

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NOs. 182/11 & 576/2012

CORAM: *Thursday*, this the *13th* day of December, 2012

**HON'BLE MR.JUSTICE P R RAMAN, JUDICIAL MEMBER
HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER**

O.A 182/11

Nisha N
D/o.Shri Balakrishnan Nair, aged 27 years
Postman, Punkunnu P.O (Relieved from the post
as per Memo No.GL2/Postman Exam dated at TCR-3
dated 22.02.2011 of Inspector of Posts
Thrissur North Sub Division, Thrissur)
Presently working as GDS Mail Carrier,
Vadakkancherry Sub Division
residing at Naduvil Veettil, Thayyur
Erumapetty P.O, presently residing at
House No.24/349, Punkunnu, Thrissur – 680 002 - Applicant

(By Advocate O.V Radhakrishnan, Sr with Mrs.K Radhamani Amma, Mr.O.F Justin, Mr.Gens George Elavia Mannil)

Versus

1. Senior Superintendent of Post Offices
Thrissur Division, Thrissur – 680 001
2. Inspector of Posts
Thrissur North Sub Division
Thrissur – 680 003
3. Chief Postmaster General
Kerala Circle, Thiruvananthapuram – 695 033
4. Union of India, represented by its Secretary
Ministry of Communication and Information Technology
Dak Bhavan, New Delhi – 110 116
5. C.Durgadevi W/o.Sri.Radhakrishnan
GDS. Stamp Vendor, Olloor, Thrissur
Residing at Chittalil House
Olloor P.O, Thrissur District – 680 306 - Respondents

(By Advocate – Mr.Millu Dandapani, ACGSC for R1-4, Mr.Shafik M.A for R5)

O.A 576/12

T.T Sivadasan

S/o the late Sri.T.V Narayanan Nair, aged 44 years
Postman, Kondazhi P.O (Relieved from the post
as per Memo No.WS/D/1

dated 22.02.2011 of Inspector of Posts

Vadakkancherry Sub Division)

Presently working as GDS Branch Postmaster,
Thekkumkara, residing at Thekkevattekkattu House
('Sivapreethi'), Near Railway Gate

Cheruthuruthy P.O, Thrissur – 679 531

- Applicant

(By Advocate O.V Radhakrishnan, Sr with Mrs.K Radhamani Amma, Mr.Antony Mukkath, Mr.K.Ramachandran)

Versus

1. Senior Superintendent of Post Offices
Thrissur Division, Thrissur – 680 001
2. Inspector of Posts
Vadakkancherry Sub – division
Wadakkanchery – TC, Wadakkanchery – 680 582
3. Chief Postmaster General
Kerala Circle, Thiruvananthapuram – 695 033
4. Union of India, represented by its Secretary
Ministry of Communication and Information Technology
Dak Bhavan, New Delhi – 110 116
5. C.J Vinson S/o Sri Jacob C.P
presently working as Postman
residing at Cheruvattor House
Vaka, Via Mattom, Thrissur – 680 602

- Respondents

(By Advocate – Mr.Thomas Mathew Nellimoottil (R1-4), Mr.Shafik M.A for R5)

The application having been heard on 03.12.12, the Tribunal
on 13.12.12 day delivered the following:

ORDER**BY HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER**

As the facts in these two Original Applications are identical and the legal issue raised is the same, these Original Applications were heard together and are being disposed of by this common order. For the sake of convenience, Original

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Application No.182/11 is taken as the pilot case.

O.A No. 182/2011

2. The applicant has filed this Original Application challenging Annexure A-4 and Annexure A-5 impugned orders and praying for setting aside the same.

3. The applicant while working as GDS Branch Postmaster, was selected for appointment to the post of Postman on the basis of examination held on 18.10.2009. After successful completion of the training, the applicant was appointed on 08.04.2010. When she was working as Postman, Punkunnu she was served with Annexure A-4 and Annexure A-5 memos cancelling her appointment as Postman and relieving her from the post of Postman Punkunnu Post Office. She was ordered to join her original post of GDS BPM, Kottapuram with immediate effect. Apparently, she was discharged from the post of Postman, against which she was appointed regularly on the basis of the order of this Tribunal in O.A Nos.459/10 and 512/10. The applicant contends that the applicant was not made party in Original Application No.459/10 and the order of the Tribunal was issued without affording her an opportunity to be heard. Hence, Annexure A-11 order of this Tribunal is to be treated as indefensible, void and inoperative. The applicant avers that two more examinations for the post of Postman were held on 20.12.2009 and 29.08.2010 (Annexure A-12 and Annexure A-13). She did not appear for the examinations as she was not at all aware about the O.A 459/10 being filed and the order of the Tribunal being issued which adversely affected her interest. The applicant placed reliance on the following judgments of the Hon'ble Apex Court of India.

1. Udit Narain Singh Malpaharia vs. Additional Member, Board of Revenue, Bihar & Anr., reported in AIR (1963) SC 786.
2. Prabodh Verma & Ors. vs. State of U.P & Ors reported in AIR (1985) SC 167.
3. Khetrabasi Biswal vs. Ajay Kumar Baral and Ors reported in 2004 1 SCC 317.



4. Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors, reported in (2004) 2 SCC 76.

5. Dattatreya & Ors vs. Mahavir & Ors reported in (2004) 10 SCC 665.

6. Tridip Kumar Dingal & Ors vs. State of West Bengal & Ors reported in (2009) 1 SCC 768

4. The applicant contends that R-5 was not at all eligible to seek revaluation as the conditions set out in Annexure A-8 DG Post letter dated 02.08.2010 were not fulfilled. Hence, R-1 should not have get her answer paper revalued. According to the applicant, this Tribunal was persuaded by R-1 to order revaluation behind her back which caused prejudice to her, the selected candidate. The applicant submitted that if there were any errors as per the original valuation, this Tribunal should have directed to revalue the answer books of all the candidates who appeared for the examination held on 08.11.2009 by applying a uniform standard and same yardstick. She added that directing to evaluate the answer sheets of 5th respondent alone is illegal, arbitrary and discriminatory attracting the frown of Articles 14 and 16(1) of the Constitution of India.

5. The respondents in their reply statement submitted that in the 11 vacancies notified for departmental quota for the Postman examination, only one departmental official qualified. In the first instance, no vacancy was announced for GDS merit quota. The shortfall of 10 vacancies in Departmental quota was then transferred to GDS merit quota with a break up of UR-8 and O.B.C-2. The applicant was selected against the last UR vacancy and she was inducted into the Postman cadre with effect from 08.04.2010. While so, Smt. C Durgadevi, R5 filed O.A 459/10 seeking revaluation of her answer script in respect of Paper I. By an interim order dated 01.11.2010, the Tribunal ordered revaluation of answer book in Paper I. On revaluation, R-5 got 2 more marks than the previously announced marks and hence the select list was revised placing the applicant in the O.A as the last UR candidate in the merit list.

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Consequently, the name of the applicant as last candidate in the UR quota had to be removed from the merit list. Thereafter, Annexure A-4 speaking order was issued and the applicant was discharged from service, and accommodated in her original GDS post with effect from 23.02.2011. The respondent maintained that they have only complied with the orders of the Tribunal in O.A No.459/10 and 512/10 filed by Smt.C Durgadevi and Mr.C.J Vinson respectively.

6. Arguments were heard and documents perused.

7. The applicant took up the main ground that her selection and consequent appointment to the post of Postman were cancelled by the respondents by issuing the impugned orders at Annexure A-4 and A-5. This was done in the course of complying with the order of this Tribunal in O.A Nos.459/10 and 512/10. In the aforesaid O.As, the applicant was not made a necessary party and hence the orders of this Tribunal were issued without giving her an opportunity to be heard. Therefore, the applicant contends that O.A 459/10 should have been dismissed on the ground of non-joinder of necessary party. She has extracted relevant portion of the judgments of the Hon'ble Supreme Court in various cases in support of her contention.

1. In the case of Udit Narain Singh Malpaharia vs. Additional Member, Board of Revenue, Bihar & Anr., reported in AIR (1963) SC 786 it is held that "it would be against all principles of natural justice to make an Order adverse to them behind their back; and any Order so made could not be an effective one. They were, therefore, necessary parties before the High Court....."

2. It was observed in the case of Prabodh Verma & Ors. vs. State of U.P & Ors reported in AIR (1985) SC 167, that a High Court ought not to hear and dispose of a Writ Petition under Article 226 without the persons who would be vitally affected by its judgement being before it as respondents or atleast some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not have proceeded to hear and dispose of the Sangh's Writ Petition without insisting upon the reserve-pool teachers being made respondents to that Writ Petition, or atleast some of them being made respondents in a representative capacity, and had the petitioner refused to do so, ought to have dismissed that petition for nonjoinder of necessary parties."

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8. She also averred that she could not avail of a further opportunity to appear for the two examinations held in December 2009 and August 2010 as she was appointed as Postman and was working in the said capacity from 08.04.2010 onwards.

9. It is a fact that in O.A 459/2010, R-5 challenged the select list but no selected candidate was impleaded, even in representative capacity. To that extent the contention of the applicant that she was kept in dark when the order of the Tribunal was delivered is right. R-5 has pointed out that for the same questions in paper A-I, in the Postmen examination, more marks were awarded to one Mr.Vinson for certain questions (Applicant in O.A 512/10). Had her answers been evaluated in the same manner, she would have got a total of 139 marks instead of 136. R-5's request for revaluation falling under para 3(iii) of Annexure A-8 guidelines of DG (Posts) was rejected by the respondents. However, Annexure A-9 order dated 01.11.2010 in O.A 459/10 shows that recording the submission of respondents, revaluation was ordered by the Tribunal and the respondents were directed to complete the same and intimate the result within 15 days. This apparently, led to a situation, when the order of the Tribunal was issued, going by the readiness of the respondents to do revaluation, on their own volition. It was open to the Tribunal to order revaluation of Paper I answer books of all candidates who qualified in Paper B & C. But a perusal of the revalued answer book shows that the manner in which the second examiner has valued varies considerably from the way initial evaluation was carried out. For question No.2, when no mark was awarded by the first examiner 3 marks was given by 2nd examiner. Marks were reduced from full marks of 5 to 4 for certain questions and increased from 3 to 4 for other questions on second valuation. Still R-5 got 43/50 which resulted in her getting one mark more than the applicant. Therefore, revaluation if ordered for more candidates, might have resulted in many changes in the select list. It was not warranted in the situation, presented in O.A 459/10, where the respondents decided to revalue the answebook of R-5 during pendency of the litigation. Further direction and

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order were issued on such submission by the respondents. It also throws up an additional issue that merely giving the key to the examiner will not suffice as every examiner has a different approach to awarding marks. One examiner does not give full marks, even when the answer is fully correct as is seen in O.A 459/10. Instructions have to be given as to how marks are to be awarded when answers are partly correct leading to the right answer. This is essential to keep up uniformity in evaluation. Lack of uniformity in evaluation will lead to a lot of heart burning as candidates are empowered by RTI act to get answer books of other candidates, compare the marks awarded and come up with a plea that justified marks are not given to them. Of course, it is settled law that no revaluation is to be permitted. It is only in view of chronic litigation and to maintain fairness and transparency that DG(Posts) has issued Annexure A-8 order giving an opportunity to set right certain discrepancies in valuation, but precluding revaluation on the ground of non-awarding of justified marks.

10. What has happened in this Original Application is that the difference of one mark has the impact of making or marring the career prospects of a GDS for whom promotional avenue is negligible. The applicant worked as Postman for almost an year before her service was terminated. She suffered the additional disadvantage of not participating in the two exams held in Dec 2009 and Aug 2010. It is seen from Annexure A-13, that in the postman recruitment register, there are altogether 3 backlog vacancies, 2 in PH and one in ST, in 2010. Respondents would have conducted the Postmen exam for the years 2011 and 2012 by now. It is quite possible to accommodate the applicant against one of the reserved unfilled vacancies by treating her as a selected candidate of 2009 and give weightage for her appointment as Postman from 28.03.2010 to 22.02.2011. The period of break can be regularised by grant of eligible leave including leave not due, or treat it as notional service.

11. In the result, the O.A is disposed of with a direction to R1 to consider the appointment of applicant as Postman against an unfilled vacancy of any year from

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2009 to 2012 within a time line of two months.

O.A 576/12

12. In this case also as a consequence of implementation of the order of the Tribunal in O.A 512/10, the selection of the applicant as Postman was cancelled and his service terminated. He appeared for the examination held on 08.11.2009. He too was accommodated in his original post of GDS. On revaluation, R-5 got 7 marks more. It is seen from the Annexure A-1. select list that candidate in serial No.2 is serving in Army Postal Service. As further promotion to the grade of Postman is generally granted in APS, it is quite possible that the official continues to work in APS. To that extent his vacancy might not have been filled up. If so, R1 can consider whether the applicant can be accommodated against his vacancy without changing the date of appointment of the APS candidate as Postman or adjust the applicant against an unfilled reserved vacancy which arose from 2009 to 2012.

13. The Original Applications are disposed of with the above direction. R-1 will intimate his decision to the applicants within a time line of 2 months from the date of receipt of the order. No costs.

(Dated, this the ^{13th} day of December, 2012)


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER


(JUSTICE PR RAMAN)
JUDICIAL MEMBER

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