

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No. 118 of 2012
with
O.A. Nos. 394/2012 and 395/2012**

MONDAY, this the 19th day of November, 2012

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

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

1. O.A. No. 118/2012

S.Subhash,
S/o. P.K. Sankaran (late),
Aged, 50 years, GDSMD, Kuzhithura,
Department of Posts, Kollam Division,
Residing at Thazhayil, Kuzhithara P.O.,
Athinad North, Kollam District.

... Applicant.

(By Advocate Mr. V. Sajith Kumar)

v e r s u s

1. Union of India, represented by
The Secretary to the Government,
Department of Posts, Government of India,
New Delhi : 110 001
2. The Chief Postmaster General,
Kerala Circle, Trivandrum : 695 033
3. The Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001
4. Rajani S, Postman,
C/o. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001
5. B. Anil Kumar, GDSMD/MC,
C/o. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001
6. Sindhu R, GDSMD,
C/o. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001

... Respondents.



(By Advocate Ms. Deepthi Mary Varghese, ACGSC for R1-3
 Mr. Shabu Sreedharan for R4 and 6
 Mr. K.P. Satheesan for R-5)

2. O.A. No. 394/2012

Sindhu R, GDSMP, Ezhukone SO,
 Aluvila Veedu, Ezhukone P.O.,
 Kollam : 691 002

... Applicant.

(By Advocate Mr. Shabu Sreedharan)

v e r s u s

1. Union of India, represented by
 The Secretary / Director General of Posts,
 Ministry of Communications,
 New Delhi : 110 001
2. The Chief Postmaster General,
 Kerala Region, Thiruvananthapuram
3. The Senior Superintendent of Post Offices,
 Kollam Postal Division, Kollam : 691 001

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

3. O.A. No. 395/2012

Rajini. S, Postman, Asramom SO,
 Thaiplamvila Veedu,
 Ezhukone P.O., Kollam.

... Applicant.

(By Advocate Mr. Shabu Sreedharan)

v e r s u s

1. Union of India, represented by
 The Secretary / Director General of Posts,
 Ministry of Communications,
 New Delhi : 110 001
2. The Chief Postmaster General,
 Kerala Region, Thiruvananthapuram : 33
3. The Senior Superintendent of Post Offices,
 Kollam Postal Division, Kollam : 691 001

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)



These applications having been heard on 05.11.12, the Tribunal on 19.11.12 delivered the following :-

O R D E R

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

As common facts and issues are involved in these cases, they are disposed of by this common order.

2. As per notification dated 20.10.2009, one should get at least 45% of marks in each of the 3 papers in the examination for selection from the GDS to the post of Postman against vacancies in the year 2009. The applicant in O.A. No. 118/2012, an OBC candidate, had scored 94 marks and more than 45% in each paper. The respondents 4 to 6, who also are OBC candidates had failed in paper-B although they had scored higher total marks. As they were appointed as Postman, the applicant is aggrieved and has filed this O.A. for the following reliefs:

- (i) To quash Annexure A-2 to the extent respondents 4 to 6 are selected and appointed as Postman;
- (ii) To declare that selection and appointment of respondents 3 to 6 who had failed to score 45% marks in Paper-B Arithmetic is highly illegal, arbitrary and liable to be set aside;
- (iii) To direct the respondents 1 to 3 to revise the Annexure A-2 select list by accommodating the applicant in the post reserved for OBC and by removing ineligible candidates in the select list, granting all consequential benefits to the applicant;
- (iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application.

2. The applicant contended that the selection and appointment of the



respondents 4 to 6 contrary to the qualifications prescribed is illegal and arbitrary. The applicant had scored more than 45% of marks in each of the 3 papers as required in the notification. The respondents 4 to 6 have failed to obtain 45% of marks in Paper-B. Therefore, their selection and appointment as Postman is highly illegal and unjust. So is the denial of selection of the applicant, who is qualified.

3. In the reply statement, the official respondents submitted that the respondents 4 to 6 had failed to secure the minimum of 22.5 marks in Paper-B and thus were ineligible for being selected. The 2nd respondent had given direction to cancel the irregular selection of respondents 4 to 6 and to give appointment to the applicant. However, the respondents 4 and 6 have filed O.A. Nos. 395/2012 and 394/2012 respectively challenging the notice of termination issued by the 3rd respondent wherein this Tribunal had ordered to maintain the status quo. Therefore, further action in the matter has been kept in abeyance. Although the respondents 4 to 6 ranked on top, based on their total marks, the fact that they had failed in Paper-B was overlooked while conducting the selection. The respondents had conducted a detailed enquiry in the matter and based on the findings of the enquiry, had taken remedial action.

4. The applicants in O.A. Nos. 394/2012 and 395/2012 contended that it is arbitrary and illegal to terminate their service two years after the publication of the results showing them as passed in the qualifying examination, imparting them training, allowing them to complete the probation period and absorbing them into the department. They have not adopted any malpractice

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in connection with the examination or publication of the results. The retrospective correction of any mistake committed by the respondents after a long period resulting the proposal of terminating the service of the applicants is unjust and illegal. The respondents could have published the marks obtained by the candidates at the proper time during the selection process itself. As the applicants were absorbed in the service they could not participate in the selection process conducted in the year 2010 and 2011 for filling the vacant posts of Postman/Mail Guard. They have no other source of income and their families will be put to difficulty , if their service is terminated.

5. The respondents in their reply statement submitted that none of the grounds raised by the applicants are tenable in the eyes of law. The applicants in O.A. No. 394/2012 and 395/2012 did not get the minimum qualifying marks in Paper-B. The competent authority has every right to review any irregular selection and rectify the error at any point of time. The gap of 2 years in detecting the error does not justify continuance of the applicants who were appointed to a post for which they were not eligible. It would be injustice towards an eligible candidate who had qualified in the examination by scoring 45% of marks in all the papers, if he is not given appointment. As long as the applicants have failed in the examination and are not eligible for being selected as Postman, the averments of the applicants have no relevance.

6. In the rejoinder statement, the applicants in O.A. Nos. 394/2012 and 395/2012 submitted that retrospective correction made by various authorities attracts the doctrine of estoppel. They relied on the judgements of the



Hon'ble Supreme Court in AIR 1990 SC 1075 and Hon'ble High Court of Kerala in WP(C) No. 22137/11 dated 25.05.2012 as at Annexures A-10 and A-11.

7. We have heard learned counsel for the parties in respective O.As and perused the records.

8. The M.A. No.178/12 filed for condonation of delay of 360 days in filing O.A.No. 118/2012 is allowed for the reason stated therein.

9. We do not find any malafide on the part of the applicants or respondents in these O.As. The crux of the matter is that the applicants in O.A. No. 394/2012 and 395/2012 / the respondents 4 to 6 in O.A. No. 118/2012 have failed to secure the minimum 45% of marks in Paper-B whereas the applicant in O.A. No.118/2012 has passed in all the 3 papers for selection to the post of Postman. Therefore, he stands qualified for appointment as Postman. Although the applicants in O.A. Nos. 394/2012 and 395/2012 had secured higher total marks, they are not qualified for appointment as Postman as they failed in Paper-B. In the eyes of law, they are not eligible for appointment to the posts now they hold. The applicant in O.A. No. 118/2012 is eligible to get appointment for which he is qualified. The respondents have the right to review irregular selections which happened inadvertently. The reliance of the applicants in O.A. Nos. 394/2012 and 395/2012 in the cited judicial pronouncements is misplaced for the reason that they do not deal with recruitment based on merit in the examination. We do not find any justification to continue the applicants in O.A.Nos. 394/2012 and

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395/2012 / respondents 4 to 6 in O.A. No. 118/2012 in the posts to which they are not eligible to be appointed or to deny appointment to the eligible candidate. Therefore, O.A. No. 118/2012 is allowed and the respondents are directed to proceed further in accordance with law. Bereft of merit, O.A. Nos. 394/2012 and 395/2012 are dismissed. The interim stays granted in O.A. Nos. 394/2012 and 395/2012 are hereby vacated. No order as to costs.

(Dated, the 19th November, 2012)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

CVR.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P(C)34/13 in O.A.No.118/2012

Tuesday, this the 19th day of November, 2013

C O R A M :

HON'BLE MR.JUSTICE A.K BASHEER, JUDICIAL MEMBER

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

S.Subhash
S/o.P.K Sankaran (late)
GDSMD, Kuzhithura
Department of Post
Kollam Division
residing at Thazhayil, Kuzhithara P.O
Athinad North, Kollam District

- Petitioner

(By Advocate Mr.V Sajith Kumar)

Versus

1. Smt.Shoba Koshy
Chief Post Master General
Kerala Circle, Department of Post
Thiruvananthapuram – 695 033

2. M.Saseendran
Senior Superintendent of Post Offices
Kollam Postal Division
Kollam District – 691 001

- Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

This application having been heard on 19th November, 2013 this Tribunal on the same day delivered the following :-

ORDER

BY HON'BLE MR.JUSTICE A.K BASHEER, JUDICIAL MEMBER

When this petition is taken up for consideration, it is submitted by learned counsel for the respondents that orders have already been issued by the competent authority in terms of the direction issued by this Tribunal in the above Original Application. Learned counsel submits that the petitioner has been issued an order of appointment to the cadre of Postman against one of the vacancies of the year 2009 and that he has also been sent for training as contemplated under the Rules.

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2. Learned counsel for the petitioner agrees that the petitioner has received the order of his appointment. He has already undergone training also. However, according to the learned counsel, respondents have not issued further orders as regards consequential benefits as directed in the order passed by this Tribunal.

3. Learned counsel for the respondents submits that necessary orders will be issued in this regard without any further delay.

4. This shall be done, as expeditiously as possible, at any rate, within 2 months from today.

5. The Contempt Petition is closed with the above direction.



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER
SV



JUSTICE A.K.BASHEER
JUDICIAL MEMBER