

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 537 of 2007

Wednesday, this the 5th day of March, 2008

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

V.S. Ramya,
D/o. Satheesan,
Satheesh Mandiram,
Kutappara, Kuttaikonam,
Thiruvananthapuram : 695 584

... **Applicant.**

(By Advocate Mr. Vishnu for Sasidharan Chempazhanthiyil)

v e r s u s

1. Assistant Superintendent of Post Offices,
Office of ASP, Thiruvananthapuram North
Sub Division, Thiruvananthapuram – 36.
2. Senior Superintendent of Post Offices,
Thiruvananthapuram North Sub Division,
Thiruvananthapuram – 36.
3. Union of India represented by
Chief Postmaster General,
Kerala Circle, Thiruvananthapuram. ... **Respondents.**

(By Advocate Mr. George Joseph, ACGSC)

The Original Application having been heard on 28.02.08, this Tribunal
on 05.03.08 delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The facts as contained in the OA: Pursuant to the notification published
by the first respondent, the applicant applied for the post of GDS Stamp Vendor,
Pothencode. The notification specified amongst other things, cycling test as
well. She had secured 488 marks.



2. As the applicant did not receive any call letters, she penned a representation to the Chief Post Master General, vide Annexure A-2. This resulted in the issue of a call letter to the applicant along with others. The applicant passed the cycling test, while certain aspirants having higher marks than the applicant in the academic qualifications, did not pass the cycling test. The applicant was, thus, issued with Annexure A-5 appointment order dated 27.07.2007, with a direction to report for duty within 3 days. However, on her presenting herself to join duty, on 01-08-2007 the applicant was not permitted to join duties. As such, Annexure A-6 representation was submitted by her and the respondent served upon the applicant Annexure A-7 impugned order dated 01.08.2007 stating that "for technical reasons the appointment made from 01.08.2007 F/N to Kumari V.S. Remya Satheesh Mandiram, Kulappara, Kattaikonam – 695 584 is hereby cancelled."

3. The applicant had moved a representation dated 13-08-2007 (Annexure A-8) stating that no reasons for cancellation of the order of appointment had been given in the order dated 01-08-2007 and further no opportunity of being heard was given to the applicant before cancelling her appointment.

4. As there was no further response from the respondents, the applicant had moved this OA, seeking the following main reliefs:-

(i) Call for the records leading to the issue of Annexure A7 and set aside the same;

(ii) Declare that the applicant is entitled to be continued as GDSSV, Pothencode S.O;

(iii) Declare that cancellation of the applicant's appointment as

GDSSV, Pothencode S.O. Without notice is illegal and arbitrary;

(iv) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

5. Respondents have contested the OA and according to them, certain discrepancies were noticed in the process of appointment to the post of GDSSV, Pothencode. These are as under:-

(i) Notification dated 22.1.2007 was not in the prescribed format.

(ii) Vacancy is originally noted as provisional but Office of Chief PMG had given permission to fill up the post permanently.

(iii) TRCA of the post was not mentioned in the notification.

(iv) The prescribed nomination of candidates from Employment Exchange was not obtained as per the extant orders.

(v) For the GDS SV post cycling test was notified as a required qualification and selection was made accordingly which was not correct. Since the GDS SV post was a stationary post, no cycling test was necessary."

And on account of the above reasons, the second respondent, the Sr. Superintendent of Post Office, invoked the provisions of Rule 4(3) of Department of Posts Gramin Dak Sevak (Conduct and Employment) Amendment Rules 2003 and brought to the notice of the first respondent of the erroneous appointment, and the first respondent had accordingly cancelled the appointment order issued by him before the applicant joined the post. In para 6 of the counter, the respondents had indicated the total number of applicants who had applied for and the marks obtained by them in the academic qualification. Of them, the

applicant stands at the third position with 488 marks, while the first was 539 marks and the second 499. It has also been stated that as per rules, for the static post of Stamp vendor, which does not involve any outdoor duties, cycling test is not a pre-requisite and thus, in the absence of cycling test, and since the applicant's selection was based on such cycling test, her appointment was to be cancelled.

6. The applicant filed her rejoinder contending that the discrepancies pointed out did not call for a cancellation of the selection process. At any rate, having invited applications and having conducted a selection process and having given an appointment order, it is unfair to cancel the entire selection process on the ground that review had been conducted pursuant to the complaint which had been made months ago by the applicant about non issue of call letter to her. Contention that cycling test is not required was also denied, as cycling test is being conducted for all the posts of GDS except BPM, as there is an obligation of the respondents to offer alternative appointment to any GDS employee on retrenchment and if the post of GDS SV is abolished, then it would not be possible to offer such an appointment in case the GDS SV does not know cycling.

7. By a Misc. application the applicant sought for production of the notification published. The same had been allowed and the respondents have produced a copy of the same.

8. Counsel for the applicant submitted that cancellation of the appointment of the applicant is certainly illegal. For, there was no opportunity of being heard and the reasons for cancellation also are feeble. Cycling test is a must for all the

posts of GDS save of BPM as there would be a contingency of such individuals to be accommodated against other GDS posts, where knowledge of cycling would be essential.

9. Counsel for the respondents submitted that the procedure adopted by the first respondent was thoroughly off the one provided for in the rules and as there was no option save to cancel the appointment of the applicant.

10. Arguments were heard and documents perused. It is true that the applicant stood third in merit in respect of educational qualification. But he had passed in the cycling test, while those who had higher marks in the academic qualification did not pass in the cycling test. If cycling test is one of the prerequisites, then obviously, it is the applicant who was to be appointed and in fact that was what had happened. In the case of *Kiran singh vs Union of India* (2007) 9 SCC 716, the Apex Court has held as under:-

“The appellant and Respondent 5 both have qualified the High School examination by securing first division. The eligibility criterion for the selection of the candidate to the post of EDBPM as per the Service Rules was not only the merit between the two candidates in High School examination but the additional criterion was that the candidate must be one who has “adequate means of livelihood derived from landed property or immovable assets” if the candidate is otherwise eligible for appointment. The instructions governing the eligibility of the candidates also provide that no weightage will be given for any higher qualification. The appellant has fulfilled the essential qualification and required eligibility criterion and as such her selection to hold the post in question was valid whereas Respondent 5 was not eligible to be appointed on the post for lack of income criterion in terms of the Circular.”

11. Thus, if there be the requirement of knowledge of cycling, then as per the above judgment, the applicant, who fulfills the additional criteria has been rightly selected and the cancellation of appointment is illegal.

12. But the respondents contend that for the post of GDS SV, which is a static post, there is no requirement of cycling knowledge.

13. The above was denied by the counsel for the applicant who submitted that there is a purpose in requiring the GDS SV also to have cycling knowledge, as there is an obligation for accommodating him in case of retrenchment. There is no specific provision in the rules that cycling test is not required for GDS SV. For all the GDS post, save GDS BPM, cycling test is provided for, as per the counsel for the applicant. Notification is also providing for such a requirement of knowledge of cycling for the post of GDS SV.

14. The question thus is now whether the cycling test is a pre-requisite for the post of GDS SV. The respondents have not produced any evidence to show that cycling test is not required, whereas the notification specifies that knowledge of cycling is essential. If the rules are silent about this aspect, it should be seen whether there was a practice to hold cycling test. For, in the absence of rule, long practice if available, would suffice. In the case of *U.P. Public Service Commission, U.P. v. Alpana*, (1994) 2 SCC 723, the Apex Court has observed, "No rule or practice is shown to have existed which permitted entertainment of her application."

15. Hence, an exercise has to be undertaken by the respondents to verify whether for selection to the post of GDS SV, in the past whether cycling test was conducted in the Division. If so, the appointment of the applicant is held to be legal. If not, the applicant may be informed accordingly. In case no such requirement is there and the post has to be filled up on regular basis, new

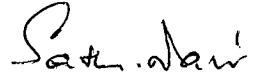
notification duly ensuring the prescription of requirement as per rules be published and applications called for. The most meritorious amongst them who fulfills all the conditions be appointed as GDSSV. Till such time such regular appointment is made, it would be appropriate that the applicant is allowed to perform the duties of GDSSV as originally appointed but on provisional basis.

16. The OA is disposed of on the above terms. The applicant shall present himself before the first respondent within a period of ten days from the date of communication of this order in which event, the first respondent shall allow him to function as GDSSV at Pothencode.

17. No costs.

(Dated, the 5th March, 2008)


(Dr. K B S RAJAN)
JUDICIAL MEMBER


(SATHI NAIR)
VICE CHAIRMAN

cvr.