

**Central Administrative Tribunal
Ernakulam Bench**

OA No.755/2012 & OA No.15/2013

.....Tuesday.....this the 4th day of August, 2015

CORAM

HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR.R.RAMANUJAM, ADMINISTRATIVE MEMBER

OA 755/2012

1. G.Jayadevan
Postman
Perumpuzha Post Office
Kollam-691 504.
2. B.Anil Kumar
Postman
Vellimon Post Office
Kollam-691 511.

Applicants

By Advocate: Dr.K.P.Satheesan, Sr.

Versus

1. The Chief Postmaster General
Kerala Circle, Thiruvananthapuram-695 033.
2. The Senior Superintendent of Post Offices
Kollam Division, Kollam-691 001.
3. S.Subash
S/o P.K.Sankaran
GDSMO, Kuzhithara
Department of Posts, Kollam Division.
Residing at Thazhayil, Kuzhimara P.O.
Athinal North, Kollam Dist.

Respondents

(By Advocate: Mr.N.Anil Kumar for R1-2
Mr.V.Sajith Kumar for R3)

OA 15/2013

D.Viswanatha Pillai
Son of Late Chellappan Pillai
Kochutharayil House

Prayar North, Prayar P.O.-690 547.
 Postman, Karunagappally Head Post Office
 Department of Post, Kollam Postal Division.

Applicant

(By Advocate: Mr.V.Sajith Kumar)

Versus

1. Senior Superintendent of Post Offices
 Kollam Postal Division, Kollam-691 001.
2. Chief Postmaster General, Kerala Circle
 Department of Post,
 Thiruvananthapuram-695 033
3. Union of India represented by its
 Secretary, Ministry of Communications
 New Delhi-110 001.
4. S.Pradeep
 Postman, Oachira Sub Post Office
 Kollam District-690 526
5. S.Sheeja
 Postman, Arinalloor
 Kollam Postal Division-690 538
6. Jeejo
 Postman, Eravipuram, Kollam-691 011
7. G.Jayadevan
 Postman, Perumpuzha Sub Office
 Kollam Postal Disivion-691 013.

Respondents

(By Advocate: Mr.V.A.Shaji, ACGSC for R1-3
 Mr.S.R.K.Prathap for R4
 Dr.K.P.Satheesan, Sr. for R5-7)

The two Original Applications having been finally heard together on 7th July, 2015, this Tribunal delivered the following common order on 4th Aug., 2015:

ORDER

By Mr. R.Ramanujam, Administrative Member

Since the issues are identical and facts are similar, these two Original Applications are disposed of by this common order.

2. These two Original Applications are directed against the decision of the official respondents to cancel the appointment of the applicants as Postmen on the ground that their selection was irregular and not in order. The admitted facts are that the applicants in OA 755/12, Gramin Dak Sevak Mail Deliverers (GDS MD) since the year 1989/1990 appeared for a departmental examination for recruitment to the post of Postman against the vacancies of the year 2008 & 2009 respectively. Based on the result of the examination, they were appointed as Postmen at different post offices in Kollam Postal Division. The applicant in OA No.15/2013 is aggrieved by similar proposal of the respondents to cancel his appointment as Postman. On receipt of a complaint from one R. Raveendran Pillai alleging irregularities in the recruitment in question, detailed enquiries were conducted by the Vigilance Wing of Circle Office. This led to a review of all the recruitments made from 2006 onwards. Consequently, based on the findings of the vigilance team, the competent authority in the Postal Division came to a conclusion that the selection of the applicants as Postmen was irregular and not in order for reasons recorded in Annexure A-1 & A3 orders in OA 755/12 and Annexure A1 & A2 orders in OA 15/2012 respectively. The action of the respondents, the applicants allege, is highly unjust and unreasonable. The applicants seek a declaration that they are not liable to be terminated from the post of Postman on the basis of the reasoning recorded in the afore-mentioned impugned orders, and a direction to the respondents to retain them in service as Postman.

3. In the reply statement, the respondents have contended that the decision to cancel the appointment of the applicants as Postman was on account of certain irregularities in the recruitment process. G.Jayadevan, the first applicant in OA 755/2012 while working as GDS MD appeared for the departmental examination for recruitment to the cadre of Postman for the vacancies of the year 2008 and based on the result of the examination, he was appointed as Postman under OBC quota. B.Anil Kumar, the second applicant while working as GDS MD appeared for the departmental examination for

recruitment to the cadre of Postman for the vacancies of the year 2009 and based on the result of the said examination, he was appointed as Postman under OBC quota. D.Viswanatha Pillai, applicant in OA 15/2013 was similarly appointed as Postman under UR quota. On receipt of a complaint alleging irregularities in the recruitment, a vigilance enquiry was conducted by the office of the first respondent. All the recruitments made in the cadre of Postman from the year 2006 were reviewed. In the light of the findings of the enquiry and review, the appointments made were found to be irregular. Accordingly, such irregular appointments were ordered to be cancelled and the applicants were directed to join their original GDS posts. According to the respondents, the irregularities range from failure to enforce the earmarking of certain vacancies under various quotas in different ratio, exclusion of certain candidates who scored higher marks, failure of the applicants to secure qualifying marks in each paper, to inadvertent error having been committed in recording the selection proceedings.

4. We have heard the learned counsel on either side and perused the documents. The learned counsel for the applicants contended that the applicants are on the verge of retirement and at this point of time, the proposal to remove them from the post of Postman is illegal, unjust and violative of Article 14 of the Constitution. The applicants were selected after a due process of selection and they were imparted training before being inducted as Postmen. The impugned orders are issued based on a compliant. There is nothing illegal in the inclusion of their names in the select list. The applicants are penalized for no fault of theirs. He argued that it would be unjust to deprive the applicants of the rights which have accrued to them and the respondents are estopped from what they are intending to do, considering the period of time that has elapsed between the appointment made in 2009 and the proposal to cancel the same in 2012/2013. Reference is made to 2009 (4) KHC 627 (FB). Reliance has been placed on (2013) 4 SCC 690 to contend that the applicants were innocent in the matter as there was no allegation of any fraud or malpractice against them. It was due to the fault of the respondents that the

alleged irregularities occurred in the selection process. Learned counsel for the respondents, on the other hand, argued that the issue involved is no more res-integra. The very same issue came up for judicial scrutiny before this Tribunal in OAs No.394/2012 and 395/2012 filed by those who were irregularly appointed as Postman under OBC quota for the vacancies of the year 2009. The aforesaid cases were dismissed by the Tribunal being devoid of merits (Annexure R1). The decision had been upheld by the High Court of Kerala (Annexure R2).

5. After going through the records, we find that the respondents have taken various grounds to come to the conclusion that the applicants' appointment as Postmen was irregular and not in order. Annexure A9 memo (filed in OA 15/13) dated 16.12.2009 indicates that D.Viswanatha Pillai and G.Jayadeven were provisionally selected for the post of Postmen based on the result of the examination. The examination was conducted for recruitment to the cadre of Postman against departmental quota vacancies for the year 2008. The very same letter states that "9 unfilled departmental quota vacancies are transferred to merit quota". Annexure A10 memo dated 28th December, 2009 indicates that the aforesaid applicants successfully completed their training and were provisionally appointed as Postman under merit quota. However, D.Viswanatha Pillai's name appears against UR quota and that of G.Jayadevan appears against OBC quota. Similarly, B.Anil Kumar who was selected against the vacancies of the year 2009 is at Sl.No. 6 under OBC category. The total number of vacancies for the year 2008 is shown as 9 (UR-5, OBC-3 & SC-1) and of the year 2009 is shown as 14 (UR-7 & OBC-7). These vacancies admittedly belonged to departmental quota but were transferred to GDS merit quota. It has been stated in the impugned orders that certain GDS candidates who scored qualifying marks were omitted to be included in the select list and this was a mistake on the part of the respondents while at the same time those omitted to be included had passed 2009 examination and were selected. It is the admitted case of the respondents that the applicants were departmental candidates and they were declared successful in the examination. The question is whether the applicants

who participated and passed the departmental examination were ineligible to be appointed as Postmen under the GDS merit quota. According to the respondents, the applicants became disentitled to be appointed as certain other candidates who scored more marks than the applicants were inadvertently excluded from the select list. It is not that the marks obtained by the applicants were less than the qualifying marks. The applicants were selected based on their qualifying marks but it happened that those who scored higher marks were omitted by mistake by the respondents. In the order dated 9.1.2013 passed by this Tribunal in OA 755/12, it was recorded that "*the 2nd applicant i.e., B.Anil Kumar is a party in OA 118/12 whose selection and appointment has been set aside by the Tribunal. That order had become final as of today. In the circumstances, the interim order in favour of the 2nd applicant cannot be continued and the same is vacated. However, interim order in respect of the 1st applicant will continue for a period of three weeks within which time pleadings be completed*". In the order dated 18.1.2013 passed by this Tribunal in OA 15/13, it is stated as the submission of the applicants' counsel that *Sri Mohanakuttan Pillai in whose place the applicant D.Viswanatha Pillai was appointed was no more* and consequently the respondents were restrained from executing the impugned orders. In effect, the stay granted in favour of G.Jayadevan and D.Vishwanatha Pillai still continues. In the case of B.Anil Kumar, the stay has already been vacated.

6. In the facts and circumstances of the cases, we are of the view that the applicants were selected and appointed as Postmen through a due selection process in accordance with rules and procedures. There is no allegation of irregularity on the part of the applicants. There is no allegation that the applicants have misrepresented in any manner in order to secure the appointment. There is no case for the respondents that the applicants have secured less than the qualifying marks in the examination. The appointment in question has become a bone of contention only for the reason that the respondents had committed the mistake of excluding from the select list certain departmental candidates who happened to score more marks than the

applicants. Considering the experience and seniority gained by the applicants as GDS MS/MD and their success in the selection process as declared by the respondents earlier, it would be too harsh to cancel their appointment as Postmen at the fag end of their service for no fault of theirs. The impugned orders except in the case of Sri Anil Kumar are, therefore, set aside. In the interests of justice, the respondents are directed to consider continuation of the applicants except Sri Anil Kumar as Postmen from the date of their posting, by creation of supernumerary posts, if necessary.

7. Original Applications are disposed of accordingly. No order as to costs.

Sd/-
R.Ramanujam)
Administrative Member

Sd/-
(N.K.Balakrishnan)
Judicial Member

aa.

CERTIFIED TRUE COPY
Date:

Section Officer (Jugd.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P.(C) No.19/13 in O.A.No.15/13

Thursday this the 31st day of January 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

D.Viswanatha Pillai
S/o. Late Chellappan Pillai
Kochutharayil House
Prayar North
Prayar P.O – 690 547
Postman, Karunagappilly Head Post Office
Department of Post, Kollam Postal Division

...Petitioner

(By Advocate Mr.V Sajith Kumar)

V e r s u s

1. Mr.M Saseendran
Senior Superintendent of Post Offices
Kollam Pin – 691. 001
2. Smt.Sobha Koshy,
Chief Post Master General,
Kerala Circle, Department of Post,
Thiruvananthapuram – 33

...Respondents

(By Advocate Mr.Pradeep Krishna,ACGSC)

This application having been heard on 31st January 2013 this
Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This Contempt Petition is closed as the order is stated to have
been complied with.

(Dated this the 31st day of January 2013)


**K.NOORJEHAN
ADMINISTRATIVE MEMBER**

S.V


**Dr.K.B.S.RAJAN
JUDICIAL MEMBER**