

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 140/07

THURSDAY THIS THE 11th DAY OF OCTOBER, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

- 1 Paul T.P. S/o TV Peter, Accountant, Cherthala HPO residing at Thottamkara House, Kadakkarappally PO Cherthala, Alappuzha-688629
- 2 Joseph Xavier S/o KJ Xavier, Accountant, Alappuzha HPO r/o Kocheekaranhouse, Kommady, ThumboliPO Alappuzha-688008
- 3 Jeeja Rose A.J. D/o A.V. Johln Ag. Assist, Postmaster(Accounts), Alappuzha HPO r/o Thekkepalackal Kattoor, Kalavoor, Alappuzha.
- 4 Mini Madhavan V. D/o T. Mdhavakurup, Accountant, Divisional Office, Aluva r/o Nandanam, IX/401(6), ChembakasseryTempleroad, Aluva.
- 5 Preetha P. D/o K.A. Prabhakaran, Accountant, Aluva HPO r/o Prampet House, Thuruth, Aluva.
- 6 Neeba K. Velayudhan D/o VK. Velayudhan, Accountant, Perumbavoor HPO r/o Kunjattu House, Mudakuzha PO Perumbavoor.
- 7 Girijadevi G. D/o P.N. Gangadharan, Accountant, Chengannur HPO r/o Vadasseril Cazhamangalam.
- 8 Rachel Varghese D/o K.V. George, Accountant, Tiruvalla HPO r/o Pallathutharayil, Pullad, Tirivalla.
- 9 Elizabeth Leny Varghese D/o L.T. Varghese, Accountant, Tiruvalla HPO, r/o Pakanakuzhiyil Evin Villla, Kubulin, Tiruvalla.
- 10 Radhakrishna Panicker P.R. S/o late Raghavan Pillai P.R. Assistant Postmaster (A/c), Offg., Changanassery HPO r/o Thushara House, Murukanagar, Perunna PO, Chkanganacherry.
- 11 Surendran P S/o P.K. Purushothaman Nair. Accountant, Kanjirappally HPO r/o Gowri Sankaram, Vazhoor PO.

- 12 Ratnamma K. D/o PA Damodaran
Accountant, Ernakulam HPO
r/o Rohini, Kattithara Road, Marad PO, Ernakulam.
- 13 Rajeswary K. D/o C. Raman Menon
Accountant, Ernakulam HPO
r/o Ushus, Thareparambil House, SN Junction
Tripunithura.
- 14 Jayinamma Kuriakose D/o C. C. Mathew
Accountant, O/o the Sr. Supdt. of POs, Ernakulam
R/o Punnachalil House, XXVI/21, Kannankulangara
Tripunithura.
- 15 Sreerekha K.G D/o KS Gopinathan Unni.,
Accountant, Kochi HPO
r/o 21/1220, Lekshmivilasam
, Palluruthy, Kochi-682006
- 16 Jayakumar K. B. S/o N. N. Bhaskara Menon,
Accountant, Ernakulam HPO
r/o Bhavan Pipe Lane road, II
Palarivattom, Kochi-682025.
- 17 Vinodini P. R. D/o Sankarakurup,
Accountant, Kochi HPO
r/o Krishna Kripa, Near A. P. Bridge,
Thevara PO, Kochi-13
- 18 Usha P. T. D/o PK Thankappan,
Assistant Postmaster (A/cs) Offg., Vaikom HPO
r/o Sivasylam, Punnathura, ettumanur.
- 19 Padmakumari K. D/o A. Govindan Nair,
Asst. Postmaster (Accounts),
Ottapalam HPO, r/o Padmasree, Mannanur,
Kavalalppara-679 523.
- 20 Unnikrishnan T. G. S/o late V. Gopalapanner
Postal Assistant, Kulukkallur, Ottapalam
r/o Thattamuriyil, Evoor South, Keerikad PO, Alappuzha Disst.
- 21 Saseendran U. M., s/o VM Ghrini Namboodiri
Accountant, Ottapalam HPO
r/o Uriyam Madam Mana, Trikkatiri PO, Palakkad-679502
- 22 Lathika K D/o PK Sankarakutty.
Accountant, Divisional Office, Ottapalam
r/o Swathi, convent road, Ottapalam-679 102
- 23 Harikumar K. s/o K. Kalyana Sundaram
Accountant, General Post Office, Trivandrum
R/o Mulluvilakam House, Near Amman Koil
Janardhanapuram, Varkala PO
- 24 Saji Sam George S/o P. George Samuel
Accountant, Postal Stores Depot, Trivandrum
R/o Molackal TRA 201, Pularinagar,
Vattiyu oorkavu, Trivandrum-13

25 Narayanan Potty T.R.LS/o late N. Ramanl Potty
Accountant, Head Record Office, RMS TV Division, Trivandrum-1
R/o KSRA-K/2,AkshathaNilaya KaladySouth
Thiruvananthapuram.;

26 Daisy Anna Bery D/o D. ArulThamby Harris
Accountant, TBOP, HRO, RMS TV Division
R/o TC 16/851,Sreekrishna Nagar,
Jagathy,Thklylcaud-695 014

27 Pushparaj C.R. S/o late V. Chlinnayyan
Accountant, TBOP, HRO, RMS TV Division, TVM
R/o JoseDale, KarodePO,;Armanai,Kanyakumari-629151

28 Sheela D.D/o J.David
Accountant, TBOP, HRO, RMS, TV Division, TVM
R/o JayaBhavan,Kadavattaram,Neyyattinklara PO,Tvm.

29 Spain Rose M. D/o late Michel
Accountant, TBOP, HRO, RMS TV Division
R/o TC 43/651,AswathyGardens Ambaklathara
Thiruvananthapuram.

Applicants

By Advocate Mr.K.S. Bahuleyan

Vs.

1 UOI r/b Secretary, M/o Communications &
Dept. of Posts, New Delhi

2 The Director General of Postal¹,
Dak Bhavan, New Delhi

3 Director of Postal Services (Hqrs),
O/o the CPMG, Kerala Circle, Trivandrum

4 The Chief Post Master General,
Kerala Circle, Trivandrum

5 The Sr.Suptd. of Post Offices,
Ernakulam Division, Kochi-11

6 The Sr.Suptd. of Railway Mail Services,
TV Division, Trivandrum

- Respondent

By Advocate Mr.P.S. Biju

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants 29 in number, are working as Accountants in Post Offices and Railway Mail Service Offices in the Kerala Postal Circle, are aggrieved by the decision of the Chief Postmaster General, Kerala Circle, not to hold separate Departmental Promotion Committee for making promotion to Lower Selection Grade Assistant Postmaster (Accounts) (LSG APM (A/Cs for short) as envisaged in the Recruitment Rules. They have filed this Application seeking the following reliefs:

- (i) To call for the records leading to the issue of Annexure A-7 and quash the same.
- (ii) To declare that the applicants are eligible and entitled to be considered by the Departmental Promotion Committee for promotion to norms based Lower Selection Grade Accountant vacancies based on Annexure A-2 Recruitment Rules of 1976
- (iii) To declare that addition of norms based Lower Selection Grade Assistant Postmaster (A/Cs)/Assistant Head Record Officer (A/Cs) vacancies to General line vacancies and conducting DPC for filling up them is legally unsustainable.
- (iv) To issue appropriate order/direction to the 3rd and 4th respondents to immediately convene the Departmental Promotion Committee for promotion of the applicants to Norm based LSG Accountant vacancies based on the Annexure A2 Recruitment Rules dated 30.9.1976.
- (v) Award costs of and incidental to this application.
- (vi) Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2 The applicants have made the following submissions:-

The applicants have passed the Examination for appointment of accountants of Post Offices and RMS conducted as per Rules 273 to 279

of Posts and Telegraphs Manual Vol. IV. They had opted for Accounts line and as such were appointed as Accountants. According to Rule 276-A (a) of P & T Manual vol IV officials on the ordinary clerical time scale of pay, who have passed the Accountants examination, will be eligible for appointment to posts of Accountants or Assistant Accountants in the Lower Selection Grade, in preference to their seniors in the general gradation list, who have not passed the Accountants examination. So also as per rule 276-A(b) promotion to posts of Accountants in Higher Selection Grade will be made from officials in the Lower Selection grade who have passed the Accountants examination and have, after passing the examination worked as Accountant or Assistant for atleast 3 years in that capacity. These rules are still in existence and as such the decisions of the Chief Post Master General taking away the distinction between General line and Accounts line is against the Rules 276-A(a) and 276-A(b) of P & T Manual vol. IV and as such are liable to be quashed.

3 According to items 15 and 16 in the Schedule to Posts and Telegraphs (Selection Grade Posts) Recruitment Rules 1976 (Annexure A-2) promotion to the post of Lower LSG Accountants in Post Offices and RMS made from Clerks in Post Offices and RMS with 10 years regular service in the grade who have passed the PO and RMS Accountants Examination. Item 15 and 16 in the schedule to Recruitment Rules 1976 is still in existence. The applicants satisfy the conditions laid down in these items and as such are eligible for promotion to the post of LSG APM (A/c)/ LSG AHRO(A/c). The decision of the CPMG in para (a) of Annexure A-7 not to conduct DPC at Circle level for filling up of LSG APM(A/c)/AHRO

(A/cs) posts is against the 1976 Recruitment Rules. So also decision (d) to conduct no more separate DPC for making promotion to HSG-II APM (A/c) by exclusively promoting LSG APM(A/cs)/AHRO(A/cs) is against the said Recruitment Rules and as such are liable to be quashed. LSG is a Circle cadre and as such promotion to the LSG APM(A/cs) and AHRO (A/cs) to be held at Circle level considering the accounts line officials only.

4 The Department of Posts (Posts & Telegraphs) Selection grade posts) Recruitment (Amendment) Rules, 2002 (Annexure A-3) has not superseded the Recruitment Rules 1976. It has amended only certain items (SI.NO. 4,5,11 and 12) in the schedule to the Recruitment Rules 1976. Items 15 and 16 in the schedule to the Recruitment Rules, 1976 pertaining to Lower Selection Grade Accountants in the Post Offices and RMS offices have not been amended. According to column 12 of items 15 and 16 promotion to the LSG Accountants in Post Offices and RMS offices to be made from Clerks/Sorters with 10 years regular service in the grade who have passed the PO and RMS Accountants Examination. Annexure A-3 makes no change in this regard. The decisions of CPMG communicated in Annexure A-7 are liable to be quashed.

5 It is stated in Annexure A-7 that the Chief PMG has taken the decisions communicated therein pursuant to the withdrawal of clarifications 10 issued on the Revised Recruitment Rules (Annexure A-3) under Annexure A-4 letter. The clarifications issued were pertaining to Annexure A-3 Amendment Rules (GSR 88(E) which had not amended items 15 and 16 in the schedule to the RR 1976 relating to the promotion to the posts of LSG Accountants in Post Offices and RMS Offices. As such the issue of

clarification 10 and its withdrawal has no relevance as far as the effect of item 15 and 16 of the schedule of 1976 Rules. The decision of the CPMG is without any basis and is not in conformity with the Recruitment Rules 1976 and Rules in P & T Manual Vol. IV. The said decisions are legally unsustainable. The letter dated 3.2.2006 of Chief Post Master General, Kerala Circle Trivandrum communicated vide Annexure A-7 by the 5th respondent is liable to be quashed.

6 Now the CPMG, Kerala Circle Trivandrum as per his letter No. ST/5-2/2001 dated 3.2.06 regarding filling up of APM(A/cs)AHRD (A/cs) posts under the revised Recruitment Rules, 2002 says that:

"Directorate vide letter NO. 137-33/04-SPM-II dated 24.2.2005 has withdrawn the clarification No. 10 issued on the revised Recruitment Rules under letter No. 137-10/96-SPB-II dated 28.1.03. In view of that the following decisions have been taken:

(a) no more Departmental Promotion Committee is called for at Circle level for filling up of LSG APM(A/cs) AHRO (A/cs)posts.

(b) LSG APM (A/Cs)/AHRO (A/cs) vacancies arising in a division are to be added to other LSG vacancies.

© 1/3rd LSG vacancies including APM(A/cs) AHRO (A/cs) are to be filled up at Divisional level by promoting officials according to their seniority and eligibility in PA/SA cadre and 2/3rd to be notified for examination as per the condition laid down in the recruitment rules."

7 A true copy of the letter No. B-1/14 dated 9.3.2006 of the Senior Supdt. Of Post Offices, Ernakulam Division, Kochi-11 communicating the copy of letter No. SST/5-2/2001dated 3.2.2006 of the CPMG, Kerala Circle, Trivandrum is produced as Annexure A-7. Annexure A-7 is liable to be quashed as the decisions communicated therein are arbitrary and

against the Rules.

8 Further, the applicants have submitted that the CAT Madras Bench in O.A. 201/2006 decided the issue in respect of similarly placed persons in their favour and has observed that the original Recruitment Rules for the LSG Accountants line post have not been amended and hence their application has not been withdrawn. The Tribunal was also pleased to direct the Principal Chief PMG, Tamil Nadu Circle to immediately convene the DPC for promotion of PO and RMS Accounts line person to norm based LSG/ Accountants vacancies; based on the recruitment rules dated 30.9.1876 and issue necessary promotion order in accordance with rules for the eligible PO & RMS Accountants line officials within a period off our weeks from the date of receipt of a copy of the order. Hence this O.A. Is a fit case to be allowed.

9 The respondents did not file a reply for about six months stating that the matter was under their consideration. However, a counsel statement was later filed on behalf of the respondents and on the same day arguments were heard. In the reply they have stated that Annexure A-2 Recruitment Rules provides for separate promotion for general line and accounts line. Since only limited opportunities in the accounts line are available it was decided to make promotion open and provide for promotion to accounts line in the general line thereby improving the opportunity of accounts line candidates. With that objective, Annexure A-7 was issued there was nothing illegal and it was beneficial to the applicants.

It is also submitted that Annexure A-8 orders in relation to Fast Track

promotion has since been given up.

10 We have heard the learned counsel on both sides.

11 The learned counsel for the applicant stated that the CPMG, Kerala Circle is taking hasty steps to conduct DPC for promotion to the LSG posts by adding the norm based LSG APM (A/cs)vacancies also to the General Line LSG vacancies and conducting DPCs not in conformity with the Recruitment Rules 1976 and it would cause irreparable injury and hardship to the applicants. The learned counsel for the respondents fairly stated that it is true that for the posts at Sl.No. 14 to 16 in the 1976 Rules, Col. 12 prescribing the eligibility for promotion with requirement of passing the Accounts examination has not been amended by the notification at A-3 dated 17.6.2002.

12 We have considered the Recruitment Rules 1976 vis a vis the amendments made thereto in 2002. As seen from the Recruitment Rules of 1976 (A-2) there are different categories of selection grade posts in the RMS offices. Category 12 consists of LSG posts in RMS offices, category 14, LSG posts in Post Offices and category 15 LSG Accountants in Post Offices and category 16 LSG Accountants in RMS offices. The categories 12 to 14 are different from category 15 and 16. For category 15 and 16, the mode of promotion is prescribed as follows in Col. 12:

Col. 2	Col.12
16. Lower Selection Grade Accountants in Railway Mail Service Offices	Clerks or Sorters in Railway Mail Service Offices with 10 years' regular service in the grade, who have passed the Post Offices and Railway Mail Service Accountants Examination.

13 The amendment notification at Annexure A-3 amends only provision relating to categories at Sl. Nos. 11 and 12 and the entries relating thereto as evident from para 2(ii) of the Recruitment rules at Annexure A-3. It does not effect any change in the provisions relating to categories at Sl. Nos. 15 or 16 viz. LSG Accountants in RMS offices for whom the above provision in 1976 Rule will continue to apply. This is the correct factual and legal position. The respondents confirmed this position by the clarification at point 10 of Annexure A-4 letter of the Ministry dated 28th January, 2003. Even point 15 of the above letter emphasises that officials having accounts qualification only may be considered for being posted as APM (Accounts). In the light of these parameters laid down by the respondents themselves, it is not clear why the department has all on a sudden issued Annexure A-7 letter dated 10.2.2006 withdrawing the clarification NO. 10 issued vide A-4 letter and directing clubbing of vacancies of LSG areas in a division. Though the Annexure A-7 order stated that it is issued in view of the Revised Recruitment Rules. The said clarification is not in consonance with the recruitment Rules which did not modify any of the provisions relating to LSG Accounts Posts. A clarificatory letter can be withdrawn by another letter. But a letter which is in the form of an advice by any construction cannot override the Recruitment Rules, the 1976 Recruitment Rules still hold the field as far as the LSG (Accounts) posts are concerned. A clarificatory order cannot take away the right given under the

Recruitment Rules which are statutory in nature. The Madras Bench of the Tribunal has also held in its order dated 21st November, 2006 in O.A. 201/2006 on the same issue as under:

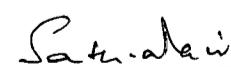
".....Without announcing the Accounts Line posts for the Fast Track Examination and filling up these post only from Fast Track qualified persons, and seeking clarification from the Directorate which is still awaited and not holding any DPC since 2002 for the PO & RMS Accounts line officials for filling up the norm based Accounts Line post on some plea or other, cannot at all be appreciated as being fair to all those who have passed the PO & RMS Examination and whose interest also needs to be protected by the respondents. Further it has been submitted by the respondents that the Directorate order dated 30.5.2006 has completely withdrawn the Fast Track Promotion scheme, which tantamounts to promotion from the feeder grade only and not through this Fast Track examination, thus strengthening the need for conducting the DPC for PO & RMS Accountants, without any further procrastination on the part of the respondents."

14 We are in respectful agreement with the same. Annexure A-7 is accordingly quashed. The applicants are eligible to be considered for promotion to norm based LSG Accounts vacancies based on Annexure A-2 Recruitment Rules of 1976. The respondents are directed to convene the Departmental Promotion Committee for consideration of the eligible applicants to the LSG Accountant posts and issue necessary promotion order if they are otherwise eligible as per rules within a period of four weeks from the date of receipt of the order.

Dated 11.10.2007



DR. KBS RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN