Postmaster, Thiruvalla on 2.4.05 and was pending before the Department. Neither the applicant nor the respondents have stated when the applicant returned to duty from suspension, though it was submitted by the applicant that the disciplinary

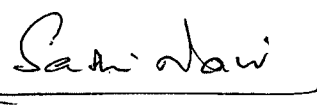
proceedings ended with minor penalty on 29.4.04. The respondents have relied on Annexure R-4 Rules. These rules stipulate that withdrawal of candidature should be allowed only if the candidate could not avail of the chances because of circumstances beyond his control and only if the departmental authority is fully satisfied with the genuineness of the case. It further provides that no withdrawal will be allowed after the examination even in the case of candidates who returned from medical leave and such request must be submitted within ten days from the date of return from duty. But the respondents are silent on the averments of the applicant that he had requested for withdrawal prior to the date of the examination i.e. on 19.4.2005 itself and in support thereof he has produced Annexure A-9 dated 22.4.2005 in which there is a reference to his earlier representation dated 19.4.05. Since the respondents have not denied the receipt of the Annexure A-9 representation it had to be presumed that it had been received but no final order has been communicated to the applicant on the request. Hence to say that withdrawal of candidature cannot be allowed after the examination at this point of time even in medical leave cases is unreasonable and such a stand of the respondents is also unsustainable in law. Besides, it is also seen that the applicant was under suspension and probably for that reason the respondents themselves had made his admission as provisional. It is admitted that he did not accept the hall ticket without which he could not have taken the examination. In order to satisfy the full meaning of "avail of a chance" one should have actually appeared in the examination which is the culmination of the process initiated by the application. Therefore, on all counts, it cannot be said that the

applicant has availed of his last chance for taking the examination in the year 2005. The applicant shall therefore be considered as eligible to appear in the 2007 examination that being his **sixth chance**.

13 The respondents have submitted that the applicant has qualified in the examination held on 29.4.2007 to which he was allowed provisionally. The candidature of the applicant having been found to be regular, the results are to be announced and further action taken to promote him to the cadre of PA/SA on the basis of the result in the above examination. We therefore direct the respondents to take action accordingly. The learned counsel for the applicant also brought to our notice at the time of hearing that the selected candidates are being sent for training and that the training will commence from **1st October, 2007**. Therefore we also make it clear that any delay likely to be caused in the finalisation of the applicant's selection and deputation for training caused by the pendency of this O.A. and the receipt of copy of the order in this O.A. by the respondents would not stand in the way of the applicant being sent for deputation for the stipulated period of training along with others. The O.A. is partly allowed as above. No costs.

Dated 5.10.2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN