

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 102 of 2010
with
Original Application No. 838 of 2010
and
Original Application No. 972 of 2010

Friday..., this the 17th day of June, 2011.

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A. No. 102/2010

1. R. Aravindaksha Kurup,
S/o. Raghavan Pillai,
Working as Postal Assistant,
Vadakkumthala East,
Residing at Eramachappallil House,
Koivila P.O., Kollam : 691 590
 2. K.C. Unnikrishna Pillai,
S/o. K. Chellappan Pillai,
Working as Postal Assistant,
Alumkadavu P.O., Karunagappally – 690 573
 3. B. Ajayakumar,
S/o. Balakrishnan Achary,
Working as Postal Assistant,
Pallithottam, Kollam,
Residing at Kalluvial Puthen Veedu,
Thattarkonam P.O., Kollam : 691 005
 4. Thankamany P.,
D/o. M.P. Padmanabhan Achary,
Working as Postal Assistant,
Kalayapuram P.O.,
Residing at Kochupadinjattathil,
Vettikkaval P.O., Kottarakara : 691 538
- ... Applicants.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

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1. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram : 695 033
 2. The Senior Superintendent of Post Offices,
Kollam Division, Kollam.
 3. The Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.
- ... Respondents.

(By Advocate Mr. George Joseph, ACGSC)

2. O.A. No. 838 of 2010

1. K.V. Valsala,
D/o. K.P. Kunhanbu Poduval,
Postman, Azhikode P.O.,
Residing at Viji Vihar, Payannur : 670 307
 2. N.K. Surendran (Karippal Surendran),
S/o. Kannan Nambiar,
Postman, Kannur HPO,
Residing at Dhanashree House,
Karippal P.O. : 670 581
 3. K.K. Chandri,
S/o. Govindan Nair,
Postal Assistant, Azhikode P.O.,
Residing at Vijithram House,
Anchampeedika P.O. : 670 331
 4. P.V. Mukundan,
S/o. D.C. Kottan, Postal Assistant,
Vengara P.O.,
Residing at Payyamvalappil House,
Kooneri P.O. : 670 581.
- ... Applicants.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

1. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
2. The Superintendent of Post Offices,
Kannur Division, Kannur : 670 001.

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3. The Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi. ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

3. O.A. No. 972 of 2010

E.K. Vijayan,
S/o. Kesavan,
Working as Postman Erumeli P.O.,
Residing at Elampurayidathil House,
Edakadathy P.O., Mukkoottuthara : 686 510 ... Applicant.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

1. The Superintendent of Post Offices,
Changanassery Division,
Changanassery : 686 201
2. The Director Postal Services,
Central Region, Kochi – 682 018
3. The Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi. ... Respondents.

(By Advocate Mr. Pradeep Krishna, ACGSC)

These applications having been heard on 06.06.2011, the Tribunal
on delivered the following:

ORDER

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

Having common facts and issues, these O.As were heard together and
are being disposed of by this common order. For the sake of convenience,
O.A.No. 838/10 is treated as representative of all these O.As.

2. The applicants who are Gramin Dak Sevaks (GDSs) appeared in the



Postman Examination held on 24.11.2002 for filling up 8 vacancies in the departmental quota and 5 vacancies in the GDS quota. The result of the examination announced on 17.02.2003 showed that only two candidates were qualified in the departmental quota. In the seniority quota of GDS, three candidates have been selected and one candidate in the merit quota of GDS. The applicants though were qualified and entitled to be appointed in the unfilled vacancies of departmental quota, were however, not selected till 31.12.2003 which resulted in adverse consequences for the applicants. A new pension scheme was introduced for those appointed on or after 01.01.2004. The applicants have been brought under the new pension scheme and recoveries are being made from their salaries towards contribution of the employees under the new pension scheme. According to the applicants, the old pension scheme was more advantageous to them. The delay in promoting the applicants was on the plea that prior approval of the Directorate was required for transferring the unfilled vacancies in the departmental quota to the GDS merit quota. In O.A. Nos. 141/03 and 193/03, this Tribunal held that the stipulation that unfilled vacancies in the departmental quota can be transferred to GDS merit quota only when approved by the Directorate is illegal and contrary to the statutory rules. In O.A. No. 620/03, this Tribunal directed the respondents to give notional promotion to the applicants therein from the date of promotion of the candidates in the departmental quota with consequential benefit of seniority, pension and pay fixation without arrears. The respondents have challenged the order Annexure A-6 before Hon'ble High Court of Kerala in W.P.(C) No. 6555/07, which is pending. Subject to outcome of the said Writ Petition, the order of the Tribunal was implemented vide Memo No. HC/2/2006 dated



11.01.2008 issued by the Senior Superintendent of Post Offices, Aluva Division.

3. The applicants submit that they are similarly placed as the applicants in O.A. No. 620/03. The representations submitted by the applicants have been rejected by the 2nd respondent vide Memo No.B2/2-4/2010 dated 28.06.2010 (Annexure A/8) on the ground that they had to get prior approval of the screening committee for adding the unfilled vacancies of departmental quota to merit quota. The applicants submit that the rejection of their representations is unjust and illegal and discriminatory. The applicants' appointment in the cadre of Postman happened to be on 13.01.2004 with the consequential loss of the benefit of CCS (Pension) Rules, 1972, solely because of the delay on the part of the respondents in transferring the unfilled vacancies in the departmental quota to the merit quota of GDS as per the statutory rules. The applicants are denied the said benefit as their result was announced belatedly for no fault of theirs. The respondents are legally obliged to extend the benefit of the order of this Tribunal in O.A. No. 620/03 to the applicants. The Hon'ble Apex Court has held in **Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others**, (1975) 4 SCC 714, that when a citizen aggrieved by the action of the Government Department has approached the Court and obtained declaration of law in his favour, others, in like circumstances should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievance to Court. In **Inder Pal Yadav and Others vs. Union of India and Others**, (1985) 2 SCC 648, the Apex Court held that those who could not come to the



Court need not be at a comparative disadvantage to those who rushed in here and that if they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of the Court. The applicants prayed for a declaration that they are entitled to be extended the benefit of Annexure A-5 order of this Tribunal in O.A. No. 620/03 and to direct the respondents to stop further recoveries from the applicants towards their contribution under the new pension scheme and refund the amount already recovered in this regard.

4. In the reply statement filed by the respondents, they submitted that as per rules on the subject the unfilled vacancies for departmental quota are to be added to the merit quota, prior approval of the screening committee is to be obtained for filling up of such unfilled vacancies by GDSs. The approval of the Director General was conveyed to the Postmaster General, Northern Region, Calicut by the Chief Postmaster General, Kerala Circle, Trivandrum vide letter No. Rectt/4-5/2003/II dated 03.12.2003 which was received by the Superintendent of Post Offices, Kannur Division, Kannur on 22.12.2003. Accordingly, the applicants were selected for appointment to the cadre of Postman to fill up the unfilled departmental quota vide Memo dated 31.12.2003. They were imparted training for 10 days with effect from 15.01.2004 and were posted as Postman on 23.01.2004. There was no procedural lapse in conducting the examination. They further submit that the applicants have no right to say that they are qualified in the examination on 17.12.2003. Only those who were declared as successful in the examination were given appointment. The respondents have challenged the order of this Tribunal in O.A. No. 620/03 by filing W.P.(C) No. 6555/07 and the same is



pending. On completing the prescribed pre-employment training, the applicants have joined as Postman on 25.01.2004. Hence, they come under the purview of new pension scheme introduced by the Government of India.

5. The applicants have filed rejoinder reiterating the contentions made in the O.As.

6. We have heard Mr. P.C. Sebastian, the learned counsel for the applicants and Mr. Sunil Jacob Jose, the learned SCGSC, Mr. George Joseph and Mr. Pradeep Kreshna, ACGSC appearing for the respondents and perused the records.

7. We find that these O.As are covered by the decision of this Tribunal in O.A No.620/2003 which was allowed on 07.07.2006. The operative part of the said order is reproduced as under :

" In the end, the OA succeeds. It is declared that the applicants 2 to 6 are deemed to have been appointed as Postman w.e.f.30.01.2003 and their pay be fixed notionally in the scale of Rs.3050-4590 while actual pay would be from the date they have assumed their charges. Their seniority shall also be accordingly fixed (of course, junior to those already appointed against the merit quota). The consequential relief viz., fixation of pay at higher stage on the date they have assumed the charges, payment of arrears of pay and allowances arising therefrom and annual increments, entitlement to pension as per the rules prevalent as on 30.01.2003 would all accrue. Respondents shall accordingly pass suitable orders for fixation of pay and allowances and make available the arrears of pay and allowances to the applicants 2 to 6 within a period of four months from the date of communication of this order."

8. The respondents have implemented the aforesaid order vide letter dated 11.01.2008 subject to the outcome of the above Writ petition. The



applicants in the present O.As are similarly placed as the applicants in O.A. No. 620/03. Therefore, the direction of this Tribunal in the said order equally applies to the applicants in these O.As also. The respondents are directed to extend the benefit of the order of this Tribunal in O.A. No. 620/03 to the present applicants within a period of four months from the date of receipt of a copy of this order. They are further directed to stop forthwith recoveries towards contribution of the applicants under the new pension scheme and refund the amount already recovered in this regard within the above time frame.

9. The O.As are allowed as above with no order as to costs.

(Dated, the 17th June, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.