

CENTRAL ADMINISTRATIVE T
ERNAKULAM BENCH

O.A. No. 129/2000.

Tuesday, this the 9th day of January, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Anitha D,
Extra Departmental Branch Postmaster,
Kazhavur P.O.,
Pulluvila-695 526,
Trivandrum District. Applicant

(By Advocate Shri Thomas Mathew)

Vs.

1. Superintendent of Post Office,
South Postal Division,
Trivandrum-14.
2. Chief Postmaster General,
Kerala Circle, Trivandrum.
3. Director General,
Department of Posts,
New Delhi.
4. Union of India represented by
its Secretary, Department of
Posts, New Delhi.
5. K. Sasisekharan Nair,
Superintendent of Post Offices,
South Postal Division,
Trivandrum-14.
6. Mariamma Thomas,
Assistant Postmaster General,
Office of the Chief Postmaster General,
Kerala Circle, Tivandrum.
7. A. Balakrishnan,
Superintendent, Postal Stores Depot,
Trivandrum.
8. V.K. Hemachandran,
E.D. Stamp vendor,
Thycaud -H.O.
9. T.S. Suresh Baji,
Extra Departmental Delivery Agent,
Karakonam.

10. Assistant Director, (Recruitment),
Office of the Chief Postmaster General,
Kerala Circle, Trivandrum.
11. Director of Postal Services,
Office of the Chief Postmaster General,
Kerala Circle, Trivandrum. Respondents

(By Advocate Shri S.K.Balachandran, ACGSC (R.1-4)
(By Advocate Shri G.Sasidharan Chempazhanthiyil (R-8)

The application having been heard on 9.1.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant has filed this application impugning the order dated 19.1.2000 by which the respondents 8 and 9 alone were selected and appointed as Postal Assistants and the communications at A-12 and A-13 as a result of which the 8th respondent came to be considered for selection and appointment to the post of Postal Assistant.

2. When the application came up for hearing today, learned counsel of the applicant states that no relief is sought against the respondents 8 and 9 and therefore, the question of quashing A-12 and A-13 does not arise. Now the application is confined to the non-selection of the applicant who belongs to OBC and not appointing her as Postal Assistant. The facts which are absolutely necessary for the disposal of this application, can be stated as follows.

3. The applicant, a member of OBC, who commenced service as Extra Departmental Branch Postmaster applied for selection and appointment to the post of Postal Assistant in response to the notification issued on 30.3.99(A-1(2)) for two

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unreserved, one OBC and one SC vacancies . The applicant participated in the selection. When the panel was prepared, he found that none was selected against the OBC vacancy. According to the applicant, she was successsful in the selection process. The non-inclusion of the applicant in the Select List according to the applicant was on account of the malafides of the respondents 5 to 7. As the applicant had produced the certificate from an institute showing that she had acquired 30 w.p.m. speed in Typing and a certificate from a Computer Institute showing her proficiency in data entry, the respondents against the rules held Typewriting test and the Computer test solely with a view to make the applicant fail, states the applicant. The further case of the applicant is that, while the last candidate in the open market in previous selection had obtained only 46.03 marks, though the applicant should have been entitled to more than 46.03 marks, she has been left out of consideration on the ground that the last marks obtained by an OBC candidate who has been considered in the previous selection was 67.53 and the applicant who obtained less than 57.53 marks would not be selected. The applicant has also alleged that the Question No. 12 in the objective type Part II Examination being wrong in A-11), the said question should have been deleted from the paper and the marks obtained by the applicant would have been properly considered treating it as out of 29. With these allegations the applicant has filed this application for the following reliefs:

- i) to call for the entire records relating to the selection proceedings leading to the issue of Annexure A-7 and quash the same to the extent it selects the 8th respondent;
- ii). to declare that the denial of marks to the applicant for Typing knowledge is illegal and arbitrary and the applicant is entitled to get the same;
- iii.) to declare that the action on the part of the departmental respondents in fixing separate Index marks for Unreserved and OBC candidates at 46.03 and 57.53 respectively for selection to the cadre of Postal Assistant and denial of 5 marks to the applicant for data entry in computer qualification are unconstitutional, arbitrary, illegal, unfair and unjust;
- iv) to declare that the applicant is entitled to weightage for experience earned in as much as the applicant has been performing the same nature of work assigned to a Postal Assistant/Departmental Sub Postmaster since the last 9 years and direct the respondents accordingly;
- v) to direct respondents 1 and 2 to exclude the respondent No.8 from Annexure A7 select list since he was not eligible for recruitment as evidenced by Annexure A2 and direct the respondents to give equal treatment to the applicant as given to the unreserved candidates in the matter of selection and to include the applicant in Annexure-A7 Select list;
- vi) declare that Annexures A12 and A13 to the extent it includes the 8th respondent in Annexure A13 is illegal, arbitrary and without jurisdiction and quash the same;
- vii) To declare that the wrong question No.12 appearing in annexure A-11 question paper is liable to be deleted and the percentage of marks already awarded to the applicant be revised and to direct the respondents accordingly.
- viii) grant such other reliefs which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

4. The respondents 1 to 4 in their reply statement have contended that as the OBC candidate of previous open market recruitment having had got 67.53 marks, the applicant would have become eligible for recruitment only if he had obtained

57.53 marks which he did not. Regarding the contention of the applicant that there was no need to hold Typing test and data entry test, the respondents rely on the revised instructions contained in the clarificatory order dated 29.2.96 as also orders dated 4.7.95 (Annexure R-1(11) and R-1(12) according to which typing test and data entry test have to be conducted for ascertaining the proficiency of the candidates in typing and computer knowledge. Regarding the inclusion of the 8th respondent, it is contended that though the 8th respondent has not produced along with the application the certified copy of his mark list, his representation having been considered by the competent authority as the mark list had been produced by him subsequently, he was permitted to appear in the examination as he was found eligible and qualified. The respondents therefore, contend that there was nothing wrong in the 8th respondent being allowed to participate in the test. As the applicant did not qualify in the Typing test scoring zero marks and as he got only 3 marks in the Computer knowledge and he did not obtain the requisite marks for being selected against the OBC vacancy, the respondents contend that the applicant has no legitimate grievance.

5. The applicant has filed a rejoinder and an additional rejoinder and the respondents have filed two additional reply statements.

6. We have perused with meticulous care the entire

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pleadings and documents placed on record. We have also gone through the file relating to the selection which was made available for our perusal by the counsel for the respondents. We shall first deal with the case of the respondents that the applicant being an OBC candidate could be considered for selection only if he had obtained marks which is not less than 57.53 as the last open market candidate belonging to OBC category had obtained 67.53 marks. We will immediately refer to the condition No.3 in Annexure A-1 notification which reads as follows:

3. General conditions: Only those extra departmental agents would be eligible for being considered who have secured not less than 10% marks in comparison to the last open market candidate considered. The index marks obtained by the last open market candidate is 67.37. As such only those candidates, who secure minimum index marks of 57.37 will be considered for selection."

It is evident that if a candidate has obtained 57.37 marks in comparison to 67.37 marks obtained by the last open market candidate considered in the earlier selection, that candidate is eligible to be considered. The last open market candidate according to us is the last of the entire open market candidates. If the last candidate in the OBC category got higher marks than all the OC candidates, it is unjust and irrational to leave out of consideration an OBC candidate of the next recruitment, who has obtained the qualifying marks as applicable to a general candidate. It is not permissible to prescribe higher standard for a person belonging to OBC in

comparison to general candidates. Therefore, if the applicant would get 46.03 marks the official respondents could not have validly left the applicant out of consideration.

7. Now let us examine the case of the applicant that he was entitled to get more marks than what was awarded. Regarding his claim that typing and the data entry tests could not be conducted, the contention of the respondents is that in view of the clarification contained in Annexure R-1 (11) and R-1(12) and also because the selecting authority should have the authority to assess the ability of the candidate before selection and appointment to the post, the holding of the test is justified. We find merit in this contention. We see that the applicant has been awarded three marks for the data entry test. According to the instructions if a candidate passes in the computer test, he should be given 5 marks. Since the applicant has been awarded marks, it shows that the applicant has passed. Therefore, there is no justification in not awarding five marks to the applicant. The file produced for our perusal does not disclose that the applicant was declared failed in computer test. Therefore, the applicant is entitled to get two marks more in that subject. We also find merit in the contention of the applicant. In the objective type question paper the question No. 12 was wrong and this should have been deleted and the marks obtained should have been considered proportionately against 29 marks. We are supported in taking this view by the ruling of the Hon'ble High Court of Kerala in Madhumohan and Ors. Vs. State of Kerala and Ors, reported in 2000 (1) KLJ 911. The applicant was awarded 9

marks out of 30. Since one question out of 30 has got to be deleted, the 9 marks out of 30, if treated as 9 out of 29, would work out to 9.3 marks. If that is taken into account, the applicant would ~~have to~~ obtain 46.04 marks. If the applicant is given 5 marks for passing computer test to which he has been found to be entitled, his mark would be 48.04. Therefore, in any event, we are of the considered view that the applicant has qualified in the examination to be placed in the Select List for the post of Postal Assistants in the OBC category.

8. The non-inclusion of the name of the applicant in the order A-7 therefore, is illegal and unjustified.

9. We find that fortunately for the applicant one vacancy earmarked for the OBC was not filled up at the time when the original application was filed. By interim order the filling up of the OBC vacancy by converting the vacancy into open market vacancy has been stayed. Therefore, that vacancy is still available for the applicant to be appointed.

10. In the result, in the light of what is stated above, the application is allowed. We set aside A-7 impugned order to the extent it does not include the name of the applicant towards the vacancy earmarked for the OBC and we direct the respondents to appoint the applicant as Postal Assistant against the OBC vacancy w.e.f. the date on which the respondents 8 and 9 were appointed to the post of Postal Assistants, to assign due seniority and to fix his pay. We

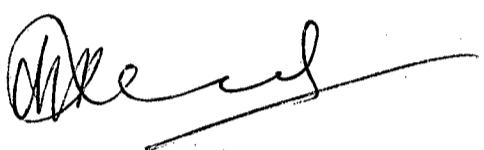
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make it clear that the applicant will not be entitled to any arrears of pay and allowances. The aforesaid directions shall be complied with by issuing necessary orders to appoint the applicant, subject to the pre-appointment formalities like the training, within a period of two months from the date of receipt of a copy of this order. No costs.

Dated the 9th January 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A1 True copy of the letter No.B2/Rectt/98 dated 30.3.99 issued by the 1st respondent.
2. Annexure A7 True copy of Memo No.B2/Rectt/98(Dep) dated 19.1.2000 issued by the 1st respondent.
3. Annexure A11 True copy of question paper Part II containing question No.12.
4. Annexure A12 True copy of letter No.Rectt/103/98-II(Pt)dated 19.7.99 issued by the Asst.Director Recruitment office of the 2nd Respondent.
5. Annexure A13 True copy of letter No.B2/Rects/98(Dep) dated 27.7.99 issued by Asst.Suptd,office of the 1st respondent.
6. Annexure R1(11) True copy of D.G.Posts letter No. 60-16/93-SPB 1 dated 29.2.1996 with covering letter.
7. Annexure R1(12) True copy of D.G.Posts letter No. 60/36/93-SPB-1 dt:4.7.1995.