

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 534 of 2012

Monday, this the 26th day of August, 2013

CORAM:

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Smt. E. Girija, W/o. P. Ponnu,
Gramin Dak Sevak Mail Deliverer,
Kadannamanna Branch Post Office,
Perinthalmanna Sub Division, Manjeri Division
Residing at Parasseri House, Kadannamanna P.O.,
Mankada, Malappuram District

... 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 : 695 233
2. The Senior Superintendent of Post Offices,
Manjeri Division, Manjeri : 676 121
3. The Assistant Superintendent of Post Offices,
Perinthalmanna Sub Division,
Perinthalmanna : 679 322
4. Smt. Indira, W/o. Krishnan,
Njarekkattil House, Mankada P.O.,
Malappuram District : 679 322

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil for R1-3 and
Mr. P. Vijayakumar for R-4)

This application having been heard on 06.08.2013, the Tribunal on
26-08-13 delivered the following:

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant was engaged in the post of Gramin Dak Sevak Mail
Deliverer (GDSMD-I), Kadannamanna Branch Post Office, on temporary basis



as part of a stop gap arrangement with effect from 01.03.2010 on absorption of the then incumbent to the department as Postman. She was 2nd in the merit list based on the S.S.L.C mark list and one of the 05 candidates who were called for verification of the original documents and cycling test on 11.06.2012 for filling up the post of GDSMD-I, Kadannamanna Branch Post Office as per notice dated 03.04.2012 at Annexure A-1. The 4th respondent was selected as GDSMD-I, Kadannamanna Branch Post Office and she was placed in-charge of the post with effect from 28.06.2012 terminating the engagement of the applicant. Aggrieved, the applicant has filed this O.A for the following reliefs:


- (i) To call for the records relating to Annexures A-1 to A-3 and to direct the respondents to conduct a cycling test again in order to prove prowess;
- (ii) To quash Annexure A-1 notice being illegal and arbitrary;
- (iii) To declare that the applicant is entitled to be given a fair chance in the selection and to declare that selection of the 4th respondent in preference to the applicant as illegal, arbitrary and violative of natural justice;
- (iv) To direct the 2nd respondent to permit her to continue as GDSMD, Kadannamanna; or in the alternative
- (v) To direct the 2nd respondent to appoint the applicant in any other similar post with same TRCA as a surplus/discharged GDS;
- (vi) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case; and
- (vii) To grant the costs of this Original Application.

2. The applicant contended that the action of the 3rd respondent in rejecting the candidature of the applicant on the ground of not knowing cycling when she has been discharging the duties of the same post for the last 03



years using cycle only and in inducting the 4th respondent who is having less marks than the applicant, is illegal and arbitrary. The applicant had a slip while trying to mount the bicycle, which resulted in a fall. The 3rd respondent cashed in on the nervous condition of the applicant after the fall and even made her to write that she does not know cycling. She fulfilled all the qualifications specified in Annexure A-1 notice and the rules and is having highest marks in the S.S.L.C examination from among eligible candidates. The applicant need not be penalised for a momentary lapse in mounting the cycle. She is entitled for an alternative posting having rendered 03 years of service in the present post on the basis of the letter of the Director General Posts dated 18.05.1979.

3. The official respondents in their reply statement submitted that the applicant had stated that she did not know cycling and the fact was recorded in the Annexure R-1 attendance sheet by the applicant herself. In compliance with the interim order of this Tribunal dated 29.06.2012, another cycling test was conducted solely for the applicant on 17.07.2012 and she was qualified in the same. The applicant had on her own free volition abstained from the cycling test on 11.06.2012. Cycling test was conducted at the courtyard of Perintalmanna post office in broad day light and in the presence of onlookers. Though the representation of the applicant against the selection was dated 12.06.2012, the same was sent from Mankada post office only on 19.06.2012 and received by the 2nd respondent on 20.06.2012. Before any action could be taken, the applicant approached this Tribunal without exhausting the official channels of remedy. The 4th respondent who fulfilled all basic conditions was selected on merit and she was placed in charge of the post



with effect from 28.06.2012, terminating the services of the applicant. The contention of the applicant that she has put in 03 years of service is not true. The applicant did not know cycling on 11.06.2012. The fact that the applicant had worked in the post for about 03 years does not mean that she knew cycling and that she has done delivery using cycle. Her engagement in the post of GDSMD-I, Kadannamanna Branch Post Office was from 01.03.2010 to 27.06.2012 with intermittent breaks. She has not completed 03 years of service even on stop gap basis. Since knowledge of cycling is a pre-requisite for appointment as GDSMD, the applicant could not be given appointment to the said post even though she secured higher marks than the selected candidates. The stipulations in letters dated 23.02.1979 and 1805.1979 are applicable only in the case of GDS who were appointed following due process of selection. The engagement of the applicant does not entitle her for regular selection or alternative appointment. The selection and appointment to the post of GDSMD-1, Kadannamanna Branch Post Office has been made strictly in accordance with the relevant rules. The respondents have produced Annexures R-2, R-3, R-4 and R-5 statements from onlookers in support of their contention.

4. In the rejoinder statement filed by the applicant, it was submitted that Annexures R-2, R-3 and R-4 were given by the respective employees only to please the 3rd respondent. Annexure R-5 statement was withdrawn by the person concerned as evident from Annexure A-4.

5. In the additional reply statement filed on behalf of the official respondents, it was submitted that nobody was directed to be a witness in the



cycling test conducted on 11.06.2012 as there is no provision for this in the GDS Recruitment Rules. The employees who gave Annexures R-2, R-3 and R-4 statements are not working under the control of the Assistant Superintendent of Post Offices (3rd respondent). Hence the question of pleasing him to receive favours does not arise at all.

6. The 4th respondent in her reply statement submitted that she was found fit for the post in question as per rules and was selected. She underwent practical training for 06 days from 15.06.2012. Thereafter she was given appointment letter dated 27.06.2012 and she is working as regular GDSMD-I at Kadannamanna Branch Post Office from 28.06.2012.

7. We have heard Mr. Shafik M.A, learned counsel for the applicant, Mr. Thomas Mathew Nellimoottil, Sr. Panel Counsel appearing for the respondents 1 to 3 and Mr. P. Vijayakumar, learned counsel for the respondent No. 4 and perused the records.

8. The undisputed facts are that the applicant was engaged in the post of GDSMD-I, Kadannamanna Branch Post Office from 01.03.2010 to 27.06.2012 and that she is having higher marks than the 4th respondent in the S.S.L.C examination. As per Annexure A-1 notice, the following conditions have to be satisfied by the candidates for consideration for appointment to the post of GDSMD.

- "1. Age should be between 18 to 65 years as on 07.05.2012;
2. Should have passed VIII std. Preference will be given to those who have passed 10th std. (SSLC or equivalent);



3. Should know cycling;
4. Selected candidates should take up his residence in the delivery jurisdiction of Kadannamanna Branch Post Office before appointment;
5. Selected candidate should be medically fit;
6. Attested copies of relevant pages of certificates showing date of birth and marks obtained in the SSLC or equivalent exam should be submitted along with the application;
7. Candidates should attend verification of the original documents at their own cost if called for. The candidate should also undergo a cycling test. He should also bring a suitable bicycle for the cycling test;
8. Any form of canvassing, furnishing of false information or suppression of any factual information will be a disqualification;
9. LIC Agency is a disqualification. (an agent will have to quit the agency before the last date prescribed for receipt of application, if his candidature is to be considered);
10. The selected candidate will have to furnish security deposit for Rs. 10000.00 or remit premia for FG Bond for the said sum.
11. Applicants who are having SSLC Mark List with Grading system of marks should make arrangements to get the Mark list with original marks forwarded to the undersigned by the competent authority before the last date fixed for receipt of the applications (07.05.2012). If the Mark list with original marks is not received on or before the stipulated date at this office, the applications with Grading System of marks will not be considered."

The merit list of the candidates is based on the marks they obtained in the S.S.L.C or equivalent examination. A candidate should know cycling. The disputed fact in this O.A is whether the applicant knew cycling on 11.06.2012 when the cycling test was conducted. The statement by onlookers and the retraction statement are of little evidential value. Neither the applicant nor the respondents could establish beyond doubt what they submitted in respect of the cycling test of the applicant on 11.06.2012



9. Even if the applicant knew cycling, it is established that on the date of cycling test, the applicant did not pass the test. The applicant has no contention to the contrary. The 4th respondent had qualified in the cycling test. Others having been disqualified for one reason or other, the 4th respondent was selected by the respondents for appointment to the post of GDSMD-I, Kadannamanna Branch Post Office. We do not find any serious irregularity in the said selection process calling for interference by this Tribunal, unseating the 4th respondent who is occupying the post of GDSMD-I, Kadannamanna Branch Post Office since 28.06.2012 after undergoing practical training for a period of 06 days.

10. On the other hand, the applicant is having higher marks than the 4th respondent in terms of the marks in the S.S.L.C examination. She was engaged in the post of GDSMD-I, Kadannamanna Branch Post Office from 01.03.2010 to 27.06.2012 with intermittent breaks. She was earlier engaged in the said post on various occasions in the leave vacancy of the then incumbent. Her averment that she had been discharging the duties of the post pedalling a cycle is not refuted by the respondents. Normally, if the applicant was using a bicycle, it should have been known to the respondents or it could be easily ascertained. That she knows cycling is established in the test conducted on 17.07.2012. In the application filed by the applicant for appointment to the post of GDSMD-I, Kadannamanna Branch Post Office dated 01.05.2012, she had stated that she knew cycling. It is not stated whether the applicant brought suitable bicycle for the cycling test as per condition No.7 (ibid) or not. It is hard to believe that a candidate who states



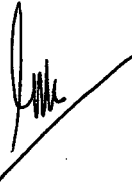
her knowledge of cycling in the affirmative in the application form and comes with a cycle for the cycling test, did not know cycling. If the applicant did not know cycling, she is not eligible to be considered for appointment as GDSMD. If she had given false information as to her knowledge of cycling in the application form, she would have been disqualified as per condition No. 8 (ibid). But there is no provision in the notice at Annexure A-1 to get a submission in writing from the applicant in the attendance sheet. The respondents could have been more scrupulous in observing the conditions to be satisfied by the candidates. All those were called for verification of original certificates and cycling test had stated in the application form that they knew cycling. Hence there is no scope for asking each candidate on 11.06.2012 whether he/she knew cycling. The applicant would have been exposed if she had given false information as to cycling in her application form, if she could not ride the bicycle. If she had slipped once, the respondent No.3 could have been more forbearing and less imperious and she could have been given a 2nd chance. Fairness should not only be practiced but also should be seen to be practiced.

11. In the conspectus of the facts, circumstances and issues involved in this O.A, we are of the considered view that ends of justice would be met if the applicant is given the consideration due to a discharged GDS. If she is falling short of the required length of service, with a view to make up the shortfall, she may be engaged as GDS in any available vacancy at the earliest. Thereafter, she maybe considered for appointment as GDS MD or in a similar post as per letters dated 23.02.1979 or 18.05.1979 of the Director General of Posts. Ordered accordingly.

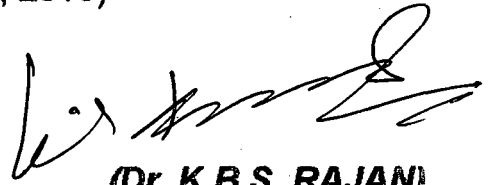


12. As prayed for, cycling test was conducted again as per order dated 29.06.2012. The O.A. is allowed to the extent indicated above. No costs.

(Dated, the 26th August, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVT.